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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 14 SEPTEMBER 2010

AT 2.10PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR PAYNE: Commissioner, before the cross-examination commences I should make a procedural fairness announcement. To the matters I raised in opening about the conduct of Mr Funovski which is being investigated, I wish to draw attention to the fact that the, this inquiry will investigate the specific allegation that in 2008 Mr Funovski was involved in the unauthorised construction of a water connection at New College as dealt with in the evidence of Mr Desfontaines so there can be no misunderstanding about that matter.

10 THE COMMISSIONER: Yes, thank you. Mr Ly.

<TRENT ADAM DESFONTAINES, on former oath [2.10pm]

MR LY: Thank you, Commissioner. Mr Defontaines, is that how you pronounce it?---Desfontaines.

20 Desfontaines, pardon me. I am, my name is Mr Ly, I'm representing Mr Funovski. I just want to ask you a few questions about your evidence that you've given today. Okay?---Okay.

Of course if you don't agree with me just say you don't agree?---Yeah.

If you agree with me you'll, you'll say you agree. You said in page 3 of your statement you started work at Sydney Water Corporation in 2006? ---Yeah.

30 Paragraph 3, pardon me, paragraph 3, your immediate supervisor is Stuart Gardner who, who I generally answerable to, correct, is that now or back in 2006?---Up until about six weeks ago that was still correct, yeah.

Okay. Is it correct to say that in 2006 Stuart Gardner was your supervisor? ---That's when I started there, I believe so, yes.

Up until about - - -?---About six weeks ago.

Six weeks ago?---Yes.

40 And Robert Funovski is a e-Developer?---Yes.

In which he was responsible for water main connections and possibly sewer connections, correct?---Correct, yeah.

When you say that Robert Funovski is an e-Developer, do you mean he is now or he was always since, the whole time since you started?---Well, from when I started I believe he, he may have still been, he may have been in that position when I first started there.

He may, is that you don't know?---Well, I'm pretty certain that he would have been, there was himself and maybe another gentleman there that were in that position, acting in that position.

Could I suggest to you that he was not an e-Developer as at late 2008 at which time you say you were on this College job?---Ah hmm.

10 What would you have to say about that?---I wouldn't be, that's, dates I'm not too certain of.

Pardon me, pardon me, early I should say, I withdraw that?---Early 2008.

Yeah, during this time?

THE COMMISSIONER: What time?

MR LY: During the time which you visited this site with Sabina Nebragga?
20 ---Yeah. I believe the date that I visited that site with Sabina, I believe he would have been in that position.

He would have been in the position of e-Developer you say?---That's correct, yeah. That's if that's the correct date anyway.

But you're not sure?---No, I'm not too sure of the exact date because I didn't write anything down in my diary at the time.

30 But if you would accept this, that he wasn't, that he was an acting supervisor, just if you were to accept this, can I ask you as an acting field supervisor what his role would be?

MR STEVENSON: I object to that, Commissioner. He's asking the witness to make an assumption which is contrary to his evidence and his belief.

THE COMMISSIONER: You don't need that evidence.

MR LY: Pardon me.

40 THE COMMISSIONER: You don't need that evidence from this witness.

MR LY: Yes, yes, Commissioner, thank you. I'm just going to ask you about job numbers. When you go to a site, you're asked to do something or given a task you are given a job number, is that correct?---Correct, yeah.

Is it highly unusual that you don't receive a job number?---99 per cent of the time you do have a job number.

So you're saying that from time to time you might not get a job number?
---It'd be not directly there and then but within a day or the next day you would be given a job number to book your hours up against.

So it has happened in the past that you didn't receive a job number?---Very rarely but there can be times.

THE COMMISSIONER: What, on the, on the day the job was done?
---Well, we might go and do a job say in the morning and then if you don't
10 have a job number, if it's a trial shutdown or something, if they ask you can you just go and do it, that afternoon or the next morning generally you'd be given a job number.

Have you ever done a job other than this one at New College where you have never had a job number?---No.

MR LY: Thank you, Commissioner. So you must have thought that this was highly unusual at the time?---Yeah.

20 And you would agree with me you would have thought that it was suspicious?---Yeah, a little suspicious at the time.

And did you speak to your colleague Mr Nebragga about this suspicion?
---Well, he's, he's more of a maintenance man, he's, he doesn't have to much to do with putting the pen to paper so - - -

Is that yes or no?---No, well, I didn't speak to him directly about it, no.

30 In fact you didn't speak to, pardon me, I withdraw that. In fact the only other time you spoke or other occasion you spoke to someone about it when you say your recall comments, paragraph 14 of your statement, "A week later I recall commenting to colleagues of what had occurred with Robert Funovski." Correct?---Yeah, I did speak to other people about it, yeah.

Who did you speak to?---Probably two or three gentlemen back at my work.

Can we have their names please?---One would have been probably a Jim Murphy maybe.

40 Jim Murphy. Is that a maybe you mean you don't remember?---Well, I'm pretty, I, there's two or three people that I get along with pretty well there so I'd definitely say he would have been.

Who else?---Probably a David Laurenzato would have been another one.

And you've said in your evidence today that about a week ago from today that is you were alerted by this discrepancy and you contacted the Sydney Water Hotline. Is that correct?

THE COMMISSIONER: Alerted by the discrepancy?

MR LY: Pardon me, I'll, I'll be a little bit more precise. Pardon me, Commissioner. You were alerted - - -?---Yeah. Word, word came about to me through some other colleagues at the depot about this incident here that was involving ICAC and from there that's sort of when alarm bells rang. My name was brought up again by someone I spoke to there. And then from there I spoke to a supervisor who arranged another meeting with another supervisor and the manager and was told to ring a certain phone number to discuss it.

Okay. So when you say alarm bells rang, you were alarmed that you may have been implicated. Is that correct?---Well, because I knew my name, because I'd said something previously and my name was there again, I sort of just wanted to make sure that my name shouldn't of been involved or wasn't involved in any wrongdoings.

But you were fearful that something that you'd done in the past may be connected with, with this - - -?---Well, I thought that it wasn't some, there's some background there was something that wasn't quite right. And I just wanted to make sure that everyone knew I didn't have anything to do with - - -

Were you really scared when you heard that you may have been implicated?---No, not really.

And you heard the name Robert Funovski floating around. Would you agree that that's fair to say?---Yeah, that's correct.

And perhaps that triggered your fears that you'd dealt with Mr Funovski in the past somehow?---Yeah, because, yeah, that's correct.

So is it the case that at the time you heard these or heard about this investigation or about this alleged corruption that you were very worried, in your own mind you were aware that you did something wrong in the past? ---I wasn't aware I did anything wrong - - -

At the time - - -?--- - - -until, when I knew something wasn't right at the end of the job. I personally hadn't done anything wrong. I just, I'd been there to do the job.

But you've told the Commission today that you in effect wanted to make sure that your name was clear. Is that a fair way to put it?---Yeah, that's correct. Yeah.

So you agree with me that on that basis you were thinking about a week ago when you were made aware, oh, well, I've done something wrong, I better, I

better defend myself. Correct?---I just had to make sure that my name wasn't getting dragged down into it.

And you heard, you can agree or disagree with me, you heard that Robert Funovski was involved?---Yep.

And you provided a statement implicating Robert Funovski as the person who was instructing you to do this job?---That's correct. Yep.

10 When in actual fact he wasn't even there was he?---Yes, he was.

At that time what other superiors, if you put it that way, or supervisors who supervises you were working at Sydney Water looking over your work?
---On that day there was no one else there looking over me.

During your employment, I'll withdraw that. Let's say during the month in which this occurred, give or take a month, before and after, who else was working at Sydney Water supervising you?---Well, Stuart's been my supervisor for all the time there from a few weeks ago. There's another
20 supervisor which a few have come and gone in the time. One would've been, maybe Steven Coles, I'm not too sure if he was there at this time or not. Louis Rosnikov and possibly Gordon Pavlovski, I don't know if he was there then at that day or not, which I don't believe he was. And then sitting in the workplace coordinator it could've been a Brendan, I mean a Christian McNally or a Gordon Stevenson.

So there's quite a few people there that were - - -?---Well, there's not, they're not always there. It's just because I'm not certain of the dates. I know people have come into positions and left certain positions some time
30 ago. If I had, if I did recollect or made note of an exact date as to when this job did occur, I could probably give you the exact names.

Now, since the time which you found out, since I should say a week ago have you tried to speak to Sebina about it?---No, I haven't been, I haven't been at the depot.

Because you agree that he may have been able to shed some light on the situation and been able to recall that particular day you went to the site?
---Yeah, possibly.
40

Can I just ask you about specifics about your role there at Sydney Water and in particular about this grinder that you have? Okay. You talk about a side grinder?---An angle grinder?

Angle grinder. Pardon me, angle grinder. Who has the authority to carry one of those angle grinders around?

MR STEVENSON: I object, Commissioner. This witness has not given evidence that he or anyone else from Sydney Water carry one around, on the contrary.

MR LY: Can I just have a moment, Commissioner.

THE COMMISSIONER: You'll see that in paragraph 10, Mr Ly.

10 MR LY: Can I just have one second, Commissioner? I'll be a little more precise with the question, Commissioner, if I be allowed to be ask in a more precise way.

THE COMMISSIONER: Ask your next question, Mr Ly.

MR LY: Did you have an angle grinder on your truck?---No. Not on that day because that's why I specifically asked that, you know, or told that we're going to need an angle grinder to get the letterings off the water main.

20 But generally you say that you do?---Of recent times, probably within the last 12 months we've been, there's been a couple of angle grinders handed out to the depot but back, I remember recalling for this job I didn't have one back at that time.

Now, sir, I'm just going to take you back a couple of steps if you don't mind. So you, on my calculation approximately two, you've waited approximately two and a half years to report this to your superiors at Sydney Water. Is that correct?---That's correct, yeah.

30 Is there any reason why during that time you haven't alerted anyone on a formal, not notified anyone of your suspicions?---Because it wasn't raised to be suspicious until this whole investigation came out I guess.

It wasn't raised to be suspicious?---Well, I did the job at the time, I spoke about it a week after and then haven't thought about it since, I've just carried on with my day to day work.

40 So you automatically thought it was suspicious. Do you agree with me or not? You automatically thought it was suspicious because Mr Funovski's name came up. Is that correct?---Afterwards, yeah, yeah, since all this has come up.

Mr Funovski, you heard Mr Funovski's name being spoken amongst the circles, Sydney Water circles and you thought wow, this incident two and a half years ago - - -?---That's correct, yeah.

- - - where you didn't receive a job number as suspicious? When you don't receive a job number what other record apart from your own records exist to

show that you actually went to the place and did the job?---I believe there probably isn't any.

So how long did you spend at the job on this occasion?---Probably an hour and a half or so.

Does that mean that you don't get paid for the hour and a half?---Well, we do still get paid, we get paid between the hours of 7.30 and 4 o'clock.

10 So did it not concern you that you perhaps disappear for an hour and a half?
---Well, no one seemed to question me about it.

And it didn't concern you that people might ask- -?---Well, if, if someone wants to question me about it, that's what I was told to do, was to tell them I was out doing a trial shutdown.

Supervisors didn't ask you where you were for an hour and a half?---No one asked, no.

20 How long did it take to get there?---Probably fifteen minutes, if that.

So two hours you were gone. Is it fair to say that?---Yeah.

You didn't think to tell any of your supervisors where you'd gone for the last two hours?---Well, our jobs are always out, out of the depot anyway, we're never at the depot for that time so I mean we can be gone for four hours and come back, we can go for five hours and come back.

30 Sir, I- -?---You can go for the whole day and come back and no one will question you as to where you are or what you are doing.

Ninety-nine, your evidence is that ninety-nine per cent of the time job numbers are created. This one instance out of a hundred times, it didn't happen?---No.

And you didn't take any action or ask anyone, didn't report this to any of your superiors until two and a half years later?---That's correct, yeah.

40 Because it's not true. Isn't that correct?---What's not true?

This story about Mr Funovski telling you to go and do this and do that?
---Ah, I believe it is true. I wouldn't make up some random story about going to do a job when I could have been doing something else.

The fact is, sir, you realised that you've done something wrong and you realised that two and a half years ago after you'd done it, but you're coming now and putting your hand up to protect yourself and yourself only. Isn't that correct?---No, it's- - -

There's no further questions, Commissioner.

THE COMMISSIONER: Do you wish to ask any questions, Mr Purdy?

MR PURDY: Yes, thank you, Commissioner. Mr Desfontaines, I'm appearing on behalf of Vincent Molluso who's a former employee- - -? ---Yep.

10 - - -of a plumbing contractor that the inquiry concerns. The events described in your statement took place some time ago and your memory about them wasn't jogged until relatively recently. That's fair to say, isn't it?---Yeah. I knew there was something suspicious when all this- - -

THE COMMISSIONER: Mr Purdy, I don't understand how this, how Mr Desfontaines evidence relates to Mr Molluso. He hasn't implicated Mr Molluso. Why are you asking questions about this?

MR PURDY: There's no dispute, Commissioner, that the, that Planet Plumbing undertook work at this, at the New College site at the corner of
20 Day Street and Anzac Parade.

THE COMMISSIONER: There's no dispute?

MR PURDY: There's no dispute about that.

THE COMMISSIONER: No.

MR PURDY: And this witness, his evidence supports the proposition that Mr Funovski undertook some unauthorised work at that location.
30

THE COMMISSIONER: Yes.

MR PURDY: Now, in my submission, that potentially implicates Planet Plumbing and for that reason it's, it's something that concerns Mr Molluso.

THE COMMISSIONER: It's not said that Mr Molluso had any involvement in this incident.

MR PURDY: That's correct, Commissioner.
40

THE COMMISSIONER: Therefore he has no interest in cross-examining Mr Desfontaines.

MR PURDY: If that's your ruling, Commissioner, I will say no further, but in my submission there are, there are some questions I would have thought would have been relevant to the Commission's inquiries.

THE COMMISSIONER: Relating to Mr Molluso?

MR PURDY: Relating to Mr Molluso.

THE COMMISSIONER: Well, if you, can you explain to me what they are?

MR PURDY: Mr Molluso's evidence will be, Commissioner, that he was only involved in any direct hands-on way on this job for a relatively short period. This witness has dated the, his arrival at the site and the work that he did there, and what I'm concerned to show is, is that the, the, the work that he took, that he did at the site took place at a time when Mr Molluso had no involvement.

THE COMMISSIONER: Well, you've got the dates, you can call, if that's what you want to do, you call Mr Molluso to say that. How does this, have you ever met Mr Molluso?---Not personally, no, I don't believe so.

MR PURDY: Commissioner, I merely want to ask him some questions about one particular paragraph.

20

THE COMMISSIONER: Well, what?

MR PURDY: I want to ask him when he says in the final sentence of paragraph 9 of the statement that the reference in the, the fourth last line to the newly-constructed building, I want to ask him what he meant by that.

THE COMMISSIONER: What's that got to do with Mr Molluso?

MR PURDY: Well, in my, Commissioner, this building at the time, I'm sorry, this building was completed long after Mr Molluso ceased working for Planet Plumbing.

30

THE COMMISSIONER: What has this got to do with Mr Molluso?

MR PURDY: Mr Molluso was an employee of Planet Plumbing. And he was a director of Planet Plumbing. The, Planet Plumbing was - - -

THE COMMISSIONER: This has got nothing to do with Planet Plumbing? This incident has nothing to do with Planet Plumbing.

40

MR PURDY: Well, I'll sit down then Commissioner.

THE COMMISSIONER: Yes, good idea. Ms White.

MS WHITE: Nothing, Commissioner.

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Mr Desfontaine, Mr Ly, who is the barrister for Mr Funovski asked you some questions about why it was that you've only come forward with this information recently. Do you recall that line of questions?---Yep.

Can I ask you this, precisely what was it and when was it that it occurred to you that there was information that you could give which would be of assistance to Sydney Water and the Commission about this matter?---Oh, probably like when this all came to light. I've probably known it because I was at a certain job here, maybe the information I had could've been a little bit relevant.

Was it because you had seen an advertisement which said that the Commission was making an inquiry into (not transcribable) Mr Funovski? ---Yes.

That's what prompted your memory?---That, yeah, that plus the case of a few people back at the depot with my name being involved.

20 So do you mean there were a few people at the depot heard - - -?---Just from, from people that I've told obviously they've told other people and word's gotten out.

Well, did someone at the depot talk to you about this inquiry?---Yes.

All right. That's what, that's what prompted you to go to your supervisor? ---Yep.

I think you said there was a number of supervisors you could've gone to? 30 ---Yeah, there was the two supervisors there and the manager.

And ultimately one of them told you to ring a telephone number you said? ---That's correct. Yep.

And that's the, the Sydney Water Fraud Hotline?---Yep.

Were you aware of that Hotline before it was drawn to your attention?---No, actually.

40 And I think you rang the Hotline last Friday?---Yes.

About 2.15 in the afternoon?---It could've been. Yeah, possibly.

You spoke to a Mr Barry McClure?---Yep.

And I think you said to him didn't you that you didn't want to give him or Sydney Water your name?---That's correct. Yep.

Was Mr McClure was content with that situation?---Yep.

He asked for your mobile phone number. Is that correct?---Correct. Yep.

And then he took down the details you wanted to give him about the matters you've talked about today?---Yes.

And Mr McClure assured you didn't he that confidentiality would be preserved in relation to what you'd said?---Yep.

10

And that he or someone from Sydney Water would refer the matter to ICAC?---Correct. Yep.

And that you could expect a call from ICAC?---Ah hmm.

And he said to you didn't he that although you'd given him your mobile phone number neither he or anyone else from Sydney Water would try to establish your identity based upon the phone number?---Yes.

20

But that you could expect a call from ICAC on that number?---That's correct. Yep.

All right. And that's what happened?---Yep.

Thank you. By the way, how long after your phone call to Mr McClure did someone from ICAC call you?---Probably within the hour I'd say, more or less.

30

Thank you.

THE COMMISSIONER: Mr Desfontaine, in your evidence Mr Funovski asked you to tell a lie if anyone asked you what you were doing at the time?---Yes.

Had you ever been asked to tell a lie in those circumstances before?---No.

Why didn't you tell your supervisors about this?---Well that's probably something I should've acted on earlier, but unfortunately didn't.

40

Mr Payne, just to make, to allay Mr Purdy's concerns, am I correct in understanding that no case has been sought, is sought to be made against Planet Plumbing arising out of this incident?

MR PAYNE: Well, Commissioner, I was going to take this up with you before this witness left. Planet Plumbing is the - - -

THE COMMISSIONER: Contractor.

MR PAYNE: - - - contractor of the New College job and there was some evidence from Mr Alafaci about his belief about the work that was done by Mr Funovski at the behest of Mr Purdy's client. It may be in those circumstances best to permit Mr Purdy to ask some questions.

THE COMMISSIONER: Mr Purdy, I was wrong it seems to me in stopping you when I did so you've now got the opportunity to ask the questions you wanted to ask.

10 MR PURDY: Thank you, Commissioner. Mr Desfontaines, if you could turn to paragraph 9 of the statement and in particular the portion of it over the page. Sorry, I haven't got page numbers but it goes over the page and you'll see that?---Yep.

Now, the sentence five lines up that begins, "The purpose of installing this fire valve"?---Yep.

20 And it goes on to say, "The purpose of installing this fire valve would be for the newly constructed building itself at Sydney University" and you understand that's a reference, that should be a reference to the University of New South Wales. Now, are we to understand from your use of the phrase newly constructed building that the building at that stage was in a fairly advanced state of construction?---How far advanced into the construction it was I wouldn't, I know there was temporary fencing there, I know there was scaffolding there, how far finished I wouldn't have a clue, that's not my, my, I don't really need to know that information.

30 But you don't recall from your time on - - -?---No, well, I knew there was fencing, I knew there was scaffolding up, how complete it was I wouldn't be able to tell you.

Is it possible that rather than early 2008 that you visited the site it was 2009? ---That's, I wouldn't, I wouldn't be able to give you an exact date, I don't have anything written down.

THE COMMISSIONER: That's a year's difference?---I know there is a year's difference there but I know it was some time ago, exactly when I wouldn't have a clue, yeah.

40 MR PURDY: You can't say yes or no to that?---I'm, yeah, I'm uncertain.

But it's possible?

THE COMMISSIONER: I mean, early 2009 is a year and a half ago and early 2008 is two and a half years ago?---Yeah.

You can't say whether it was one or the other?---Possibly.

Possibly what?---Well, I possibly could be wrong, I'm not too sure but I know - - -

You could be wrong about - - -?---Dates, dates I can definitely be wrong on, I'm not, that's what I'm saying.

You could be wrong in saying what?---In which date it was.

10 So in paragraph 5 you've said, "I recall that some time in early 2008" you mean that it could possibly be some time in early 2009?---Possibly, yeah, that's what, normally I write all the jobs that I go to down, I've looked through all my diaries and I can't, can't find a date with this one down there.

MR PURDY: Thank you.

THE COMMISSIONER: You may be discharged?---Thank you.

You are discharged and you may leave the witness box.

20

THE WITNESS EXCUSED

[2.43pm]

MR PAYNE: Commissioner, I call Mr Funovski.

THE COMMISSIONER: Mr Funovski, please be seated. Mr Ly, do you wish me to make a section 38 order?

MR LY: Yes, please, Commissioner.

30

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr Funovski and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY MR FUNOVSKI AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Mr Funovski, do you wish to give your evidence under oath or to affirm the truth of your evidence?

MR FUNOVSKI: I wish to affirm the truth, your Honour.

<ROBERT FUNOVSKI, affirmed

[2.44am]

THE COMMISSIONER: Mr Payne.

MR PAYNE: Mr Funovski, what's your full name?---Robert Funovski.

And what's your employment status?---At the moment?

10 Yes?---My title?

Yes?---Production employee.

For Sydney Water?---Sydney Water, yeah.

For how long have you been a production employee?---I think I commenced my employment with Sydney Water back in 2002.

20 And you participated in a compulsory examination before this commission on 13 August this year?---Yes, that's correct.

Yes. I tender that document and I'll show you a copy, Mr Funovski. For the record, Commissioner, the confidentiality order made on that day has been varied and copies of that variation have been distributed.

THE COMMISSIONER: Yes. Thank you. The transcript of Mr Funovski's compulsory examination of 13 August, 2010, is exhibit P89.

30 **#EXHIBIT P89 - TRANSCRIPT OF COMPULSORY EXAMINATION OF ROBERT FUNOVSKI**

MR PAYNE: Mr Funovski, I'm going to ask you some questions initially in relation to that document. You'll see on the bottom right-hand corner there is a number?---Yes.

40 So first of all I'd ask you to go over to 46PT in the bottom right-hand side? ---Yep.

Have you got that page?---That's on there, yeah.

There are numbers down the left-hand side which are line numbers. So on about line 5 on that page, you're asked, "You work in the east of Sydney?" ---That's correct.

And that's the city east production area?---Correct.

You've been there throughout your time with Sydney Water?---I've also been to other neighbouring areas as well.

Which are?---Ah, I've been to the inner west area occasionally and on shiftwork I've been to ah, the southern suburbs, neighbouring areas.

And if you look down the page, you are a production employee- - -?---Yes.

10 - - -ultimately within the maintenance department of Sydney Water?
---Correct.

You have, as well as your other responsibilities, you are responsible, aren't you, for inspecting the work of accredited constructors of Sydney Water in relation in particular to water connections to the Sydney Water system?
---Yeah. I, I am one of those, one of those people in the depot.

20 And part of your responsibility is to inspect the work and see that it's been done in accordance with Sydney Water standards. Do you agree?---That's correct.

And that's been part of your responsibility for the whole time you've been a production employee?---No, that's incorrect.

For what period has that been part of your responsibilities?---When I first started in the role when I was asked to do the, the, the e-Developer role, if you call it as such. And that would have been in the first, first few years, maybe 2005 or 2006 I started that, that role.

30 And since 2005 or 2006 to the present day, that's been part of your responsibilities as a production employee?---Part of my responsibilities.

And you've concentrated particularly on the water side rather than the sewerage side of inspections?---Correct, for inspections, correct.

And in addition to that inspection role, you also do maintenance?---Yeah, correct.

40 What else has been part of your role since 2005/2006 when you took on, I think as you described it, the e-Developer job?---In that time period?

Yes. What, what else do you do other than the e-Development role?
---Just basically participate on the roster, so I, you know, go on the ah, standby weekend patrol, shiftwork, all that type of stuff.

Actually performing maintenance activities on behalf of Sydney Water?
---Yeah.

And just so we're clear- - -?---Ah hmm.

- - -these inspection functions that you've had, that you've described as a e-Developer role- - -?---Yeah.

- - -that's been right throughout from 2005 or 2006 to the present day?

---Well, no, not as a, not as a full-time role, no.

Not as a full-time role?---No.

10 But that's been part of your responsibilities since 2005 or 2006?---Part of my responsibility, part.

Now, can I take you forward in this transcript to 51PT?---Ah hmm.

Tell me when you're there?---Yes, yep.

Look at about line 12. The Assistant Commissioner asks you, he's asking you about that part of your role which is the e-Developer role?---Ah hmm.

20 "That part of your role, it is your essential function to ensure that contractors undertake work according to the standards and specifications required of them by Sydney Water." You agreed?---Yes, I agreed, yeah.

And that was correct?---Well, no, that's not the essential function of my role. My role is more of a planning role and that, that's part, part of the role is to perform random audits or construction audits what we call them.

30 So when you agreed with the Assistant Commissioner at about line 12 that your essential function is to ensure that contractors undertake the work according to the standards and specifications required of Sydney Water, when you answered, "Yeah," to "Is that right," you now wish to change that answer, do you?---Well, I didn't want to go into the full description of my role because when I started doing it, you know, I just, he was, he was sending me towards that so I just agreed.

Okay. I see. Do you tell the Commissioner today that that answer was incorrect though do you?---It's partially correct, yes.

40 Go forward if you will to 53PT and look at line 10, you were asked this question?---Sorry, 53?

53, tell me when you're there?---Yeah, yeah, yeah.

"Does it happen to you quite frequently that you're asked to go out and do an audit but you do not know what you're meant to be auditing?"---That's correct, yeah.

And you see what you say, that on a number of occasions when you're supposed to be auditing, that's performing this e-Developer inspection role we're talking about, just so we're talking the same language, that's what you're talking about there?---Yeah, yeah, yeah.

So it's also known as auditing in your mind?---Yeah, yeah.

10 You don't even make it, you don't even get a chance to do the audit let alone know what you're supposed to be auditing a lot of the time?---That's correct.

So do you tell the Commission that in performing this inspector role for Sydney Water inspections that many times in the past you have signed the paperwork passing the inspection and even though you haven't actually inspected anything, is that what you say?---I, I'm not, I mean, I don't quite consider myself an inspector.

20 I understand?---And I, and I, there, there has been on times where, where, when we haven't had enough people or for some reason you don't get out to their commencement of the job and yes, you can sign off the construction audit without actually going there.

I see. So just so - - -

THE COMMISSIONER: Without going there?---Yeah, because there's a, there's a, it's a tick, it's a tick and it's like a pro forma document and on of the boxes that you can actually tick on it says that audit not carried out so you don't have to actually go there.

30 So you tick the box audit not carried out?---If we miss that part of the process or that part of the stage.

MR PAYNE: Well, let's just explore that answer for a moment but look down the page at about line 28?---Yeah.

40 You were asked this question, "What I'm asking you, are you telling me that quite frequently when you get there you can't tell whether the work's been properly done." "You, you can't, it's under the ground?"---That's correct, if it's been backfill.

Look at the next question and answer, "So what's the point of going out there?" "I don't know, it's part of the process, it tells you go to there, go there and do it, sign the construction audit and move the job onto the next phase." You see that?---Yeah, yeah.

You're signing the inspection papers - - -?---Yeah.

- - - passing the work, aren't you?---No, we're just passing it onto the next step of the process.

Yes. And you - - -?---It can't, it can't, it can't into the next level unless you pass that - - -

Until you've signed off?---Until you sign the document, yeah.

10 And I want to suggest to you there's nothing on that document about no inspection carried out, you're just, you're signing the document passing it onto the next stage so - - -?---It actually says if you can't, if you don't get to the job there's a box that says audit not carried out so you just tick that box and you just, and scan and release the document and it goes to the next, the next part of the process through the e-Developer system.

20 So at page 53PT what you were telling the Commission on that occasion was that you didn't know why you were there but you were actually, rather, rather than signing the construction audit and moving on you were, you were, you were filling in the appropriate form to show that you hadn't actually done an inspection. Is that what you say you were saying?---That's what I'm saying, yeah.

I see and that's the same in relation to both sewerage and water is it? You say that there's a space on the form for that to say construction not audited? ---For sewer I'm not, not 100 per cent, not for sewer I wouldn't know. I believe it's the same, the same document but it just says, one says water main, one says sewer main.

30 Let's just clear, clear this up while we're here?---Mmm.

You have from time to time conducted work inspecting sewers as well have you?---No, not really, I, only if, if, if the waste water representative was maybe on holidays or not in but at that time there, they, they gave that role to another person in the depot so he was looking after that stream of works and I carried on and just did my role in the water.

40 So water was your principal responsibility so far as this e-Development was concerned rather than sewerage is what you're telling me?---Most of the time I dealt with water, yeah, that was my background and at the time when I went into the role I, I stayed on the, on the water side of things.

Can you have a look at 58PT?---Yeah.

At about line 19?---Ah hmm.

"Mr Funovski, had you worked with Vince on a number of projects?"
That's Vince Molluso?---Yeah.

You say, "I coordinated a number of projects for Planet Plumbing?"---Yeah.

"That included the New College project at the University of New South Wales." You say, "New College at Randwick, yeah, yeah, we would have done that job, yeah?---Yeah, if it's in that, if it's in Randwick, yeah, it's quite possible that we would have been the service provider for that, for those works, yeah.

10 You were, you were the Sydney Water representative in relation to the New College project at the University of New South Wales, weren't you?---No, I wasn't.

And, well, look at line 29?---Yeah.

"What can you tell us about that job?" "The internal works Planet Plumbing and Sydney Water would have done, I think did a sewer, a sewer connection to the main, they did an extension off the connection?"---Ah hmm.

20 "The existing sewer one that has large connections, there were boosters, hydrants, that type, type of stuff?"---Yeah.

That was a job you, you were involved in on behalf of Sydney Water, weren't you?---I, I don't know if I was directly involved with the job. Like I said, the role is shared in our depot. There's three or four people at a time, okay, that are involved in the developer process. Okay. So the role is shared so that's what I'm saying.

30 Well, Mr Funovski, I want to give you every opportunity, let's just look at these questions and answers?---Yeah.

You were asked at line 19 had you worked with Vince, that's Vince Molluso, on a number of projects. You say, "I coordinated a number of projects for Planet Plumbing?"---Ah hmm.

Second, "Okay. As my role, yeah, but I did for other, for other company as well," and I assume that's other companies as well?---Yeah, other contractors, yeah.

40 "And that included the New College project at the University of New South Wales." You say, "New College, is that at Randwick?" "Yes, yes." "We would have done that job, yeah." The we in that is you and Mr Vincent Molluso, isn't it?---No, the we would be our depot, the we would be myself and the other field representatives at, that assist in the e-Developer role. That's we.

THE COMMISSIONER: Well, you were one of the people involved in coordinating that job I understand you to say?---At the time I may not have been. It's quite possible.

(not transcribable) answer. When you were asked - - -?---Ah hmm.

- - - whether that included the New College project and you replied, Yeah, were you not telling the truth?---No, because I associated the suburb with our depot, that's why I would have - - -

10 No, I'm sorry, are you saying you weren't telling the truth?---No, no, I'm saying that when I was asked where the job was, okay, and then, then I was given New College at Randwick I would have associated the suburb with our, with our area that we, that we, that we do work in.

You were asked, you were asked, Mr Funovski, whether you worked with Vince on a number of projects?---Yeah, that's correct.

And, and you said yes?---Yes.

20 And then you were asked whether those projects included the New College project and you said yes?---Yeah, I, yeah, look, I don't know. I'm just saying that maybe when I was asked that question I've thought that, I've related the suburb with, with our area not directly with actually working with Vince Molluso on that job.

So are you now saying you didn't work with Vince Molluso on the New College project?---I may not have, no. I've worked with jobs on him, with him in the past.

30 So are you saying that you didn't do any work for Sydney Water on the New College project?---Personally no, I wouldn't, I don't, I don't think I would have done any work on that. Our depot may have done some work there.

But you didn't?---No.

So when Mr Desfontaine said that he saw you doing work on the New College project site, he couldn't be telling the truth?---I don't, I don't recall going to that job.

40 So do you say he's not telling the truth?---Possibly.

Or are you just making a memory mistake?---No, I'm not making a memory mistake, no.

So if you, if you, you're adamant you have not been on that site?---No.

So you, it follows then doesn't it that Mr Desfontaine was not telling the truth?---I don't know what Mr Desfontaine was telling. I can't, I can't tell you whether he was telling the truth or not.

Did you mention to your counsel that you were, you've never worked at the New College site?---Did I mention it to my counsel?

Yes?---I don't know if he's asked me.

But you heard Mr Desfontaine's, you were, you were in the hearing room - - -?---Oh, okay. Yes, yes, yep. Sorry. Sorry.

10 You were in the hearing room when Mr Desfontaine said he saw you on the site weren't you?---Yes, yes, I was sitting in here, yeah.

And it was put to Mr Desfontaine that he was rung - - -?---Yep.

- - - by you counsel?---Yes.

But it wasn't put by your counsel that you'd never worked on that site?---I can't remember what, what my counsel, I can't remember - - -

20 That's what I'm asking you, did you tell, did you tell your counsel - - -

MR LY: Commissioner, I have some concerns about this line of questioning with all respect.

THE COMMISSIONER: I beg your pardon?

MR LY: I would've thought perhaps that - - -

30 THE COMMISSIONER: I'm sorry, I can't hear you.

MR LY: Commissioner, what Mr Funovski has said to me, with the highest respect is privileged information.

THE COMMISSIONER: Mr Ly, with the greatest respect to you - - -

MR LY: Yes.

40 THE COMMISSIONER: - - - privilege does not apply in these hearings. Just read the act before you represent a client in this hearing room.

MR LY: In any event - - -

THE COMMISSIONER: It's the most elementary thing you have to do.

MR LY: - - - I don't see the relevance of this, your Honour.

THE COMMISSIONER: Right. You may sit down now. Now, we will proceed Mr Payne.

MR PAYNE: Mr Funovski, I want to give you every opportunity, I want you to look with me at line 28 of the, of the examination that you participated in on 13 August, 2010 when you were asked about the New College project at the University of New South Wales, yeah, yeah, we would've done that job. Yes?---Yes, I can see that.

10 It's clear isn't it that you were telling the Commission that you were involved on behalf of Sydney Water in the New College project at the University of New South Wales isn't it?---That my depot might've been involved in the job.

It's clear isn't it that you were involved in the New College project at the University of New South Wales isn't it?---I can't recall being involved in that project, in that particular project, no.

Do you deny it?---I can't recall whether I was involved in that particular job.

20 Do you deny it? Yes or no?---Do I deny?

Do you deny being involved in the New College project on behalf of Sydney Water? Yes or not?---I can't recall. I can't remember if I was, I've been involved in a lot of jobs and a lot of connections with our depot in these areas.

THE COMMISSIONER: Do you, when you're involved in a job, is a record made of that in Sydney Water's records?---If I'm involved in it or - - -

30 Yes?---Well, it depends like from a, from the depot, where I'm based in the depot, the, the, there would be a record, yeah, because I, there'd be a processing of paperwork. There'd be, you know, all that type of stuff.

So Sydney Water's records would show whether you were involved in the, in the New College job?---Yeah.

40 And it would show what kind of work you did would it?---It would show, yeah, if, yeah, if we had some - - -

So if, if we can get the relevant records from Sydney Water overnight we'll be able to know whether you were working at the New College or not? ---Yeah.

And with that knowledge do you still maintain that you don't know whether you worked there?---Well, no, unless I saw maybe something that could show otherwise.

We're talking about something that happened two years ago?---Yeah.

Are you really saying that you don't remember whether you worked at the New College job?---I'm saying I did a lot of jobs around - - -

No. I'm asking you whether - - -?---No, I don't remember if I worked the New College job.

10 You don't (not transcribable). All right. I just want to say something to you, Mr Funovski?---Mmm.

It is a serious criminal offence to give false answers to this Commission when you're giving evidence. Do you understand that?---Yes, I understand that.

And I'm pointing that out to you because the penalty for giving false evidence in a public inquiry may be a gaol imprisonment for a term of up to five years. Do you understand that?---Yes, I understand that.

20 Do you still say that you can't remember whether you worked on the New College job?---So is that, I'll just have a look at this - - -

I don't think you'll find the answer in there?---No, no. I'm just thinking here because maybe, I know our depot was involved, would've been involved in working this area. I'm just trying to remember if I did anything there.

All right. Well, we'll come back to this.

30 MR PAYNE: Well I'll show you some documents that might help you Mr Funovski (not transcribable) the Commissioner. These documents are all numbered in the top right hand corner. The document I'm asking you about has got 75 on the top right hand corner. You agree with me?---Yep.

10 Day Avenue, Kensington is the New College job at the University of New South Wales?---Yep.

You see the constructor is Planet Plumbing?---Yep.

40 And you'll see that the person responsible for the pre-connection and the connection on 13 November, 2008 is you, Robert Funovski. Correct? ---That's correct.

Having seen that document does this refresh your recollection that you were involved in the New College project on behalf of Sydney Water?---That's not my handwriting.

Having seen this document does this refresh your recollection that you were involved in the New College project on behalf of Sydney Water? Just look at the first one, please?---Which one? 75?

75?---Sewer main connection report, well it's got my name on this document, right, but that's not my writing. That's Dave Hayward's writing. Okay. What he does is he fills these in first and then he goes back and he just dates them and put whatever he does on them. He doesn't, he doesn't process this stuff electronically. We do it for him in the depot. Okay.
10 That's not my writing on any of these construction reports that you've got here in front of you, that you're showing me.

Just attend to my question Mr Funovski?---Yeah.

Having seen these documents - - -?---Yeah.

- - - does it refresh your recollection that you were involved in the New College project at Kensington on behalf of Sydney Water?---Well, the documents suggest that I am.
20

I understand that and having seen them does that refresh your recollection that you were involved?---Look, if it's to do with the sewer I have may have been asked to go there on a day to do a, to do a, to do something with the sewer connection. But this is signed Dave Hayward. It's not signed Robert Funovski.

Mr Funovski, let's not beat around the bush?---Yeah.

You were involved in the New College project. Correct?---It appears that I was.
30

It appears that you were because you were weren't you?---Look, I may have gone there to do one, one, one particular sewer, water or sewer connection. But I have not been on these, to this job on all these dates here. And like I said that's not my handwriting, that's Dave Hayward's handwriting. And what he does is, he makes up about 20 or 30 of these documents and he fills them in as he goes along and he hands them to the other people to scan and release them. So where he's put these dates and stuff, I'm sorry, I have not attended the connections, whatever dates are on there.
40

THE COMMISSIONER: How do you know you haven't attended?---I would've gone there for the construction, look, I would've done, I now when they done the, when they brought the sideline in I would've been there. Okay.

How do you know that?---Because now I know, now I remember where the job was.

Why do you remember where the job was now?---Because I've seen the documents.

But how does that tell you where the job was?---Because I remembered Bob Pascoe being there, it's got his name on the top.

10 But what did you do at the job?---No, I just went there, they had the road open, they were connecting to the, to the, to the sewer main. I just went there, had a look what was going on, said hello and that's what you normally do.

But you've only been there once. Is that what you're saying?---Yeah.

In that whole job you've only been there once?---That's correct. I would've been there for the sewer connection.

I just want to make sure that your evidence to this inquiry is that in all your time at Sydney Water you've only been to the New College job once?
---Correct.
20

MR PAYNE: And you've now having seen these documents you've got a vivid recollection do you, Mr Funovski, that you've only been there on one occasion?---Yeah, (not transcribable).

No possibility, no possibility you were there on any other occasion?---No.

I tender that bundle of documents if the Commission please.

30 THE COMMISSIONER: Bundle of Sydney Water documents with pages 75 to 78 is Exhibit P90.

#EXHIBIT P90 - BUNDLE OF SYDNEY WATER DOCUMENTS WITH PAGES 75-78

40 MR PAYNE: Just so we understand one another, Mr Funovski, I suggest to you that the evidence you've just given the Commissioner is a lie on your oath?---Sorry?

I'm suggesting to you that the evidence you've just given the Commission about the New College is a lie. Do you agree?---I disagree.

Let's go forward. 59PT in Exhibit P89 bottom right-hand corner?---PT, yeah.

Have a look at the bottom of that page about line - - -

THE COMMISSIONER: What page?

MR PAYNE: 59PT about line 43?---43, yeah.

Yes. You were asked this question. "When was the last time you spoke to Vince?" That's Vince Molluso?---Yeah.

He's a friend of yours?---Yeah, he's a friend of mine, yeah.

10 You became friendly with him during his time while he was at Planet Plumbing and you were performing duties on behalf of Sydney Water? ---Yeah. Yeah.

You have stayed in contact since that time?---That's correct.

You discuss matters of mutual interest?---That's correct.

On 10 August of this year you went to Mr Molluso's offices on the way home from work. Correct?---Correct.

20

And if you look over at 61PT at line 28 you were asked this question about that meeting. "The only thing you discussed at that point was work he had coming up?" And you answer that, "Yeah."?---Sorry, 28?

"The only thing you discussed", so this is the meeting on the 10th which you recollect the meeting I take it on 10 August this year?---Yeah. Yes.

I want to give you every opportunity, Mr Funovski, do you tell this Commission on your oath that the only thing you discussed at that meeting with Mr Molluso was work that he had coming up?---The meeting I went to his office on that day?

30

Yes?---Probably some stuff about his family and stuff, like just general, social and, and whatever it says here.

You discussed this inquiry didn't you?---No.

Absolutely sure about that?---I don't recall it.

40 THE COMMISSIONER: You said no then you're saying you don't recall. Which is it?---I'll say I had a conversation with him, I can't exactly remember exactly what I said to him.

MR PAYNE: Have a look at this video, Mr Funovski.

VIDEO PLAYED

[3.14pm]

MR PAYNE: Mr Funovski, that's you arriving at Mr Molluso's offices on 10 August this year at 1.49?---Yeah, that's correct.

You agree?---Yeah.

How long do you say you were there?---I don't know, not long, I would've just, don't remember the time, I just drop in and say hello and go. I don't know, 15 minutes maybe.

10

I suggest you were there for over an hour. Do you agree?---One hour? Possibly.

And I suggest to you that while you were there you discussed this Commission and the evidence that you were going to give. Correct?---I disagree.

Do you tell the Commissioner on your oath that there was no discussion whatever during that meeting on that day with Mr Molluso about this inquiry?---Not that I can recall, no, I just went there on the way home from work and I stopped in and said hello. I'd finished for the day and I went home.

20

THE COMMISSIONER: Why did you go there?---I normally, it's on the way home.

Do you drop in everyday?---Not every day, no.

Why did you go that day?---Because I'd finished early. Was that a Tuesday 10th of August. Is that correct?

30

Why did you go that day?---I just went there for a visit. He rang me up - - -

Why?---Hey?

He rang you up?---Well, he may have, I don't know, I just, I just sort of - - -

Every time you say something and I take you up on it or not every time but very often you then backtrack and say possibly or you may have. Is that because you become uncertain when you're asked or is it you're trying to cover yourself?---Well, no, I'm just, just not totally, totally sure. I make sure, want to make sure I give you the right answer.

40

I think that's a good idea and I suggest that you take your time before your answer, before you answer so that when you do answer you don't have to backtrack?---Ah hmm. Okay.

MR PAYNE: Mr Funovski, it's clear isn't it that you discussed with Mr Molluso this inquiry on that day isn't it?---No, it's not clear.

Do you deny it?---I don't recall discussing the inquiry or you're suggesting at that, at that particular time I went to his office.

And I'm suggesting to you it was discussed. I'm giving you every opportunity to meet that suggestion. Do you agree with me it was discussed?---I don't, I don't recall the exact conversation.

10

So it's possible it was discussed is it?---I can't remember.

Have a listen to this. Just give you every opportunity to address this. You tell the Commissioner on your oath that you were not asked to come past by Mr Molluso on this day?---I can't remember how I ended up, I know I went past there, I don't deny going there but I can't remember whether I was asked or I just went past.

20

I suggest to you that you were asked to go by Mr Molluso and that a critical topic of conversation at the meeting was this inquiry. Do you agree?---I can't remember what the conversation was about, I just went past his office.

Do you agree that you were asked to go by Mr Molluso on this day?---We, we had a telephone conversation, maybe it was just neutral, I said I'll go past or he said come past.

I see. You had a telephone conversation did you?---(NO AUDIBLE REPLY)

30

When was that?---I wouldn't just go there unannounced, I'd make sure he was there if I went there.

Did you call him or did he call you?---I can't remember.

What was discussed during this telephone conversation?---I don't know.

I'd suggest to you that Mr Molluso asked you to come past. Do you agree? ---I had a conversation with him, I cannot remember whether he asked me to come past or I said I was going to go past on the way home from work.

40

Well, I'll take you up on that. Why would you wish to come past and speak with him on that day? About what topics?---Because I was just probably passing through the area.

Have a listen to this recording. I'll give you a transcript.

TELEPHONE INTERCEPT PLAYED

[3.21pm]

MR PAYNE: Commissioner, I tender that recording and the associated transcript.

THE COMMISSIONER: The audio recording and transcript of a conversation between Mr Funovski and Mr Molluso on 10 August, 2010 is Exhibit P90.

10 MR PAYNE: Can I ask you about the second page of that, Mr Funovski?

THE COMMISSIONER: Sorry, I beg your pardon. So this is P91, I beg your pardon.

#EXHIBIT P91 - COPY OF TRANSCRIPT OF TELEPHONE CONVERSATION AND AUDIO RECORDING BETWEEN MR MOLLUSO

20

MR PAYNE: Look at the second page please, Mr Funovski?---Yes.

Mr Molluso says to you, “Yeah, I want to talk to you about something, yeah, give me a call, yeah, or come past the office.” See that?---Yep.

That something was this inquiry wasn't it?---No, I don't believe so.

You're absolutely certain about that?---I don't believe so.

30 So you tell the Commissioner on your oath it wasn't discussed at the meeting?---I just went past, like it says here just come past the office like I normally would.

THE COMMISSIONER: That's not what you were asked. You were asked whether - - -?---Sorry, yeah.

40 You were asked about the topic of conversation. Is it your evidence that you did not actually mention this inquiry at your discussion with Mr Molluso on 10 August, 2010?---I don't believe I was aware of this investigation being anyway.

MR PAYNE: But he told you didn't he during the meeting?---I can't remember, like I went there and had a talk to him.

Mr Funovski, I suggest to you that that's another lie on your oath. Do you agree?---I don't, I disagree.

Commissioner, in relation to the video recording I tender the recording together with the surveillance logs which indicate that the meeting took place between 13.49 and 15.04 hours on 10 August, 2010.

THE COMMISSIONER: The surveillance logs, that's the surveillance logs of - - -

MR PAYNE: The video recording.

10 THE COMMISSIONER: Of the video recording of 10 August, 2010 and you are tendering the video recording?

MR PAYNE: I tender the video recording together with the surveillance logs.

THE COMMISSIONER: Yes. That's P92.

20 **#EXHIBIT P92 - VIDEO RECORDING AND SURVEILLANCE
LOGS DATED 10 AUGUST 2010**

THE COMMISSIONER: Have you finished asking Mr Funovski about this transcript?

MR PAYNE: I had, Commissioner.

30 THE COMMISSIONER: I just wanted to ask him a question about it. Mr Funovski, if you look at page 2 of this recording when Mr Molluso says he wants to talk to you about something and asks you to give him a call?---Ah
hmm.

And you say yes I'll come past the office and you agree but you were on the telephone weren't you?---Yeah, but I was probably busy. Yeah, I was on the telephone, yeah.

Why do you think, you were on the telephone from the depot weren't you?
---The work phone?

40 Yes?---Possibly.

You're saying, "Hurry up, I'm in the depot."?---Yeah, but I still could've been on my mobile, I'm not sure.

Why do you think Mr Molluso wasn't prepared to talk to you on that telephone that he was using?---I don't know, it was probably easier just in person I guess.

He said, "Give me a call." He wanted you to give him another call. Can you explain, can you, do you have any explanation as to why Mr Molluso wasn't prepared to talk to you on that telephone call and asked you to give him another call to discuss whatever he wanted to talk to you about?
---Probably because I've said to him I've got too much work on give me a call back.

10 Where did you say that?---At, at, at the beginning. It says, "I'm going crazy, mate."

Where did you say give me a call back?---"I've got too much work on."

Where did you say give me a call back?---No, no, no, I'm just saying - - -

You said that he said to you, that you said, "I'm too busy, give me a call, I'm very busy, give me a call back."?---No, no, it says here, he says, "Give me a call." "We need to talk about something so give me a call." That's what I was looking at just then when I said that.

20 THE COMMISSIONER: Yes.

MR PAYNE: Mr Funovski, if you were so busy, if you've still got that second page, why are you asking Mr Molluso, "You've got anything" about halfway down the page?---Okay. Inspection. "You got anything?"

THE COMMISSIONER: Above that?---Yeah. No, I can see it, I can see it, I'm just trying to read through the conversation.

30 What did you mean by that?---I really don't know.

It's rather an odd thing to say?---Yes. We were going to come (not transcribable).

What would Mr Molluso have for you?---I'm not sure.

Well, you're the only one apart from Molluso that can tell us this?---Yeah, I'm not sure.

40 Did he have information for you that you were expecting?---No.

So why do you ask him if he's got anything?---Maybe did he have anything on. "You got anything on." Because he's already asked me what I'm doing so I'm sort of saying, Have you got anything? So then we've agreed no, let's go to the office.

Yes, Mr Payne.

MR PAYNE: Mr Funovski, I suggest to you that that evidence is untrue. You started by telling the Commissioner - - -?---Ah hmm.

- - - that your belief was that you were so busy?---Ah hmm.

That was your explanation, you remember saying that a few moments ago? ---Yeah.

10 But you now agree that that can't be right, you were asking him you got anything? You were prolonging the conversation not cutting it short, agreed?---Well, I wasn't going to just palm him off, you know, a couple of minutes out of work time is no big deal.

So you weren't so busy you couldn't speak to him?---No, I was busy otherwise maybe I would have talked to him for another five, ten minutes. I don't know, how long was this conversation for?

Mr Funovski, I suggest to you - - -?---Yeah.

20 - - - that you recognise that you did have a conversation with Mr Molluso on that day and you are now giving evidence trying to downplay or minimise that fact, do you agree?---Can you say the question again please, sorry.

You had a conversation you know on 10 August, 2010 with Mr Molluso about this inquiry, don't you?---Ah hmm, no.

30 And when you said, "I want to talk to you about something," that something in the hour long conversation that you had with Mr Molluso turned out to be this inquiry, didn't it?---No, we could have spoken about a number of things.

THE COMMISSIONER: You could have?---Yeah.

Well, what did you speak about? It's not long ago, Mr Funovski?---Yeah, I know, I know.

10 August?---No, I realise that.

40 It's not five weeks ago?---You know, his, his wife was pregnant at the time, she was ready to give birth, you know, he was renovating his house.

Did you discuss all that did you?---I was there for an hour, it's quite possible, yeah.

MR PAYNE: Mr Funovski - - -?---Mmm.

- - - last opportunity about this, you say, "You got anything?" Mr Molluso says, "Yeah." What was the thing that he had for you when you turned up and had this meeting just a few weeks ago with him?---Nothing.

THE COMMISSIONER: But he wanted, he made a deliberate request, he wanted you to phone him on some other phone, some other time or come round and see him?---Yeah.

10 Something and it had to be important. What was it?---I don't know how important it was, if I didn't go, if I wasn't finishing early that day I probably would have gone and seen him the next day.

You're not telling us what it was?---I don't, I don't understand why, what I've said there, you've got anything, I don't know.

MR PAYNE: Mr Funovski - - -?---Yeah.

20 - - - in relation to Mr Molluso it is true, isn't it, that you have accepted cash payments from him from time to time?---I disagree.

Mr Funovski, I'm going to give you every opportunity and I want you to reflect carefully on this answer, it is true isn't it that from time to time Mr Molluso in the course of your official duties as a Sydney Water employee has given you amounts of money? Do you agree?---No, I disagree.

You say on your oath that he has never given you 20 or \$50 to smooth the way?---I can't remember.

30 Is that a serious answer?---Is this something, is this something I said in the compulsory examination?

Just put that to one side for a moment. I'm asking, I'm asking you some questions?---Yes.

Please close the document. Please close the document, thank you?---Yeah.

Please attend to my question?---I am.

40 Have you received cash payments from Mr Molluso, yes or no?---Not that I recall, no.

As you sit here on your oath you tell the Commissioner you don't recall receiving money from Mr Molluso?---From Mr Molluso, no.

Absolutely no question about it? I'm giving you every opportunity, no, no room for doubt, you never received 20 or \$50 as a Sydney Water employee to smooth the way. Is that what you say?---(NO AUDIBLE REPLY)

No, please don't flick through the document. Is that what you say?---Not from, I can't remember from Mr Molluso, I can't remember.

THE COMMISSIONER: Can you remember from anyone else?---Like over the, over the, the time that I've been in Sydney Water there may have been on the rare occasion yes but I can't remember who it would have been from.

10 MR PAYNE: So you received cash as part of your duties as a Sydney Water inspector from time to time from people other than Mr Molluso, is that what you say?---I received gifts.

Well, you received cash as well, didn't you?---On the rare occasion I might, I may have, yeah.

How much?---20 bucks.

20 And that was to smooth the way was it?---To smooth the way what?

Well, Mr Funovski, you have no - - -?---I don't understand what you mean by smooth the way.

You have no problems with your memory do you?---Not that I'm aware of.

I want to suggest to you, give you the last opportunity, I want to suggest to you that you have received on occasion as part of your official Sydney Water duties payments of 20 and \$50 from Mr Molluso, do you agree?---I can't remember from Mr Molluso, no.

30 THE COMMISSIONER: Is it possible?---Possibly, I don't know.

MR PAYNE: Well, in what circumstances is it possible that you received such money?---It'd be unlikely. I wouldn't accept money from my friends, he's a friend of mine, why would I accept money from him for?

40 So you deny receiving money from Mr Molluso do you?---If I thought I received money from him I would have repaid him back, it would have been just like, you know - - -

Mr Funovski, I want to suggest that this evidence you're giving this afternoon is a complete pack of lies. Do you agree?---I disagree.

Have a look at 65PT. Have a look at line 12. You were asked by Ms Colquhoun this question. "Has Molluso," that's the same person we've been talking about, agreed?---Okay, yes.

“Has Molluso, has money ever exchanged hands between yourself and Mr Molluso?” Answer, “Oh, maybe like, you know, \$20 to buy a box of beer or something like that but, you know, that’s about it?”---Okay, yes, I see that now, yeah.

Is that true?---Well, yes, if I’ve said that there, \$20 yeah, possibly to buy a box of beer.

10 THE COMMISSIONER: Why does that make it true that you said it?
---Sorry?

Why does that make it true that you said it?---I don’t - - -

Why do you have to read it in your own, in the transcript of your own evidence to work out whether it was true or not?---Because I, I can’t remember what I said on the day over there.

20 MR PAYNE: Just a few moments ago you told me that there was no reason that you would ever accept money from Mr Molluso and he was a friend and you’d pay it back. You now say that that evidence you gave a few moments ago was quite untrue, do you?---This may have been a very long time ago, prior to a good friendship being established.

Well, this is, this is your evidence just a few weeks ago, Mr Funovski and you say, “You know, \$20 to buy a box of beer or something like that, you know, that’s about it.” You see that?---Okay, yeah.

30 Well, what did you mean by that? On how many occasions did you accept this \$20 from Mr Molluso?---Maybe once around Christmastime.

I suggest to you again Mr Funovski and I want to give you every opportunity, that, that answer’s a lie?---(NO AUDIBLE REPLY)

It is, isn’t it?---I disagree.

40 Do you then say to the Commissioner that you’ve read it here that your received \$20 only once, that’s your evidence on your oath is it?---Look, I can’t remember how much times I’ve received money, if I’ve ever received it. Like I said - - -

Well, was it - - -?---If it was ever like it’d be something like that, to buy a box of beer.

Well, this is the, this is the evidence you gave just a few weeks ago and you agreed with me a moment ago it was true?---Ah hmm.

Do you remember doing that?---Yes, yeah.

You received a cash payment, just dealing with this one at the moment, of \$20 to buy a box of beer or something like that, you recall that happening, don't you?---I do now, yes.

You didn't pay it back, did you?---I would have drank it.

You received the cash payment as part of, as part of, as part of your role, you agree with me?---I don't know if it was to do with my role, it was maybe something for - - -

10

Well, is this, is this - - -?--- - - - maybe it was something for Christmas, a gift, I don't know if it was to do with my role or not.

I see?---It was a gesture.

I see. A gesture to a Sydney Water employee?---Mmm.

Correct. And do you tell the Commissioner on your oath on your oath that this is the only occasion you've ever accepted a cash payment from Mr Molluso?---Yeah, that I can recall, yeah.

20

I want to give you every opportunity Mr Funovski. You're absolutely sure about that? That's the only one you remember?---Like I said, like over a period of 8 years, like you know, it's not like, no, I can't remember.

Have a look over at page 67PT. Have a look at line 20?---Oh, yeah. Yep.

Oh, yeah. And when did Mr Molluso give you money and under what circumstances? Answer, Ah, they would've been minimal amounts, it's just, I wouldn't go to the bank, \$50 or \$20. Now it happened on a number of occasions didn't it Mr Funovski?---I don't know how many times it would've happened though.

30

Well, this is your evidence just a few weeks ago. What did you mean by this answer?---Just basically what it says, what I answered.

They would have been minimal amounts i.e. it happened more than once. Correct? Do you agree?---Well, that's what, I agree. Yeah, possibly more than once, if that's what it says there. Yeah.

40

Mr Funovski, you remember when you were giving evidence on the 13th that it was a serious occasion didn't you?---Yeah.

You were trying, you say, to tell the truth do you?---Trying to cooperate, yeah, with the Commission on the day and everyone that was there.

And what you said was you'd received amounts, plural from Mr Molluso. That was true wasn't it?---That's what I've said there, yeah, I agree.

And when you told you me a moment ago it was once only that was a lie wasn't it?---No, it wasn't a lie. I just didn't remember.

Over what period did you receive these cash payments from Mr Molluso?
---It may have been some time early, I can't, I can't remember. Like I said, I've done the role for a long time, like those, those past years that I did it, so
- - -

10 So how many occasions?---Look, I wouldn't be able to give you an exact figure. I just, I just wouldn't have any, any idea.

More than 10?---Oh, no, no way, less than.

Well, let's have a look at some other evidence that you gave then. Down that page 67PT, Have you ever been offered bribes or gifts during your employment with Sydney Water? Answer, Yeah, it's common. Quite common. It's the whole Sydney Water culture I guess?---Yep.

20 What did you mean by that answer?---Well, you asked me if I received gifts and I, and I said yes. Is that correct?

The question which you were asked here, Have you ever been offered bribes or gifts during your employment with Sydney Water? And you say, Yeah, it's common, quite common. It's the whole Sydney Water culture I guess?
---Okay.

30 That was the question you were asked, that was the answer you gave. Correct?---Yeah, I think I might've been referring to the, to gifts not, not actual bribes.

I see?---I've never really been offered a bribe.

I see. Well tell us about the gifts you received?---The gift you'd receive is probably around Christmas time. You know you may receive a, you know, like something, like a, like a little hamper or a ham, a bottle of scotch, a box of beer, those type of things.

40 Mr Funovski, again I want to give you every opportunity?---Ah hmm.

You have been offered cash payments in your role as a Sydney Water employee on many occasions haven't you?---Not on many occasions, no.

THE COMMISSIONER: On some occasions?---On some occasions I've been offered it, yeah.

And you've taken it?---No.

You've handed it back?---No, I didn't accept it.

MR PAYNE: Well, you took it from Mr Molluso didn't you?---No.

You didn't take cash payments from Mr Molluso?---Oh, no, for the, you're talking about for the beer?

10 I'm talking about your evidence that you gave me just a few moments ago that you accepted cash payments of 20 or \$50 from Mr Molluso? That's what you told me just not more than five minutes ago?---Okay. If that's what I said, yeah.

Well it's what you said, it was true wasn't it?---I guess.

THE COMMISSIONER: You're not sure if it's true?---Well, no, I would've, it's just I'm getting a bit confused. I don't know. I can't remember.

20 Well, let's start again?---Yeah. All right.

Forget about what you said before. Let's start it fresh?---All right.

Have you accepted money from Mr Molluso?---Yes.

And money in what amounts?---\$20 mainly.

How many times?---On a few occasions.

30 Over what period?---Over my entire time I've been at Sydney Water.

From time to time throughout that period?---Oh, no, for my entire time that I've been at Sydney Water. Yeah.

Yes. I know you've said that, but I'm trying to find out over what period during that entire time?---Oh, it would've been, it would've been early on when, when we didn't, when we hadn't established like a friendship, I guess. I wouldn't of accepted it off him after we were friends. There's no reason.

40 And did you accept bribes from others?---No, I didn't accept bribes.

So if you've given evidence that you have accepted bribes, that evidence is not true?---Yeah, because I think I - - -

Just, is that evidence, if you have previously said that you've accepted bribes, is that evidence not true?---The evidence is not true.

And you, and you gave that evidence knowing it was not true?---I was, I believe I may have been confused in the question, because it said both bribes and gifts.

So what is the true answer?---I have accepted gifts, yes.

You've never accepted bribes?---No.

10 MR PAYNE: Mr Funovski, some answers you just gave the Commissioner, I'm going to suggest to you again are quite untrue. I want to ask you about the payments that you received from Mr Molluso. I want to suggest to you that they weren't early on, that they were in 2008 and 2009. Do you agree?
---I disagree.

You're quite sure about that?---(NO AUDIBLE REPLY)

Absolutely no possibility of contradiction?---No.

20 Have a look at 71PT. Have a look at line 22. Now when you talked earlier in your evidence about accepting small amounts of money from Molluso? Yeah. When was the last time he gave you money? The last time would've been years, back in the, back in the period over there. Assistant Commissioner, What period over there? 2000, possibly 8, 2009. Do you see that?---Yes, I can see that.

That's contrary to what you told me about three questions ago. Do you agree?---Yeah, I agree. Yeah.

30 Mr Funovski, I suggest to you that you are lying on your oath to try and get out of a very serious situation you find yourself in?---I disagree.

What explanation do you offer the Commissioner for your answer that these payments took place in 2000 possibly 8, 2009, having told him not five minutes ago that it was years earlier?---That I may have been confused with the dates.

Let's read on. Ms Colquhoun asked you, So when he was working at Planet Plumbing? Yeah, yeah?---Yeah.

40 You know that was 2008 don't you?---I know, I know he was there, I wasn't exactly sure what time he left.

Well, I'm going to suggest to you in a moment that that's a lie as well, Mr Funovski, because you know very well when he left because you went and shook down Mr Alafaci for several thousand dollars didn't you?---I disagree.

Let's keep reading. You said not half an hour ago to me that you didn't accept these payments to smooth the way. You were asked this question, and this is the payments of money at line 38, Okay. Now what was it for? Your answer, Probably for speeding up the process for the connection because what can happen a lot of the time it's sort of like first in best dressed system in Sydney Water so there's no, there's no prioritising. Do you see that?---Yeah.

10 You accepted cash payments from Mr Molluso to speed the process and smooth the way. Do you agree?

THE COMMISSIONER: I think it would be really helpful Mr Funovski if you would answer the question by reference to the truth and not by what you've said. And you won't find the answer by examining as you are continuously doing the transcript. Just think about the question and answer it without reference to the transcript?---Sorry, what was the question again?

20 MR PAYNE: I suggest to you that you accepted cash payments from Mr Molluso to speed up the process of connection to Sydney Water. Do you agree?---I received cash payments to purchase a gift but I don't know whether it was for that purpose.

Well, Mr Funovski, have a look at page 71PT, your answer just a few weeks ago. Ms Colquhoun asked you, "What was it for i.e. what was the cash for?" "Speeding up the process for the connection." Was that a true answer---Yes.

30 So you accept do you that you took cash from Mr Molluso in 2008 to speed up the process of a connection. Correct?---It's possible I didn't receive cash, I would've received like something, something else.

Mr Funovski, go back up to where we started about this. This whole topic here is when you talked earlier in your evidence about accepting small amounts of money from Molluso, that's what you're talking about isn't it? ---Accepting small amounts of money from Mr Molluso?

Yes. In 2008 that's what you did wasn't it?---Possibly.

40 And I'm asking you the reason for it, I'm asking you to agree with me that you accepted that for speeding up the process of the connection?---It may have been for that.

Well, it was wasn't it?---I'm not sure, I wouldn't be able to tell.

There's no doubt in your mind is there that that's what the money was accepted for is there?---No, there is a doubt otherwise I would've, I'm not sure what it was for.

THE COMMISSIONER: Why would you say it's not, you're not able to tell?---Why I would've received money off him for?

Yes. When you were asked what did you receive the money for you said, "I'm not able to tell." Why is that?---Like I said it's possible I could've borrowed money off him, that's why I was getting, getting money off him and repaying him back.

10 MR PAYNE: Mr Funovski, I suggest to you that that's a lie. You never paid this money back did you?---I disagree.

THE COMMISSIONER: So you paid it back?---I've borrowed money off him before and just paid it back.

MR PAYNE: So when you gave these answers on your oath at 71PT that we're talking about when you accepted small amounts of money from Molluso for speeding up the process you now tell the Commissioner on your oath that they were loans do you?---I don't know which payments you're referring to.

20

Well, Mr Molluso, it's your evidence - - -?---No, Mr Funovski.

Mr Funovski, I'm terribly sorry, you received the money from Mr Molluso didn't you?---I received money from Mr Molluso?

Yes?---I've already answered that question.

And the answer's yes isn't it?---I think I've already answered that question.

30 THE COMMISSIONER: Well, just answer it again?---Yes.

MR PAYNE: And do you tell the Commissioner now on your oath that on each occasion you received money from Mr Molluso that was a loan do you?---Not on each occasion, no.

Well, on some occasions you received \$50 and that was to speed the process wasn't it?---Look, I don't know. Speed the process, I don't know what, what can, I don't know what speed the process - - -

40 THE COMMISSIONER: It's your words, you used the words?---But there's only so much I can do to speed up the process.

What did you mean when you said it?---Like I could probably assist him in some way of, of, of, of getting, getting the work done I guess.

Speed the process of getting the work done?---Mmm.

Yes?---Yes.

MR PAYNE: So we agree do we, you accepted cash payments from Mr Molluso in 2008 to speed Sydney Water's process of getting the work done. Correct?---I don't know if it was in 2008.

Well, you - - -

THE COMMISSIONER: 2009?---No.

10 You've said it. You've said it?---2009?

Yes. 71, line 32?---I wasn't even, I wasn't even in the depot working in 2009, I was over in Training Services. I wasn't even doing this role in 2009.

MR PAYNE: So your answer to the Assistant Commissioner about what period of time you received cash and you said 2000 possibly 8 to 2009. You now tell the Commissioner it can't be 2009, it was only 2008 do you? ---Yeah.

20

So in 2008 you received cash from Mr Molluso to speed the process. We agree with one another do we?---No, I can't, 2008, I can't even, I don't even know if I was doing the role then either.

Well, have a look at 71PT at line 32 when the Assistant Commissioner asks you, "What period over there?" And you say, "2000 possibly 8, 2009." You've just told me it can't be 2009. It's 2008 isn't it?---It says possibly 8 so I'm not sure.

30 Possibly 8, 2009, you didn't identify any other time it could've been did you?---It may have been prior to those years. I'm unaware.

Mr Funovski, you're just making this up as you go along aren't you?---No. I'm not.

Have a look over at 72PT. Have a look at line 12, this question and answer?---Ah hmm.

40 "So he gave you money", that's he Mr Molluso gave you, Mr Funovski, money to smooth things along really?" Answer, "Pretty much, yeah." That was true?---That's, yeah.

So you've accepted cash payments from Mr Molluso to smooth things along with the Sydney Water process. You agree?---Yes.

You knew that was wrong I take it at the time?---No, not really.

You thought it was okay did you to take cash payments as a Sydney Water employee to smooth things along did you?---I wasn't, I wasn't taken, it was just, I knew it was just for a gift, that's all it was, it wasn't accepting - - -

THE COMMISSIONER: It wasn't for a gift, you've just said it was to smooth things along. That's not a gift. That means you're giving value for it?---No, it was just probably like an appreciation from the person, I can't, there's much I can do.

10 It was smoothing things along wasn't it or are you changing that now?---No, I can't change it I've said it already.

Afraid so.

MR PAYNE: Mr Funovski, Commissioner, I am going to another topic now, it's a few minutes before 4.00 but it may be appropriate to adjourn.

THE COMMISSIONER: The Commission will adjourn till 10.00am tomorrow.

20

THE WITNESS STOOD DOWN

[3.57pm]

At 3.57 THE MATTER WAS ADJOURNED ACCORDINGLY [3.57pm]