TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Inquiry into fire season preparedness

Melbourne — 28 February 2017

Members

Mr David Davis — Chair Ms Samantha Dunn
Ms Harriet Shing — Deputy Chair Mr Khalil Eideh
Ms Melina Bath Mr Cesar Melhem
Mr Richard Dalla-Riva Mr Daniel Young

Participating Members

Mr Greg Barber Mr James Purcell
Mr Jeff Bourman Mr Simon Ramsay
Ms Colleen Hartland Ms Jaclyn Symes

Witness

Mr Danny Michell (sworn), former Chief of Staff, Minister for Emergency Services.

The CHAIR — I welcome Danny Michell to this hearing, indicating that evidence you give here is protected by parliamentary privilege but may not be outside. Mr Michell, as I understand it, you were adviser on emergency services, or chief of staff to Minister Garrett.

Mr MICHELL — Chief of staff.

The CHAIR — And what dates were you chief of staff, just so that I get the time periods quite clear?

Mr MICHELL — It was from the start of the swearing in of the government in early December until the end of the second week in May, and from my memory that was the 12th.

The CHAIR — May 2015?

Mr MICHELL — Yes. So approximately six months.

The CHAIR — Right. And your role there was the normal work of a chief of staff to a minister?

Mr MICHELL — Yes.

The CHAIR — Clearly we are interested, in terms of previous evidence both today and earlier, about the decision of the government that the CFA would fund a payment to the UFU. What I am trying to understand here is the role that you played in that. We have heard evidence that you spoke to the then CEO in early February 2015, and I would be interested in your description of that process and the dates on which it occurred.

Mr MICHELL — I have very scant recollection of that meeting with Mr Bourke, and I can say it was probably early February, but the detail and the actual content of the meeting I cannot recall. But I will say that I did not make that request that the \$2 million be paid.

The CHAIR — You did not?

Mr MICHELL — No.

The CHAIR — Only a scant recollection?

Mr MICHELL — But I would not have made that — —

The CHAIR — So would it have been on the 9th?

Mr MICHELL — No.

The CHAIR — No? What date was it?

Mr MICHELL — No, I do not — —

The CHAIR — Did you have any notes or anything?

Mr MICHELL — I have no notes, and I do not believe I took notes. It was a casual meeting that was probably over a cup of tea near the ministerial office.

The CHAIR — Right. And you indicate that you did not say to the then CEO, Mr Bourke, that — —

Mr MICHELL — I cannot recall saying that.

The CHAIR — What did you say to him?

Mr MICHELL — I cannot recall that conversation.

The CHAIR — So you are sort of pleading the fifth, as it were.

Mr MELHEM — He said he does not recall, so move on.

Mr MICHELL — I cannot say I remember a conversation if I do not remember it.

The CHAIR — Right. Did you discuss the matter of the UFU request for payment with others in government?

Mr MICHELL — It was a very long time ago, and I cannot remember the specific items that were discussed then.

The CHAIR — So you did not discuss it in the ministerial office?

Mr MICHELL — No. I do remember it, and it was over a cup of tea near the Exhibition ministerial office.

The CHAIR — Right. So that is up at Nicholson Street?

Mr MICHELL — No. On Exhibition Street.

The CHAIR — Exhibition Street. What address?

Mr MICHELL — 121.

The CHAIR — It is at 121. The SX1 building.

Mr MICHELL — Yes.

The CHAIR — Right. So you had a coffee there —

Mr MICHELL — Nearby.

The CHAIR — nearby to that.

Mr MICHELL — A cup of tea.

The CHAIR — Tea, sorry. With the then CEO in early February?

Mr MICHELL — Yes.

The CHAIR — This much is agreed. But you do not recall anything from the conversation other than the fact that you did not talk about — —

Mr MICHELL — I would not have made such a request. It was a very early discussion. I had very little dealings with Mick Bourke prior to that meeting. I recall that meeting as maybe commencing a regular catch-up just to talk about things informally, and that is all I recall of that meeting.

The CHAIR — And you did not discuss this UFU issue — the demand for \$2 million — anywhere else? You did not discuss it in the ministerial office?

Mr MICHELL — No. Sorry with Mr — —

The CHAIR — In your ministerial office. You have got other staff in that office. You are the chief of staff. Did you discuss it with other staff in that office?

Mr MICHELL — With Mick Bourke?

The CHAIR — No. In your ministerial office. Did you have a discussion about this matter?

Mr MICHELL — Only that it was a matter for the CFA and it was a matter for the jurisdiction.

The CHAIR — And who did you have that discussion with in the office?

Mr MICHELL — Neil Robertson.

The CHAIR — Neil Robertson. And he was the secretary of the — —

Mr MICHELL — He was — I am not sure of his position now — secretary of the — —

The CHAIR — Then department.

Mr MICHELL — No. Emergency Management Victoria.

The CHAIR — Emergency Management Victoria. Did you discuss it at all with anyone else in the ministerial office?

Mr MICHELL — No.

The CHAIR — No. Did you discuss it with anyone at the Department of Premier and Cabinet or the Premier's office?

Mr MICHELL — Yes.

The CHAIR — Who was that?

Mr MICHELL — Chris Reilly.

The CHAIR — Chris Reilly. And what was the nature of that discussion?

Mr MICHELL — Chris Reilly was a central point of contact in liaison with the Premier's private office, mainly around industrial matters, and it was either a proactive or a reactive discussion between both of us about, 'This matter had come up and what was the reaction going to be'. His was that it should be a matter for the CFA and the jurisdiction. And that is where I informed my view.

The CHAIR — His role at the time was what?

Mr MICHELL — He was the senior adviser in the Premier's office. He may have had another title.

The CHAIR — The discussion you had was that this was a matter for CFA — —

Mr MICHELL — And the jurisdiction.

The CHAIR — You discussed it with no-one in the ministerial office and then you —

Mr MICHELL — Except for Neil Robertson, and the discussion occurred in the ministerial office.

The CHAIR — Right.

Ms SHING — Physically.

Mr MICHELL — Physically.

The CHAIR — Physically in the ministerial office. When was that discussion with Neil Robertson?

Mr MICHELL — I cannot recall.

The CHAIR — February? January? March?

Mr MICHELL — No, it was early in the year. I cannot recall.

The CHAIR — Right.

Mr MICHELL — Most of the dates from my time there I just have no clear recollection of.

The CHAIR — Are there any records that you had on that matter?

Mr MICHELL — No.

The CHAIR — Nothing at all? To understand this really clearly, you are arguing that you had the discussion with Mr Reilly. You then at some point discussed it with Mr Robertson but you had a meeting with the CEO of the CFA. You do not recall what was discussed there except for the fact that you did not discuss this matter?

Mr MICHELL — Yes. I would not have made such a request.

The CHAIR — Could he have interpreted it in that way?

Mr MICHELL — That is not a question for me.

The CHAIR — I would have thought that these are matters that are very carefully framed, very carefully phrased.

Ms SHING — You can think what you like, Chair. This is the witness's evidence.

Mr MICHELL — Yes. I have no recollection of the detailed content of the conversation.

The CHAIR — Did you discuss it with your minister — Minister Garrett?

Mr MICHELL — No.

The CHAIR — No. At no point?

Mr MICHELL — No.

The CHAIR — Right. Was she aware of the demand by the UFU?

Mr MICHELL — I have no knowledge of whether she was or not.

The CHAIR — Was it discussed with Mr Eccles at the Department of Premier and Cabinet?

Mr MICHELL — Not to my knowledge.

The CHAIR — Not to your knowledge. Did you talk to Peter Marshall about it?

Mr MICHELL — No.

The CHAIR — No. Did you have contact with Peter Marshall?

Mr MICHELL — Occasionally.

The CHAIR — In what format?

Mr MICHELL — Occasionally there were meetings with Chris Reilly and myself with either Pete Marshall or another member of the UFU to talk about ongoing matters. Pete Marshall, as the union leader, was a key stakeholder that we needed to consult on particular things.

The CHAIR — Did you keep records of those?

Mr MICHELL — I may have had notes but I do not have them anymore.

The CHAIR — Right. And would Mr Reilly have kept notes of that matter?

Mr MICHELL — I cannot answer that for him.

Ms SHING — Mr Michell, I would like to take you to the nature of the conversation that you had with Mr Bourke where you said that caught up, ostensibly to start what you thought would be an informal discussion around a range of things over a cuppa. At what point did you first become aware of an issue in relation to the Federal Court proceedings and the private arbitration and a request for costs to be covered?

Mr MICHELL — My recollection was that it was the decision the Federal Court made in favour of the UFU and then the UFU made the application for costs, and that was talked about in general chatter. Where I first heard of it, I cannot recall. Whether it was the EMV or whether it was through contact through the CFA or whether it was through Chris Reilly, I cannot give any confidence to that.

Ms SHING — But you were aware of the fact that because the private arbitration had not gone in the CFA's favour the UFU, as the other party, had decided that it wished to seek costs from the CFA?

Mr MICHELL — I was not across the detail of the mechanisms you talk about.

Ms SHING — But were you aware that there was a claim by the UFU for costs as a consequence of legal proceedings?

Mr MICHELL — Yes.

Ms SHING — In relation to the request for costs to be met, you have indicated in your evidence today that you in fact would not have discussed this with Mr Bourke. Mr Bourke has given evidence today that he received a request from you — a verbal request — indicating that he would have to find a couple of million dollars. What do you say to that assertion that Mr Bourke made today in his evidence?

Mr MICHELL — Quite clearly somebody going and asking an agency's CEO to hand over a cheque for \$2 million is ridiculous, so I would not have done it. If he took away that there were maybe some discussions in that meeting around that costs needed to be considered and he knew of an upper limit, well maybe that is where he took that away from.

Ms SHING — Mr Bourke also indicated in his evidence that the CEO of the CFA had a financial delegation of around \$4.5 million, and on that basis it has been put to him that there would not be a need to seek to have any input from an external agency. He has indicated in his evidence that he notified Mr Neil Robertson and that that appears to only have been an oral discussion and it did not result in anything other than a very brief conversation in the course of a handover, whereby Mr Bourke was leaving and Mr Wootten was taking on the role of interim CEO. What conversations did you have with Mr Robertson in relation to the way in which Mr Bourke and Mr Wootten had discussed this issue?

Mr MICHELL — Only that it was a matter that was afoot. In normal conversations that I had with Neil Robertson we spoke of many operational matters that were happening at the time. We were at the end of the fire season so we spoke on a daily basis if not multiple times a day. It would have been in the nature of him saying this has come up, and I would have said it is a matter for the CFA and the jurisdiction to resolve.

Ms SHING — That is indeed what Mr Wootton's evidence was. I will put to you evidence that was given by Mr Robertson in the course of a Public Accounts and Estimates Committee hearing earlier this year. There was a question from the Deputy Chair of that committee where he says:

In March prior to the year under discussion the CFA entered into private binding arbitration and covered the UFU legal fees incurred during 2010 to 2014 ... can you confirm whether the request was made by a ministerial officer, a parliamentary officer or a member of Parliament — to cover those fees?

That question was then referred to Mr Robertson, who said:

I am not aware ... To my knowledge, and just to go back a few steps in that process, I think that emanated from the full Federal Court appeal around it. The court actually asked the parties to come back to it with a proposal as to how the question would be resolved. I think the answer to that was, as you rightly say, the private arbitration, and it was funded by the CFA.

Mr Morris, the Deputy Chair of PAEC, then said:

... it does not indicate who authorised the payment, no.

Mr Robertson says:

Okay. My understanding again was that it came from the CFA and it was a consequence because the parties agreed that the outcome of the arbitration would bind them. So it flowed from that. As to who in the CFA, I am not exactly certain.

Off the back of that evidence, is there anything in any of the conversations, discussions or engagements that you had with Mr Wootten, with Mr Bourke or with Mr Robertson to indicate that there was ministerial office involvement or involvement from a political office or office-holder around the way in which this particular matter should be settled?

Mr MICHELL — No.

Ms SHING — Thank you very much, Mr Michell.

Mr DALLA-RIVA — Thanks for the evidence thus far. I will just reflect back on the question by Mr Davis. You recall the place where the conversation was had, you recall that you had a cup of tea — —

Ms SHING — No. A cup of something.

Mr DALLA-RIVA — He said it was a cup of tea. It was pretty clear; it was not coffee, it was tea. You recall it being in early February 2015 but you do not recall what was discussed. I am just trying to get to the issue of the amount of depth of knowledge of certain activities. If someone asked for \$2 million, allegedly, on the evidence given just before by the other witness, you would have thought that would be front and centre in your memory somewhere. I put it to you that Mr Bourke was perhaps more accurate about the discussions than you are recalling. What do you say to that?

Mr MICHELL — I cannot recall what I cannot recall. I left the position very abruptly in May. I have probably put on record that I was under significant distress from about the middle of March, hence leaving. I really cannot recall a lot of the level of detail from most of my discussions on many matters.

Mr DALLA-RIVA — There are a couple of us here who have had chiefs of staff and we understand the pressure you were under. You also said you did not have involvement with certain activities. Do you think as the chief of staff you perhaps should have had more oversight of what was going on, given the role?

Mr MICHELL — No. It was an independent decision and a matter for the parties and the jurisdiction.

Mr DALLA-RIVA — No, I am talking more generally in your role as the chief of staff. You would have a very in-depth knowledge about what was going on within the ministerial office.

Mr MICHELL — I do not think there is any assertion that I was not acquitting the role appropriately, until the end obviously.

Mr DALLA-RIVA — No, I am not saying that. The role of the chief of staff is pretty heavy in terms of the ministerial chief of staff. Would you agree with that?

Mr MICHELL — Yes.

Mr DALLA-RIVA — And often the chief of staff would have a very in-depth knowledge about the day-to-day policy issues around what the minister is doing.

Mr MICHELL — Correct.

Mr DALLA-RIVA — You would have to agree with that.

Mr MICHELL — Yes.

Mr DALLA-RIVA — What I am trying to get at is there must have been some further discussions or some more in-depth discussions about this issue with the UFU and the claim that they were asking. There must be something in the depths of your memory about that.

Ms SHING — He has already referred to the discussions that were had generally.

Mr MICHELL — The discussions that I had were that I sought advice given my primary contact in the Premier's office and two clear recollections that I have — and I cannot recall exactly when I had that conversation either, but I do recall it and it was in Chris Reilly's office — that it was a matter for the CFA and for the jurisdiction to move forward.

Mr DALLA-RIVA — You said had conversations with Mr Marshall.

Mr MICHELL — Yes, but not about this.

Mr DALLA-RIVA — But in general was it about the EBA and the progress of that?

Mr MICHELL — Oh, various matters. Some of the EBA process might have been discussed, but the record will show that the EBA did not progress in any particular way whilst I was the chief of staff.

Mr DALLA-RIVA — We have asked this of everyone, so do not feel any different. We are aware there was a memo that came out in August 2015 — this is after you were gone — from Mr Blandthorn where he says:

You may consider asking Marshall to be more respectful to all ministers, members, staff and departments and to treat them with the respect that he would demand himself.

Were you personally aware of situations where Peter Marshall's behaviour crossed the line when dealing with either yourself or any staff, including the minister?

Mr MICHELL — Yes.

Mr DALLA-RIVA — And in those dealings, was it part of the reason why you were under enormous stress?

Mr MICHELL — I would not say it was the primary factor, but it was something that summed up to the whole. There was one particular phone conversation, not the detail of which but the date of which I do remember, which was the Friday night before Labour Day weekend, where Pete called me. Normally I was not the primary contact. It started very chummy-chummy — 'Hello comrade', all that type of stuff — and by the end of it I broke down. The level of behaviour and language and threats was just — —

The CHAIR — He was bullying?

Mr MICHELL — Yes, absolutely was.

Mr DALLA-RIVA — And you reported that to the minister?

Mr MICHELL — She knew of that, yes.

Mr DALLA-RIVA — I say this genuinely, having seen my chief of staff and others: it is a very tough gig. I think people do not realise the toughness of a chief of staff to a minister. In that respect, do you think the memo that emanated from Mr Blandthorn was as a result of types of conversations like was had with you on that particular Friday night?

Mr MICHELL — Perhaps, but when was the — —

Mr DALLA-RIVA — The memo was in August.

Mr MICHELL — August of what year?

Mr DALLA-RIVA — 2015.

Mr MICHELL — Okay. I was aware — I was overseas, probably, at the time. I had a break after I left. But I would say that in some times — particular cycles — that would reflect Peter Marshall's behaviour, and that is not uncommon knowledge.

Mr DALLA-RIVA — Yes, I realise that, but it is refreshing, I must say, to hear it from somebody who has had it firsthand. We have heard hearsay. Over the course of the inquiry there has been innuendo and there have been suggestions, but I think, Mr Michell, to be the receiver of this type of call probably calls into question Mr Marshall's position into the future. But I will leave that aside. The discussion with Mr Marshall, was it relating to the EBA?

Mr MICHELL — No, I am reasonably confident that it was not in relation to the EBA. I say that with confidence because the process around moving forward with the EBA — I cannot remember that it actually moved forward in any substantive way until after I left.

Mr DALLA-RIVA — So it started off cordial, but it progressed. Was it because of your conversation, or was it just an elevation on Mr Marshall's side?

Mr MICHELL — He was seeking resolution to a particular issue, and — —

The CHAIR — What was the issue?

Mr MICHELL — To my recollection it was around the appointment of two secondments to somewhere within the agencies or the department and around the delay in that occurring.

Mr DALLA-RIVA — And these were UFU members?

Mr MICHELL — I believe they were UFU members, but I cannot with any — I assume so.

Mr DALLA-RIVA — So in the sense that they were about the appointments to the department; is that right?

Mr MICHELL — As it was described, it was, I suppose, like a career progression-type thing — so to shift to a different department to get different skills. I think they were operational firefighters — a shift in the department.

Mr DALLA-RIVA — So it was an operational decision made by the CFA or the MFB?

Mr MICHELL — That is right. As other leadership, it would be expected that there would be secondments on particular areas in departments and maybe across agencies to reflect, sort of, career development, and it was that these two particular people should be considered and accommodated.

Mr DALLA-RIVA — So in terms of your own career development, being yelled at and abused is probably not the best thing?

Mr MICHELL — Probably not.

Mr DALLA-RIVA — This is a Parliament that brings laws in to protect those who are bullied. This is a Parliament that protects children, the community and women from being bullied. Here you are, the chief of staff for a minister, and it sounds like you had a pretty rough time up until that May, where essentially you were bullied by the head of the UFU. Yes?

Mr MICHELL — That conversation was pretty rough. I knew this type of questioning might happen. I would think that I only had one, if not two, conversations with Pete Marshall after that conversation. I would have to say that the next one was so bizarre, where it was like the aggressive conversation never occurred, which made that sort of passive aggressive arrangement even worse.

Mr DALLA-RIVA — Yes, and it is difficult for you, sir, in your role. I will finish up now. Post leaving Minister Garrett — I think it was in May 2015 —

Mr MICHELL — Yes.

Mr DALLA-RIVA — did you have to take time away?

Mr MICHELL — Yes, I did. I purposely left. Basically my decision to leave was on the foundation that I really was not having much fun and did I want to do this for the rest of my life or the next immediate bit of the future, given that, as Ms Shing would know, I had served ministers and MPs for many, many years.

Mr DALLA-RIVA — Yes, I have recognised you. When you were sitting there before I thought you were still an adviser. So there you go! Are you still an adviser?

Mr MICHELL — No, I am working in private industry.

Mr DALLA-RIVA — Private industry. So you have seen the light.

Mr MICHELL — Yes, thank you.

Mr DALLA-RIVA — And in private industry, you would not accept that type of bullying?

Mr MICHELL — Absolutely.

Mr DALLA-RIVA — Yes. I am sorry you have had that bad experience. I know you work for the other side, but thank you, sir, for giving us forthright evidence, because this type of behaviour just cannot be allowed by Parliament to be just forgotten. All the best in your future endeavours, I guess.

Ms SHING — Sorry, just a really quick one: did Mr Marshall ever discuss the issue of costs with you at all?

Mr MICHELL — No.

Ms SHING — No. So that was nothing that was ever the subject of a conversation with him?

Mr MICHELL — No. There were occasional catch-ups, as I said, with Chris Reilly. I cannot recall if it was in isolation with Pete Marshall; there was always somebody else. And there was probably a range of matters where you sat across the table and went, 'Okay' — really rats and mice stuff.

Ms SHING — And if you had had a conversation or heard from Mr Marshall in the terms you have just described, you would certainly remember if it related to the costs issue?

Mr MICHELL — Absolutely.

Ms SHING — Okay. Thank you, Mr Michell.

Mr RAMSAY — My question was along the lines of Mr Dalla-Riva's but given you have responded to his questions, in the circumstance with Peter Marshall, Chris Reilly and yourself in a meeting where Mr Marshall became abusive and threatening, what was the specific issue if it was not the — —

Mr MICHELL — The phone call, where it was just me and him, that was the very aggressive one. In terms of being in a meeting space and being physically aggressive — no. Sure, he might have got animated on the other end of the table and it was a robust discussion but in nowhere near the type of aggressiveness that occurred on that phone call.

Mr RAMSAY — Can I then refer to the phone call? Was there a specific issue that he was — —

Ms SHING — It was the secondment issue.

Mr RAMSAY — Secondment was the only one.

Mr MICHELL — Yes, that is right.

Mr RAMSAY — Thanks.

The CHAIR — So just to conclude on some of these points. The threats that he made to you on that phone call — what was the nature of those?

Mr MICHELL — It was around the delay, that there seemed to have been a commitment made around the appointments of the two secondments. Then there was the delay, I suppose, from the election in 2010 to that point in May and really, I think, an expectation that Mr Marshall had built up in his mind about them being implemented a lot quicker.

The CHAIR — What was the consequence if you did not do these — —

Ms SHING — Were they threats or was he just talking?

Mr MICHELL — I am not sure — —

Ms SHING — Or was he talking to you?

Mr MICHELL — No, it was a lot of profanity towards the end: 'We can never trust all you people' type of thing, 'We've had enough', 'You can all go and get ...' and all that type of stuff.

Mr MELHEM — Any specific threats to you personally?

Mr MICHELL — Personally? No, I cannot recall that. But certainly overall — —

The CHAIR — To the minister?

Mr MICHELL — No, generally to the government.

The CHAIR — And what was the nature of those threats?

Mr MICHELL — The type of 'We supported you, and now we're in that space and we just don't trust you anymore' — that type of stuff. It is not dissimilar to what Peter has set out publicly over the last two years.

Mr DALLA-RIVA — Are you in the Labor Party anymore?

Mr MICHELL — Yes.

The CHAIR — So are you aware of any other threats that were made — or conversations of this type — to other staff in your office, since you were in the minister's office? Were there conversations of this type with other members of the office?

Mr MICHELL — Of Minister Garrett's staff?

The CHAIR — Yes.

Mr MICHELL — I can only recall one other instance with a UFU official in terms of being briefed around the items that were in the budget. He was quite aggressive, not in a physical nature and probably not to the same gravity that I speak of, to the senior adviser who was managing emergency management then.

The CHAIR — So that would be around the 2015 budget, would it?

Mr MICHELL — Correct.

Mr DALLA-RIVA — Female? Was it a female?

Mr MICHELL — No, it was not. It was a male.

The CHAIR — And who was that UFU official?

Mr MICHELL — His name is Ben Craven. I cannot recall the official's name, but it was not Peter Marshall. And there obviously were the public reports of threats to the minister as well too, but — —

The CHAIR — With an axe.

Mr MICHELL — Yes, but that was obviously after my time.

The CHAIR — Did the office take any security steps on the basis of these sorts of matters?

Mr MICHELL — No. As you would be aware, ministerial offices are very secure places. There would not be any nature to alter that, certainly. As you would be aware with electorate offices, when instances of security happen, many times there need to be mitigating matters, which sadly has had to have happened in the case of Jane in her electorate office in Brunswick, given another public matter. But, no, ministerial offices are very secure. We did not alter any other arrangements.

The CHAIR — All right. I just want to reiterate the comments made by Mr Dalla-Riva that we are very respectful of the fact that people make a contribution to public life — they should not be truncated in these sorts of ways.

Mr MICHELL — Thank you.

The CHAIR — Thank you.

Ms SHING — Thanks, Mr Michell.

Witness withdrew.