

SIRENPUB00872DOC  
16/09/2010

SIREN  
pp 00872-00927

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 16 SEPTEMBER 2010

AT 10.20AM

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.

THE COMMISSIONER: Mr Payne.

MR PAYNE: Thank you, Commissioner.

<JACQUELINE GAI HIDDLESTONE, on former oath [10.19am]

10 MR PAYNE: Ms Hiddlestone, there's just two things I want to clear up with you that we discussed yesterday and just to finish off the point really. The first in relation to these diagrams required by the New South Wales Sewerage Code that plumbers have to complete as part of their paperwork when they're inspected by the PIAS inspectors and just in relation to that, just I think to summarise what you told me yesterday, there was training at the time that requirement was introduced into the New South Wales Sewerage Code conducted by Sydney Water in Sydney, point one. Correct?---That's correct.

20 Your role in that training out to the Hunter area when the Hunter becomes part of the new Department of Fair Trading regime of sewerage, plumbing inspections. And that's planned for when?---Early 2011.

And the training that all licensed plumbers undergo, the TAFE training includes a session or a section on drawing these diagrams, so it's part of the licensing requirement. Correct?---In the third year, yes.

And so the third year of that qualification?---Yeah. Apprenticeship third year (not transcribable)

30 And you need to pass that drawing qualification before the license is granted is that - - ?---I believe it's part of one of their modules, so, yes.

And fourth thing is, as you understand it, there are commercial enterprises throughout Sydney ready, willing and able to draw diagrams for any plumber who for some reason couldn't do so?---That's correct.

40 You've read I think the evidence of, I'll start again. You've read I think the evidence of the PIAS inspectors and former PIAS inspectors who have given evidence to the Commissioner, I think you told me yesterday?---Ah hmm.

You've been shown the transcripts of that public examination?---I've had a look through them. It's right there.

The evidence of one in particular, a Mr Rogers was that things were so dire in the last 18 months that when asked by plumbers who were incapable of drawing the diagrams, he felt he had no choice but to do it and received a cash reward for doing so, to summarise that evidence. If he had come to

you at any time in the last 18 months and asked in relation to any plumber who wanted a diagram drawn for him, doing the best you can, it's a hypothetical question, what would you have instructed Mr Rogers to do? ---Well, plumbers used to draw the diagrams. There was a period of time Sydney Water picked up that drawing, so really reverting back (not transcribable) providing those diagrams. There are commercial options out there. A number of those attended different information sessions and actually gave out brochures. Had Robert come to us and said look, I do want to draw diagrams, we'd have a look at that as to whether we saw that as a conflict of interest. If it was seen as a conflict of interest then that would be declined.

Thank you. The other thing I want to clear up with you and it may have been that I was the person who created the confusion, so I apologise, was about telephone access and hotlines. The old system, we're just concentrating on PIAS at the moment, but I'll ask you a broader question. The old PIAS system was that PIAS or the P and D inspector would have a municipality where, where he or she, I suppose, has there ever been a female P and D inspector?---No, unfortunately not.

Where he was working there'd be a telephone number which was available to plumbers working in the area and they would telephone direct the inspector?---That's correct.

The new system that you set up which rolled out from '08 into '09 of the centralised booking, you were telling the Commissioner you have statistics and so on and that you can tell how many dropouts there are?---That's correct.

And so far as you're aware that the new system, as least so far as contacting PIAS inspectors is one that, that is working well and delays, if they existed under the old system, as least so far as PIAS is concerned no longer exist? ---That's correct. With the phones, a plumber if they ring an inspector and he answer it, it to go to messagebank, so they would have to ring the plumber back. By going through the central phone system, there's six people answering those calls. The call pickup rate is extremely high. And so they're actually getting through much quicker and getting the allocated spot they're looking for (not transcribable)

And there's a messagebank system is there with the PIAS inspector?--- There's, they've got messagebank if need be.

I see?---But (not transcribable) not having to use that.

And just in fairness to you there was evidence that under the old system, I think Mr Vecchio was giving, the old system there was a real advantage in knowing a PIAS inspector because you could get on to them directly on the mobile phones or, you know, their direct office line and so on. But he

wasn't talking about the new system. But there has been quite a lot of evidence though about delays in connecting with the civil maintenance department and inspections in relation to developments, which I accept are no part of your responsibility. I just wanted to ask you, if you know, is there any system in place or any moves underway to introduce the same sort of centralised telephone system in relation to areas where civil delivery or maintenance inspections are concerned?---I'm sure I've had it. There is a contact session number they can go through. There's also the direct site numbers and there's civil maintenance for (not transcribable) control in  
10 place. Where they're going to take that further on booking inspections I'm not sure.

Sorry, I didn't quite catch the last word?---So whether they're going to take a central approach on booking inspections I can't answer that.

Just in the three things that you mentioned. You said there's a central number, that's a central Sydney Water number is it?---There's contacts, yes, contact inspection number that people can contact.

20 The second way you said there was, you can ring the sites or the depot?---I believe so, yes.

And what was the third way?---There is an incident area for civil maintenance so (not transcribable) and the like that they're managing there as well.

And that's some sort of special number is it?---Yes.

30 And who are the people who look after that as you understand it?---That's civil maintenance staff, they're known as schedulers. There's scheduling work going in and out for them.

I see. And to the extent that the evidence discloses that there are considerable delays in getting through you can't help us one way or the other about whether there are moves on foot to implement that?---I can't answer that.

I have nothing further for this witness, Commissioner.

40 THE COMMISSIONER: Other than Mr Stevenson is there anyone who wishes to question Ms Hiddlestone? (not transcribable) you looked as if (not transcribable) wanted to yesterday. You have no interest in doing that?

MS WHITE: No, Commissioner.

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Thank you, Commissioner. Ms Hiddlestone, can I just clear up your current roles so far as concerns the PIAS inspectors. You told the Commission that in 2005 your task was at Sydney Water to manage the PIAS inspectors?---(not transcribable).

You've given evidence as to the changes you effected in that regard. You're now on secondment to the Department of Fair Trading?---That's correct.

10 So you're still a Sydney Water employee?---(not transcribable) Sydney Water seconded to Fair Trading.

Do you at the moment have any role to play in the management of the PIAS inspectors at the Department of Fair Trading?---Not direct management. I'm virtually consulting but I did the vetting in of their group to ensure the IT systems were in place, assist with the regulation changes, any changes around the central system on that and transfer Hunter Water staff.

20 It was recorded yesterday that the Commissioner was asking questions of you about further reforms that could be (not transcribable) to the PIAS inspectors. Do you recall those discussions yesterday?---Yes.

Are you the person who would be responsible for effecting any further changes to the PIAS inspection system?---Not directly, no. I (not transcribable) put that recommendation forward but their direct manager will take care of that.

30 But you know within the Department of Fair Trading who the people are that would be concerned to effect further changes if they were needed? ---Yes, I do, I liaise with them regularly.

And you'll pass on to them won't you the Commissioner's comments and what you've learned from the Commission?---(not transcribable).

Can I just ask you a little more about the inspectors. When you first came to Sydney Water in, sorry, when you first started to manage the PIAS work in 2005 how many inspectors were there then?---There would've been approximately 37.

40 And you've told the Commission in paragraph 7 and in your statement of a reduction in the number of those inspectors. Can you just explain to the Commission the reasons for and the process of that reduction?---There's progressive reductions through natural attrition, we did do some back filling where it was required. If we're looking at - - -

Back filling?---Sorry.

Does it replace inspectors?---Recruit, yes, recruit additional, newer staff. Given a number retired and a number resigned, given the age grouping of the team when we're looking at reducing from the current, the 24 down to 17, sorry, 23 to 17 - - -

That's for the migration to the Department of Fair Trading?---No, it's in relation to part of the, what we call the Plumbing New Approach, in that included is the centralised scheduling and introduction of audit based inspections. So rather than go to every inspection you're going to a sample  
10 of inspections and (not transcribable) around risk connections to the Sydney Water assets, the type of plumbing undertaken and the plumber's performance. We found that we needed 17 staff on that so to reduce from 23 down to 17 we looked at the performance agreements with staff, their progress to date or the prior year, the current year so which had a weighting on that approach. We also looked at their behaviours, any performance management that had been undertaken, skill sets, adaptability to IT, so a number of different parameters and that effectively gave us a ranking of the inspectors on the level of competence overall. The 17 moved forward as part of the team seven did not and they were offered redeployment of  
20 redundancy and some took redundancy, some took redeployment and are in other areas of Sydney Water.

Was that process whereby the number of inspectors was reduced, was that informed in any way by any apprehension you had about fraudulent (not transcribable) conduct by any inspectors?---No. It was based around the capability to do the role.

Is that because you weren't aware - - -?---Possibly.

30 - - - that any of them were engaging in any such conduct?---That's correct.

You did say one change, I think you said that one change that you affected was to in effect ensure that the inspectors telephone numbers were changed?---That's correct.

And I think you said you did that by arranging for a new SIM card, I think you said, was given to them?---Yes. What we did was took their - - -

40 That's right is it?---That's correct.

So all the inspectors mobile phone numbers - - -?---Were changed.

- - - were, their mobile phone numbers were changed. So why did you affect that change?---The reason, the plumbers were ringing to book their inspections and because we changed to a centralised system, we diverted all their existing mobile numbers to that central number. So as a plumber rang as part of that transitional period, they got the centralised number. By giving the inspectors a new number that wasn't published, that allowed that

connection, should they need to receive or make phone calls. But it also wasn't handed out to the plumbing industry.

Right. So the object was, the reason new phone numbers were allocated to the inspectors was to ensure so far as you could that plumbers didn't ring inspectors but went to the central booking number exclusively?---That's correct.

10 One of the matters you mentioned in your recent reduction of probity risks summary document, which is Exhibit P110, was the making of surprise audit inspectors visits. Do you recall that - - -?---That's correct.

- - - Mr Payne asked you some questions about that?---Ah hmm.

20 My question is this, what steps have you taken to inform inspectors that they may be the subject of a surprise audit visit?---The inspectors are (not transcribable) are very aware as part of management team roles, particularly the direct manager, that they could attend a site at any point in time and undertake an onsite audit with the inspector.

Did you mention something about something brief online?---Oh, sorry?

30 Did you just mention that, about an ET brief online?---Oh, sorry, a mega brief. What I did, we on a regular basis had all the entire team together as part of, we call those mega briefs. And as part of that they're advised of the decisions of the management team. And as part of the management teams role, particularly their direct manager is to ensure that they are complying with the standards, the (not transcribable) operating procedures, their actual function, they're turning up on time and the like. So the management team will do field based audits.

So a mega brief, is that a meeting - - -?---A meeting of staff.

- - -(not transcribable)?---Yes.

All right. So are you saying, are you telling the Commissioner that at meetings, you told inspectors that they may be (not transcribable) to random audit inspections?---That's correct.

40 With (not transcribable)?---Sorry.

(not transcribable) language. Yes, thank you.

MR PAYNE: Commissioner, for the benefit of those present, we're now going to move away from the PIAS inspectors briefly. There are two gentlemen from Queensland who have returned to give evidence today. The first is Mr Purcell. And I call him. We will return and deal with Mr Sharpe

immediately after these two gentlemen, which will be the last of the PIAS evidence.

MR STEVENSON: I seek leave to appear for Mr Purcell.

THE COMMISSIONER: No Section - - -

MR STEVENSON: No.

10 THE COMMISSIONER: Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR PURCELL: Under oath.



MR PAYNE: Mr Purcell, what's your full name?---Steven Warren Purcell.

And what's your present position?---I'm the manager for Acceptance and Compliance in the urban growth business.

10 You've made a statement in this matter dated 29 July, 2010?---I have a copy here. Yep.

Well, perhaps I'll hand you one so we can make sure we're talking about the same document. Is that the document to which you refer?---Yes.

Are there any corrections you wish to make to that document?---I noticed that there was one omission on page, which was an oversight on my behalf.

Did you omission?---Omission, yes.

20 Omission, yes. Page 3, yes?---Section 8.

Yes?---Where it says (not transcribable) and I managed the DAS and AIS areas. Fred Mattern was also a component of that team. It was actually running an area called Supply and Management which covered the providers as they become known a few years later. So from, from 2000 through to 2005, the providers were actually managed by Fred Mattern which was a separate contract and arrangement then the water service coordinators contract, which started in 2001. However, I didn't put that in there.

30 By providers are you referring to providers of construction services to Sydney Water clients?---Yes.

So accredited constructors were at that time part of a stream, they were managed by a stream that Mr Mattern was the head. Is that what you're saying?---Yes.

I see. And any other changes you wish to make to the statement?---No.

40 I tender the statement, sorry, and the statement you tell the Commissioner is true and correct to the best of your knowledge and belief?---Yes.

All right. I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit P111 is the statement of Mr Purcell.

**#EXHIBIT P111 - STATEMENT OF MR PURCELL**

MR PAYNE: Mr Purcell, I wonder if at the outset we get some things straight about structure and who's who within Sydney Water at various times. And I'll hand you three pieces of paper if I may. A copy for the Commissioner. The first document, the colour document that I've handed you, can we just go through that together and tell me whether I've got it right. This I want to suggest to you is a representation of the current organisation of Sydney Water as you understand it?---Yes.

10

And just if we can go through the items, the board of directors at the top. Reporting directly to the office of the managing director are a number of separate teams including group audit, sometimes known as internal audit? ---Yes.

Corporate affairs, company secretary, health and safety, legal, media and strategic planning. And as I understand it, those officers within Sydney Water have a, have a direct reporting function to the managing director of Sydney Water?---That's correct. I'm not sure about health and safety, but, I would assume that would be the case.

20

Okay.

THE COMMISSIONER: These don't come under group audit, they're separate entities as it were?---Yes. Yes.

MR PAYNE: I'll just, then taking up the Commissioner's question, in each of these boxes at the bottom of the page, so starting on the left, human resources, asset solutions et cetera, they're all separate streams within Sydney Water that have their own management structures?---Yes.

30

With the head of each of these divisions and the head of that division reports to the managing director?---That's right.

And in particular just a few things I'd like just to understand about your role in the asset management division. So that's six from the left. There are a number of management sub-streams in asset management, one of which is urban growth?---That's right.

40

THE COMMISSIONER: Just as a matter of interest, Mr Purcell, where does sewerage come into this?---Sewerage, sewerage from a maintenance point of view it's under, under maintenance (not transcribable).

Yes. So sewerage contracts are administered by maintenance are they? ---No. As my construction point of view or, or developer works?

Well, let's just take instruction. Under which department, if you want to find a contract under between Sydney Water and the contractor for the

construction of sewer works who, who has the responsibility, the ultimate responsibility for that?---The ultimate, well, the actual contracts would be managed by Asset Solutions to the left under Ian Payne.

Asset Solutions?---Yep. They, they also run contracts - - -

And then, I see. And then if you take existing sewer contracts and work done, maintenance work done in connection of those under which section does that fall?---Just repeat that again, sorry?

10

Work, where there is an existing sewer contract and work is done by the contractor under that and makes claims for work done under that who, who administers that?---Like, that would probably be like a renewal program.

That's one of the questions, yes?---Yes. And that, that would also be run by Asset Solutions. There, there is a compartment of some contracts would also be run by maintenance under - - -

20

That's Mr Payne is it?---Mr, Mr Payne's under Asset Solutions, that's correct.

So if you've got a major contract in progress for the construction of sewerage and there are variations to the contract and claims come in from the contractor and someone has to decide whether the claims are under the contract or under variations, who's responsible for that?---I would, to my knowledge it would be the project manager in charge of, of the particular construction case in Asset Solutions.

30

Under which box does this come?---Asset Solutions.

Thank you?---The other component of that, sorry, just to finish it off, the work would be identified through Asset Management for work that needs to be done. Asset Solutions becomes that doing role the project manage to deliver. That's where asset management comes in to actually identify through asset planning one of those components - - -

If this Commission needs to asks questions about that kind of thing we go to Mr Payne do we?---For the running of the contracts, yes.

40

You may tell Mr Payne he'll be hearing from us?---Okay. Well, there are other contracts that are run, it's not as easy as I just painted the picture, there are other contracts would be run under maintenance. If you look in the box under Eric De Rooy where you've got mechanical and electrical maintenance and constructions, so there are a component of construction works done under that area but usually they, they would relate to maintenance works.

If we want to have copies of contracts who do we go to?---Asset Solutions. They have a contract section in there, it's not identified there but there's actually a construction area as part of that division.

Thank you.

10 MR PAYNE: Can we explore just for a moment those answers and about contracts because I want to suggest to you it is again even a little more complicated than what you've just told the Commissioner?---I'd say it would be, yes.

In the sense that, can we just talk about a typical urban growth involvement in a new development where a sewer connection was required. So that's the topic I will be speaking?---Yes. And the other ones I, I was talking about were larger contracts for infrastructure to be built. Okay, you understand.

20 I understand but we need to get the evidence out, Mr Purcell. So what you just told his Honour about that's very large scale infrastructure projects where in effect new networks are being built and bolted on to the old network?---Yes.

I just want to ask you about that. In the ordinary course under the Australian Sewerage Code as I understand it, correct me if I'm wrong, what happens if, if I'm a developer of say an old drive-in site out at Bass Hill no longer to be used for drive-ins but I want to build a series of properties there so a large scale development over a long area I go to the local council, the council is required by the environmental and planning laws to insist as a condition of development consent that I the developer can show the council evidence of a certificate under section 73 of the Sydney Water Act that  
30 Sydney Water certifies that sewerage and water facilities are available from that property. Correct?---Correct.

Now, that certification process the ultimate responsibility for that sits in these boxes in Asset Management with Urban Growth doesn't it, you have the power and responsibility to determine those section 73 applications? ---That's right. Correct.

40 So that at the end of a typical development of the kind I've described what will happen is there's a process within Urban Growth to yes or no, that the section 73 certificate can issue so that I the developer go along and can say in respect of all of the conditions at least so far as sewerage and water is concerned here, Sydney Water has given me my certificate and my development consent that, that condition precedent is satisfied?---Yes.

And I think critically for the questions that I'm going to ask you just in terms of these boxes although you in Urban Growth have that responsibility and I want to suggest to you that the significant expertise within Sydney Water in determining whether the construction should be so certified along

the way while the development is going on there are critical hold points or critical moments in the process where inspections will be carried out not by Urban Growth but by officers of Civil Delivery which is in the next box to the left under the maintenance department?---Yes.

And as you understand it Mr Buckley, Mr Kane and Mr Funovski are each Civil Delivery employees in the maintenance section - - -?---Yes.

10 - - - and oh no, reporting or other responsibilities to you in Urban Growth in the asset management stream who actually have to sign off on the section 73 certificate?---Just repeat that last bit, "Oh no"?

You've got no supervisory responsibilities over the Civil Delivery employees that I've identified?---That's right. Correct.

20 And the process is that those Civil Delivery personnel, sometimes called inspectors although it's probably a misnomer in strict Sydney Water terms but bear with me, those Civil Delivery inspectors go along and inspect at the pre-connection stage, the connection stage and the post-connection stage in order to identify whether the work, the particular sewerage or water connection work meets the Australian Sewerage Code and Sydney Water standards at least so far as they are aware. That's what happens?---Yes, generally.

30 And I want to suggest to you that within Urban Growth although there are auditing functions performed within Urban Growth of the work of constructors and water service coordinators from time to time there is no, it's part at least at present of Urban Growth's role to audit, correct or check the work of the Civil Delivery employees who are conducting the inspections?---Yes, that's right.

40 And I'll take you through some occasions but certainly so far as Mr Buckley was concerned even when very senior officers of Urban Growth who I want to suggest to you had a great deal more training, knowledge and experience of the Australian Sewerage Code and sewerage matters even if there was a disagreement between that Urban Growth officer and Mr Buckley he could and did say in effect I'll do my job you do yours, leave me alone and there's nothing much that Urban Growth could do about it?---That would be correct.

And I want to suggest to you, in fairness to you, but you've been I think on leave for this week, but have you had an opportunity to peruse some of the evidence which has been given in this Commission by the Civil Delivery inspectors over the last couple of weeks?---No.

Are you aware that there is evidence at least with the three gentlemen that I have referred to that they've been to a greater or lesser extent receiving cash payments from accredited constructors in relation to their work?---Yes, I am

aware of that. I have read some of the scripts but only from probably the first couple of days which, which did indicate that, the first few days.

Well, taking into account that matter and indeed your long experience of the relationship between the urban growth department with the responsibility under the, to issue the certificate under the Sydney Water Act and the inspectors employed by Civil Delivery and Maintenance, would you agree with me that this split in functions is highly undesirable and fraught with problems?---Yes.

10

And that particularly having regards to the evidence which has emerged in the proceedings, but certainly as a result of your long experience of the interaction between the two, it would be highly desirable if these Civil Delivery inspectors were answerable to the people with the actual responsibility for, for, for signing off on the work, namely the urban growth?---In, in hindsight, that looks the easy answer.

Yes?---We have had, we are starting to have some workshops with the management of Civil Delivery- - -

20

Yes.---?- -to, to look at the way forward on some of those inspections. It has worked well in the past but it is certainly not, I don't believe, a core business of that area and there's probably a better model in there.

Well, it must have been the fairly distant past, because for at least ten years it seems that, that Mr Buckley was accepting cash payments from constructors and nothing much was done about it within Sydney Water. Do you agree?---Well, that's, that knowledge wasn't readily available, like, it wasn't, wasn't clear that he was taking money. We had issues relating to him as I've got in my statement, around certainly being pedantic on certain issues, in a lot of other area he was quite correctly holding the line on, on faulty work, poor workmanship. That type of arrangement was working well and to my knowledge it's only, only more recent that we've become aware of corruption allegations.

30

I'm going to ask you about that in some detail a little later. But just at the moment, as a, as a structural question, you'd agree with me, wouldn't you, I think you have agreed with me at least in hindsight, if, if what urban growth who have the knowledge and skills are involved in, they're, they're auditing the other people there, but they have no supervisory responsibility over, over the Civil Delivery staff. That's a situation at least that is in your mind undesirable and needs to be addressed?---Potentially, but you're I'd say correct.

40

Yes. Thank you?---Just that I should add a little bit to that. Our auditors were more about the performance of providers, and they're not just all constructors, there's designers, testers, others, I won't go down that path.

You're quite right. And I'll just give you every chance just to explain that. It's certainly looking at the work of the water service coordinators, which is a design role as well as a - - -?---Exactly.

- - -often a supervise and construction role?---Yep.

10 There's accredited constructors themselves doing the work and there's the overall integrity of the system. Don't get me wrong, I accept that within Sydney Water there is considerable expertise on those issues. What I'm suggesting to you though, that that's concentrated in urban growth and one of the things that you didn't have a role in doing was checking the Mr Buckley's and Funovski's and Kane's of this world and at least in hindsight you agree with me that it's highly desirable that urban growth should have such a role making sure that- - -?---Yes, in my opinion.

That's all I can ask you about, Mr Purcell. And in terms of contracts that His Honour was taking up with you, actually, before I do that, can I tender that document, Commissioner, please, just the colour document.

20 THE COMMISSIONER: The bundle?

MR PAYNE: I'll tender the bundle as one, yes. Yes, thank you.

THE COMMISSIONER: What do I call it, Mr Payne?

MR PAYNE: Organisational charts re Sydney Water.

30 THE COMMISSIONER: Yes. The organisational charts re Sydney Water is Exhibit P112.

#### **#EXHIBIT P112 - BUNDLE OF ORGANISATIONAL CHARTS**

THE COMMISSIONER: Can I just ask one other question, Mr Pascoe. The waste disposal, who's in charge of that?---Mr Purcell. You called me Pascoe.

40 Pascoe. I beg your pardon. But under what department does that fall?--- Just repeat that question again.

Waste disposal?---Hmm.

I'm interested, just because this Commission is interested in aspects of waste disposal undertaken by Sydney Water. We've had difficulty in finding out who actually deals with it?---Waste disposal, that's in- - -

I can see that there is a long hesitation on your part as well?---Oh, well, I would have thought it was a component of our, our, our maintenance area, but possibly a part of our operations.

So who do we, who is in charge, who do we speak to about that?---(NO AUDIBLE REPLY)

If you want to get contracts relating to waste disposal, who, who- - -?  
---Well (not transcribable)

10

Who is the head?---(NO AUDIBLE REPLY)

Is this something that you wouldn't know?---I possibly should, I possibly should know that but I'd say it's, it's probably under our maintenance and again using our asset solutions area.

Mr De Rooy and Mr Payne?---Yes.

20

One or other of them?---Oh, well, I'd, I'd say more, more under Eric De Rooy.

Thank you.

30

MR PAYNE: He, he will be giving some evidence, Commissioner, perhaps tomorrow, if not on Wednesday next week. Just, just to complete those organisational charts P112, can you have a look at the second document, Urban Growth Key Contacts. And it's a little faint, I apologise, but it's the copy that was provided to the Commission by Sydney Water. Take a moment to look at that. Is that current as at today or not as an organisational chart of urban, urban, within urban growth?---Yes.

So Mr Freeman is the general manager, Ms Davies reports to him and then underneath that strategy and support, complex works, acceptance and compliance, standard works. And you're the, you're, you're the senior officer within the acceptance and compliance- - -?---Yes.

- - -stream within urban growth?---That's right.

40

And could you just describe in a broad way for me what the principal activities you're now performing are within that role?---Ah, in that acceptance and compliance area is, has, is made up of two teams. There's two operational managers run those two teams. One, one team, which we are classing as our acceptance team, actually has a review function of all application or inquiries that come to urban growth relating to growth matters. That same group is also the, the last port of call, if you like, before we actually issue the, the certificate, which is a Section 72.



So just stopping you there. So the two streams that report to you, one is looking at from all the way through the process for applications for Section 73 certificates relating to new sewerage and water connections that Sydney Water's asked about?---They don't do the full process within that first team, they do the front end to make sure that we've got enough information- - -

I see.---?- - -from the water service coordinator- - -

10 Yes.---?- - -and we also make sure that all the conditions are met in that group. So it's really like an audit group for what we receive and what we let go.

I see. And essentially doing it on the papers do they or do they travel out to the sites and do any inspections as well?---Office.

20 So it's a paper based system and to the extent there are inspections on behalf of Sydney Water of those proposals that go through, that's done as we discussed by the civil delivery employees at the three stages, commencement, sorry, pre-commencement, commencement and completion?---Before the, before the issuing of that section 73 a package is received from the Water Service Coordinator and part of that package would include what, what you're referring to.

Yes. So the Water Service Coordinator has an obligation to get from the Civil Delivery employee the various documents that are necessary and if there's a Corrective Action Request issued by the Civil Delivery officer I take it within Sydney Water your system is such that the 73 certificate can't be issued until that's cleared?---Just repeat that, sorry.

30 If a Corrective Action Request is issued by a Civil Delivery employee in relation to sewerage connection or water connection I take it that your, this management stream that we've just been talking about can't issue the section 73 certificate until that CAR is cleared?---That's correct but in some circumstances if the Corrective Action is, is not what you might call absolutely critical, there may have been, may be some paperwork hasn't been supplied or a fairly simple process issue we will not hold the, we will not hold it up, we'll try and get that closed off. If it's a major, a fairly major issue or something relating to construction, that's our whole point not to move that certificate forward or release the bond if we've got a bond on the  
40 work as well.

And I'll stop you, that the first group and we'll come back to that in a moment. The second group that report up to you, what are they responsible for?---That's, that's the accreditation and monitoring of the performance of the different providers, provider groups that deal in developer works. They, they also look at another component in that group, is they look at the B, the building over sewer and adjacent to sewer applications which are approved by the Water Service Coordinators so its two components but the main

component of that group is the accreditation and, and monitoring of the performance of the providers, provider listings.

So looking at it from the beginning of the process, from the Water Services Coordinator's design work, their supervision of construction, the accredited construction work, anything else?---The actual Water Service Coordinator's contract itself, we have a contract with them and that's, that relates to them being our front face to face or our front arm, a front contact with the developer industry.

10

Yes?---The Water Service Coordinators through to the designers who are usually your Water Service Coordinators companies through to the different construction levels and capabilities that they may have onto the testers who actually test the mains at the end.

And you're the head of that branch that does that auditing work as well, so you've got those two, those two streams?---Yes.

20

You mentioned contracts there and this goes back I think an amplification of a question that the Commissioner asked you at the outset you, don't you, have ultimate responsibility for the maintenance and content of the contracts that Sydney Water enters into with water services coordinators on the one hand and accredited constructors on the other?---Yes, there's a contract for a Water Service Coordinator, that's to perform their actual duties, it's a five year contract - - -

Yes?--- - - - we're in two years of that at present and there's a, a developer - - -

30

Sorry, did you say you were with, that they're all rolled over together are they, Water Service Coordinator contracts, they all march instead for five years do they?---Yes.

I see. So at the end of the five years you have a review of the whole Water Service Coordinator programme?---That's correct. We're into our third contract - - -

40

I see?--- - - - with, with that grouping and we open it up to, we open it up to other water industry players to, to, to tender for that contract at that time.

I see. So there's been 12 years then of experience of these contracts with Water Service Coordinators, has there?---No, there's been nine years, we've had different lengths of contract, this is the longest length we've had.

I see?---Its five years this one.

I see. And so far as accredited constructors are concerned, do the contracts work the same way, are they all let at the same time?---No. We, we have

held back in certain situations but normally you have to meet, normally you could apply to be on those of those lists of meetings, put, meeting certain criteria for that, the capacities of those different groupings. So you would have to supply things along the lines or certainly you cover yourself from an insurance point of view is one. Others are that you're experienced in doing certain work in the industry and you've also, also got to cover other areas relating to quality management systems and the whole - - -

10 You need certification under the relevant Australian standard - - -?---Yeah.  
- - - of your quality standards?---Exactly.

And you need to provide a whole range of paperwork to Sydney Water together with a fee and if you pass all of that in the ordinary course Sydney Water would enter into a contract with the accredited constructor?---Yeah.

Save I think that you've had a freeze on new contracts since some time in 2009?---Yes.

20 And that freeze is still in place is it?---That's right.

Can I just ask you about the contract, just so we're clear, you've annexed to your statement which I've handed you a pro forma Asset Creation Developer Process Developer Infrastructure Provider Agreement which I think is the second annexure on the statement?---Yes.

30 Of the one that I've handed you. If you just open, open that and turn if you would to paragraph 3.4.13, tell me when you're there, have you got that there?---Yes, I'm there.

So that's page 8 of 41 in my document?---Yes.

Is that the only thing in the contract, Mr Purcell, that deals with corruption issues in the relationship between Sydney Water and the accredited constructor?---No, I believe there's another reference under 3.3.6 if memory serves me well.

3.3.6?---Which unfortunately is not in that.

40 Well, let's have a look at Exhibit P38, could the witness be shown P38. I apologise but I think in all the copies including mine, page 6 of 41 for some reason didn't make it?---I think what's happened is the second page has - - -

So there's been a photocopying problem. So you're drawing my attention to 3.3. - - -?---I think it's 3.3.6.

THE COMMISSIONER: Yes, it is.

MR PAYNE: So you'd read the two together, so one must act ethically in accordance with the Business Ethics Guides as updated from time to time and downloaded from the website and 3.4.13 is an obligation to like effect to keep fully informed of those requirements?---Yeah, one's under the obligations that we expect from those providers and the other one's in actually undertaking the actual developer works itself, so keep themselves up to date on those, those lists is the first one under 3.3.6 and the other one relates to while they're actually doing the work if you like.

10 Other than those references are there to your knowledge any, is there any written material or any interactions available between Sydney Water on the one hand and the providers on the other in relation to corruption management issues?---Other than its, other than it is highlighted in their application, during their application stage.

How is that highlighted?---It's part of the package that they receive as a, as a, to actually apply.

20 By which you mean the ethics guide itself is part of the package. Is that what you're saying?---Yes. In this one it actually refers to a website at the time of the, of the application it would be at the time what Sydney Water would have as is document be part of that application But being an ongoing agreement contract, we make reference to the website because it can be updated time to time by the corporation.

30 But you say that when a new contract is entered into you give a copy of the business ethics guide as exists at that time to the, to the potential or to the, the counterparty of the contract?---I believe so. I haven't, that was normally the case. That's, that's my belief. I don't know if you've got one there.

40 I do have a business ethics guide. I'm going to ask you some questions about it. What I want to suggest to you at the outset and then we can explore it, is that your department being the, the face of Sydney Water as it were in dealing with these accredited constructors and other water service coordinators and providers, would you agree with me that the communication and mechanisms made available to those people to make complaints about corruption within Sydney Water are not adequate?---No, I wouldn't agree with that. We, we also as is in my statement as well, I don't know if you, you might get to that later, but we have a forum that we hold, it's mandatory four times a year, with the water service coordinators. We used to have more.

I wanted to come to that directly, Mr Purcell, because I want to suggest to you and give you a chance to deal with it. I'm not suggesting that there's, your personal involvement in failure to take something up that should've taken up, but I want to suggest to you that these forums have been ineffective in dealing with complaints which had been made at the forms from time to time of corrupt conduct, including corrupt conduct about Mr

Buckley. I'm just putting that to you for your response?---I don't believe so, no.

THE COMMISSIONER: Has the, the audit, the performance audit team take proactive steps to determine whether corruption is occurring or has it simply reacted to reports of the corruption?---Well, I'd say we've reacted to it.

10 So there is no method of actually investigating and checking whether there's any corruption going on?---No. We wouldn't have that as a, like an audit programme where we would target corruption. Generally not. We would more then likely to be targeting the type of performance that they're doing from a construction point of view.

Yes. In fact my, my impression is that absolutely nothing is done about corruption, checking on whether it's occurring or not, other then waiting to see if somebody reports it?---It's, we give those two forms, there's the other form that I, I didn't get to, is the external quality council, which is, which is also four times a year, we used to have more, with the reps from the different groupings, constructors, designers, testers come along as a  
20 representative of their, their area. The idea of those, that, especially that type of one which concentrates on all the different provider groups, if there is, if there is concerns they should be certainly contacting us and raising those concerns.

Who, who would have the concerns?---Anybody in the industry may be contacting anybody within the, working within the industry.

30 Isn't that a, isn't that a, I don't want to coin a phrase, but isn't that simply a false but pious hope?---Pious?

Yes. I mean what makes you think - - -?---I guess - - -

What makes you think that somebody in the industry is going to report to Sydney Water that they have suspicions that somebody else is not doing the right thing ethically?---I guess because they're, they would be directly involved.

40 Well, they may not be. They might just be hearing rumours?---That's a point.

So isn't that a defect in the system, that there is no, no monitoring of the ethical obligations of contractors?---Possibly, but we I guess, whether it's, whether we see people, it is in the contracts, we believe people are basically honest in their dealings. Our concentration has certainly been around safety, environmental issues.

I'm not criticising?---And those types of things, so - - -

Of course you have to do that. It's obvious that one has to do that. What I'm really asking about corruption. And my impression is that in the Sydney Water organisation nothing is done about the corruption involving these contractors that we've been discussing, other than hoping that somebody will come forward and or someone amongst them will come forward and raise issues rather than having anybody in Sydney Water checking on it?---It's a fair point.

10 And do you intend to do anything about that?---I certainly think, I certainly think there'll be a concentration on this area. And I'll certainly be working with a number of people in Sydney Water to, to target this area, for sure.

You read evidence about Mr Buckley, about Mr Funovski and about Mr Kane. Have you?---I've only read the one about Mr Buckley.

Do you intend to read the others?---Yes.

20 And I'm not saying that any of them is guilty of corruption at this stage, but there is certainly a case made out against them that they have attempted to answer and are still attempting to answer. But nevertheless, do you accept the evidence that (not transcribable) as a matter of concern?---Yes.

Are you saying that some steps will be, steps will be taken to remedy this situation?---Certainly.

More than what is actually happening now?---Yes, I think we have to.

30 MR PAYNE: And can I just take you up on the external quality council that you raised with me. And I take it from your answers to the Commissioner, you accept that evidence that Mr Buckley, for example, has been taking cash payments from accredited constructors for a decade, is both disturbing and very serious?---Yes.

And I take it that you accept that whatever mechanisms were in place at the time weren't adequate to detect and deal with that corruption?---I think that's, yes, that's right.

40 And just taking you up on the external quality council. And this is important, Mr Purcell, because one of the things that the Commission has investigated and we've discussed already, this split in functions and the obvious undesirability, but for the people who know what they're doing, if I can put it that way, urban growth having no supervisory responsibility over these inspectors who have any interface with the constructors, one would need to be confident if, just exploring the evidence, if one of the outcomes was that these people did report to you that something would be done about corruption in the future. So that's the reason I'm asking these questions of you?---Yes, it would. If I could just talk on processes (not transcribable)

Yes?---Is that the case manager if you like from that, accepting the application all the way through to that Section 73 being issued, in other words all the works that you've got to do with Sydney Water have been finalised and there's a number of different areas involved in that. Not all those areas including a construction audit can work in that one area. It's a number of process partners if you like that we deal with, including asset planning, which was on that other structure and a number of other areas have been put along the way through that process, under, under fairly clear work instructions. So, it's not just a case of me saying yes, but the perfect model may be that they operate under my control and auditors, because we couldn't do that with every, you'd appreciate, every activity that occurs through this process. That's just an observation if we just talk about one area.

Thank you. I do understand that, Mr Purcell, but as I think we've established, your area where you head- -?---Yes.

- - -is a critical interface with these accredited constructors and water services coordinators. You accept that?---Yep.

And that, we'll deal with all the others one by one, but you here on behalf of urban growth, at least I'm giving you, I'm putting some propositions to you about what's happened in the past for your comment and suggesting to you that the existing system at least hasn't worked and needs to be fixed?---Yes.

And can I ask you about the external quality council, because I think it is an important point that we examine that as a potential mechanism for complaints about corruption and examine what's happened in the past. Now, Mr Paul Saxby, who's he?---Ah, Paul was, was my equivalent in the business, in one of the business models, on the other one, the other earlier one prior to February of this year.

Yes. I see. So prior to February he, he was the, he was the man but it was, it wasn't called acceptance and compliance, but he was the man at the top of the tree in urban growth dealing with these two streams of audit that you've been discussing?---At certain, at certain points, as was Fred Mattern.

And as I think you corrected at the outset, you and Mr Saxby would often interchange roles?---Yep.

You were both the, you were the senior officers within this relevant part of Sydney Water and urban growth?---Yes.

And Mr Mattern had some responsibilities as well, which we'll come to? ---Yep.

And I take it that you've had a long and happy association with Mr Saxby? ---Yes.

He's a person you regard as truthful?---Yes.

Can I read something to you that Mr Saxby has written about the external quality council meetings that took place in the period 2000 to 2010 and ask for your comment?---Yep.

As you said, they take place four times a year. Typically during the period 2000 to 2010, both you and Mr Saxby would attend on behalf of Sydney  
10 Water?---Normally.

And there would be minutes of those meetings?---Yep.

And on behalf of the providers, if I can put it that way, who would attend?  
---Who as in the actual people?

Yes. Did they stay the same throughout or would they change?---They would change.

20 Was Mr Farrell one of them who would be there regularly?---Yes.

Mr Mann?---Yes.

Anybody else who was there regularly throughout that you can recollect?  
---From a construction point of view, Phil Cook, Phil Cook from CLM was, was a long, he's not there- - -

They're the under pressure drilling people, are they?---No, he was a major  
30 constructor.

A major constructor. I'm sorry. Yeah?---Steve Ackerley, who would do major and minor works plus the under pressure cuttings, Leon Liu has been on that for a number of years. I can go back earlier years where, I don't know how many names you want me to mention, but after, and I can't remember off, after so many years, might be a 2-year period, we would ask for people to volunteer from the industry, from all the providers who would like to be part of that committee.

40 And the purpose of these external quality council meetings, as you understood it, was to provide the senior officers, you and Mr Saxby, to discuss matters of concern and interest with representatives of the constructor/designer/water service coordinator population?---Yes.

And do I take it that you were suggesting to me earlier that in terms of corruption prevention, you thought these external quality council meetings had some role to play?---Well, I thought in, in my understanding that would be the avenue that if someone had a concern, they would bring it up with one of their representatives to, to move forward with. So whether it be a Mr



Farrell or Phil Cook, they would contact them and, and raise their concerns on those types of issues.

And I want to suggest to you that even as a reactive mechanism for dealing with corruption that these external quality council meetings over that decade failed miserably. Do you agree?---I, I would have to, on, on reflection I would say yes, because it was, yes, yes.

10 Yeah. Can I just, I'll go back to Mr Saxby and I'll just read you something that he said for your comment. "I recall some years ago, probably between 2000 and 2002", this is at external quality council meetings he's talking about, "Two separate allegations were made about Buckley requesting money or payment from accredited constructors to pass inspection. I'm pretty sure that Steve Purcell was present at the meeting." Do you have a reaction to that, Mr Purcell?---I don't recall that.

20 Well, can we just examine that for a moment. Two separate allegations made about Buckley requesting money or payment from accredited constructors to pass inspection. Is it likely or possible that if such a serious allegation were made in your presence that you wouldn't remember it?  
---Yes.

It's likely you would not remember it?---It's, no, it's likely that I would remember it.

30 Sorry. Thank you. I'll continue. "It was my understanding at the time that the allegations were raised by representatives on behalf of complainants." So as you were explaining to me before, that's the way you thought it should happen, the complainants would make the complaint to the representative who would bring it to the external quality council. "One of the representatives that raised one of the allegations was Phillip Farrell." Again, for your comment, do you remember Mr Farrell making any complaints of this kind?---Not directly to me, so the issue may have been raised and, and I haven't got the minutes going back to that time, I know, I think they were supplied. I can't remember whether it, again, my recollection is that it wasn't open, in open forum, whether it was raised directly with Paul after or separate to it I'm, you know, I cannot recall that.

40 Well, I suggest to you that you and Mr Saxby advised the forum that this nature of complaint was not part of the role of the external quality council. Do you agree?---We informed them of that?

Yeah, that you told the external quality council that you're not going to receive complaints of this nature in this forum?---I don't remember that.

You'd agree with me that if it happened, that would be a matter of some concern, given what you told me a moment ago - -?---That's right.

- - -about the role of the external quality council?---Yep.

Can- - -?---If we had that type of concern raised, we'd certainly ask for detail and I, we have had issues raised more about the pedanticism of some cases, but certainly needed people to come forward and, and actually identify, identify whether there were some issues raised, who was involved and where the job was actually at. I would, I would um, then forward to our internal audit.

10 Well, in fairness to you, I'll read on what Mr Saxby says and that puts some of what you've just said to me in context?---Yep.

Apparently outside the meeting, you and Mr Saxby said that you needed details to be provided outside the forum and you would pass those to internal audit. One of the two declined to provide further information, one person did submit further detail, and Mr Saxby isn't sure it was emailed or not. Now, does any of that jog a recollection with you?---No.

20 Can I ask you this. If someone raises an allegation of Mr Buckley requesting money or payment from accredited constructors to pass inspection, should a note somewhere within Sydney Water have been made of the allegation?---I would have thought so.

And if I suggest to you that in response to notices issued by the Commission, not a single piece of paper about these allegations has been produced, would that surprise you?---Yes, yes, that it hasn't been recorded, no that it may not be part of the minutes of that particular meeting.

30 I accept that and I think reading all of what Mr Saxby put to you in context I think at least part of what you were telling me I accept namely that after the meeting you had a discussion but I want to suggest to you that having such a serious allegation made on the assumption that it was made it was completely inappropriate to say to the people in effect unless you submit further details we won't pass them on and if you do I'll just pass them up the line to Internal Audit. Do you agree?---Just repeat that.

40 Two questions, I'll try again. Do you agree that telling one of these complainants who had alleged that Mr Buckley had requested money or payment from an accredited constructor do you agree that telling them that unless they provided further information the matter wasn't going to be taken further that that would be quite inappropriate?---I believe so.

And as you would regard it against Sydney Water policy?---I don't know if they've actually got a policy, a policy which would relate to that but certainly, certainly we would ask for further detail but in the meantime I think we would certainly have flagged that with our Internal Audit for information.

Yes. And getting to the nub of the matter with the External Quality Council you said you didn't have a policy. I want to suggest to you that to the extent that the External Quality Council was a useful forum for bringing forward matters of very serious concern such as the ones I've suggested to you about Mr Buckley requesting money it was inadequate that there was no policy about how such matters when raised would be dealt with by Urban Growth and Sydney Water representative on that External Quality Council. Do you agree?---On reflection I'd have to, I'd have to, not remembering or recalling that one I'd have, I'd have to - - -

10

On the assumption, and I put it to you and I've identified the person who said it, on the assumption that it's Mr Saxby's recollection I take it you would accept that Mr Saxby at least was doing his best to tell the truth in a statement he's provided to the Commission. Correct?---Yes, I would say, I would, just what was the question to say - - -

On the assumption that that occurred you would accept that it is unacceptable for Sydney Water not to have a policy about dealing with these complaints at External Quality Council meetings?---On reflection, yes.

20

And going forward, borrow a phrase, Sydney Water so far as the ball is now firmly in your court with Urban Growth that's something that you can and will take urgent steps to address?---Yes.

THE COMMISSIONER: Mr Purcell, we've had evidence from contractors to the effect that they thought that it was pointless referring complaints such as those of corruption of the kind committed by Mr Buckley to the Audit section because in essence to summarise that evidence they thought that firstly the Audit section was extremely protective of the inspectors and were not interested in carrying out a thorough investigation and an objective investigation of them. And secondly they thought that their own position would be prejudiced because there seemed to be almost a resistance from the Audit section in receiving complaints of this kind, they just didn't want to know about it. They put up all sorts of formal requirements relating to the receipt of those complaints which prevented them from being properly made. Are you able to comment on that evidence as I've summarised it?

30

---Yes. I wouldn't see some of those requirements if somebody did raise a particular issue to ask for some detail of who was involved, where, and where the job was actually, the location of the job. It's, it's, there's a lot of, just through any construction or any type of, this type of work if you like whether it be hearsay or rumour or a challenge to gain, to gain some sort of other upper hand if I coin a phrase as well I guess we've got to take into concern as well so if somebody's going to raise an issue whether it's corruption or, or no matter what it may be we'd certainly expect a level of detail to come forward and not, not a, I shouldn't say frivolous but a complaint with potentially no detail to back it up.

40

Are you saying that some sort of complaints of corruption have been made in the past?---Not, not to my recollection in those, in that area that we were talking about but, you know, we've always said if you've got some issues to bring forward make sure you come forward with any sort of detail. Now, I do recall that being said at a number of forums over the years, quality councils I should say over the years and the forums themselves.

10 If a contractor came to you and said Mr X is, I want you to know that Mr X is going around requiring payments to be made and I'm scared to give you more details because I could be harmed, I would become really unpopular with other inspectors, not prepared to tell you any more than that but I can assure you that he's going around asking for bribes. I understand from what you're saying is that you'd say, well, I would just leave that alone, I'll ignore that because he hasn't given us the details. Is that right?---Well, in the context that you've put that I would certainly, I would certainly have raised that with our Internal Audit and be guided by them. I may - - -

20 What would they do, what would they do then?---Well, I would think they would talk to the management of our Civil Delivery area or Civil Maintenance area and possibly, possibly themselves do, do further investigations themselves. I don't know whether they would directly involve ICAC at that point.

Well, are there any systems in place or any procedures in place which recognises possibility and provide for an appropriate investigation of reports of this kind?---I would have to say no.

30 And you have no recollection of any report vague or otherwise of corruption ever having been made to this audit committee?---Not in that period. I did, I did pick up and whether it was rumoured at a later date probably, probably more like around four years ago which we did raise with, with their management and, and basically was more hearsay than anything else that an investigation had been conducted and that that, that investigation had, had not shown anything. Now, I may have my years, my years wrong on that but - - -

Sorry, that's hearsay you say?---Yeah.

40 You mean someone else told you?---Yes, that there'd been an investigation.

You didn't bother to investigate this allegation yourself?---I wasn't even made aware or was aware whether it related to developer works or other works that were done in that, that area. Certainly - - -

Well, who's responsible in the organisation for this kind of investigation? ---If it came to light through this developer process I would say I am today.

And do you think that it would be a good idea to have some system whereby contractors who report corruption can do so on the basis that what they report is kept secret from other contractors and kept confidential amongst a small group of people at Sydney Water who specialise in these investigations?---I would have to agree with that.

10 Do you accept that the present method really creates an atmosphere of intimidation for contractors who want to report because they have to do so openly in front of everybody?---No, I don't, I don't, I can't agree with that. I think there's plenty of opportunity for them to actually contact individuals including myself, we, we're not in any sort of an ivory tower for these people to contact us directly or one of my people.

Have you told them that they should do that?---I don't believe so.

I mean, as I understood it they're expected to do that at these meetings, these open meetings?---Mmm.

20 Is that right?---Through their representatives normally.

So they can't even come direct?---They, they can, they will have a contact list which will have my name and, and others within that audit group to contact. They are regularly in contact with those people from a, from a skills base point of view so they know they have a working relationship with a number of players within that audit team.

30 And whereas I understand you, you're prepared to take up the issue of creating new procedures to make the reporting of corruption by contractors more confidential and more user friendly with proper channels?---Yes, definitely.

Yes, Mr Payne.

MR PAYNE: Mr Purcell, just taking that up in particular, whilst there is a, there is a fraud hotline within Sydney Water generally as you understand it - - -?----(NO AUDIBLE REPLY)

You nod?---That's right, yes.

40 You nod, you agree?---Yes.

Do you agree that it would be sensible and desirable to include references to that and procedures more generally for making complaints in the contractual documents that you have with your constructors and Water Services Coordinators firstly?---Yeah, yeah.

And in these forums, Water Service External Quality Council forums and other interactions between the industry and Sydney Water?--- Yes.

Recently, I think it was in May we had some representatives from our Internal Audit people present at both those forums, the WSC forum and the External Quality Council forum and highlighting that hotline but yes, we certainly could work on some process and get it into the actual contracts themselves.

10 THE COMMISSIONER: You see, there's a real problem here, Mr Purcell. The problem is that the, the group of inspectors and managers of inspectors appears to be a fairly tight one, would you agree? I mean, they all know each other, they've worked together for many years, they're friendly with each other?---The inspectors themselves?

Yes, and the managers, and their managers?---Not necessarily, there's been quite some management change in, in civil delivery, Civil Maintenance, get my terms right, but I believe the inspectors themselves have not, have not moved for a number of years.

20 I'm not suggesting that there's anything wrong with it but when it comes to investigating complaints would you accept that you need to have a separate independent group to receive them just as the police do? It was found that the police to have their immediate superiors investigating them was hopeless?---I'd have to agree with that.

You really do have to have a separate unit to investigate complaints, people who are not friendly with the inspectors and who didn't grow up in the system. Do you accept that?---Yes.

30 MR PAYNE: Can I just finish this, these two complaints of corruption made between 2000 and 2002 that Mr Saxby has given, has provided a statement about and just complete the picture in an Internal Audits role and ask for your comment on that. Mr Saxby says that in relation to the information that came with the External Quality Council I passed the information straight on to Internal Audit, I think Barry McClure, I was told by Barry McClure that the matter was being investigated. I did not hear anything else about the matter?---Yeah, I don't recall, I don't recall that, that process occurring.

40 Do you accept that if that evidence is correct that that is hopelessly inadequate as an investigation of the complaints that Mr Saxby has told us about in his statement?---Well, if I was involved, I'd say if I was involved, that happened to me, I would follow that same process. My first port of call one, would probably be to advise my next level of management as well that we do have this issue and the other one would be certainly, and we do have a pretty good relationship in discussing issues with the McClures or Jonathon Sesel himself.

I don't suggest that the reference to Internal Audit, I certainly don't criticise Mr Saxby nor you for that but I'm asking for your comment about the fact

that having passed on a serious allegation of Mr Buckley requesting and taking money between 2000 and 2002 to Internal Audit for Mr Saxby to be able to be say in 2010 that I did not hear anything else about the matter, in terms of Sydney Water systems is just hopeless, do you agree?---I would have - - -

MR STEVENSON: Commissioner, can I respectfully submit that whatever answer this witness gives to such a question will not assist the Commission.

10 THE COMMISSIONER: I accept that?---I could just make one - - -

The facts speak for themselves.

MR PAYNE: I'll ask another question?---I could tie that into the recent inquiry, what we're here, here for, the Christmas following the initial raising of the issue, I think it was in July, that Christmas I had not heard anything and I was moving, I have moved into this role and I did raise with the internal audit and my manager that I was quite concerned that I hadn't actually heard anything after six months and I knew that the people who had  
20 been involved in the industry were quite dissatisfied that they hadn't heard anything so again, ICAC were obviously doing a lot of work investigating but our frustrations were that I raised, I did follow that up after six months and I would say, it's hard to think back eight years ago, but if I was involved in that after six months or so of not hearing anything you would follow that process back through.

You'd follow it up, of course you would?---It's just a nature probity.

30 Of course, of course you would and that's good common sense and I don't suggest otherwise. Can I ask you, if you can just turn to your statement for a moment just to finish your knowledge of the, what you recollect about complaints about Mr Buckley and have a look at paragraph 17 and this may have been the thing that you're referring to in answer to the Commissioner's question a moment ago. You say about four or five years ago I recall being made away that Buckley's manager at the time, and you identified two gentlemen, I think neither are with Sydney Water any more, is that true?  
---No, Peter Dejanovic works in Sydney Water.

40 Still there, I see. So this is Buckley had been involved in an investigation relating to Buckley's behaviour, I think it was about him taking money?  
---Yeah.

Who told you about that?---I can't recall so - - -

What if anything do you know about that investigation?---I, I know nothing about it.

Have you ever seen any document concerning such an investigation?---No.

If you can look up, up the page in paragraph 16, this is, this is your recollection of External Quality Council meetings, you think that no one was willing to provide specific information and you're drawing attention to that are you, that you're aware of general issues about Mr Buckley's performance quite a few years ago but you don't recollect any specific allegation of the kind that I read to you from Mr Saxby?---No.

10 THE COMMISSIONER: Do you remember allegations that are not specific?---The only allegations, some were coming forward relating more to jobs being held up through that process and people, people not wanting to be identified, not about taking money, not wanting to be identified as raising an issue where its constantly happening to them in that particular area.

So there were no general allegations of corruption?---Not to my knowledge.

And just on that, if I could read you one last thing that Mr Saxby has said for your comment. "Throughout my time on the External Quality Council I recall there were a number of complaints about suppliers, about delays  
20 getting inspections and connections, mainly in the inner western area, some of those concerned Buckley," so in the area of specific allegation here not the complaints about taking money that I've taken up with you earlier. Mr Saxby goes on, on one occasion I recall speaking to Buckley's supervisor, I can't recall his name, about one such complaint and he told me that "John runs his own race," and Mr Saxby interpreted that as meaning that at the time Buckley was the only person in the inner west area engaged on inspection work. Just taking that up with you, again accepting Mr Saxby's version of that, I take it you'd regard it as highly undesirable  
30 for the section 73 development process could in effect be told by Mr Buckley's supervisor complaints having been investigated that John runs his own race, leave him alone, you'd regard that as quite unacceptable I take it?---Unacceptable in the terms that they've used but having, having, having spoke to Peter Dejanovic and others that Peter himself at one time, it's not in my statement here, but Peter himself actually conducted an audit himself on a particular constructor that we were having some difficulty with to basically back up, back up John's hard stand if you like on certain construction issues so I would, I would say yes, he may be his own man but I think it's more about his management was supporting his hard line on, on  
40 poor performance when it did come forward. But we're not, that's not, as I understand it the reported complaint didn't concern performance issues, it concerned bribery?---I didn't pick that up in that.

Well, maybe I misunderstood then.

MR PAYNE: It's in the nature of a general complaint, Commissioner, this one, when he went to see, this is after the bribery complaint and it's a



general complaint. And I just want to raise this for your consideration. Do you regard it as desirable in Sydney Water's interests when the equal head of the relevant area of urban growth goes to Mr Buckley's superior and said, look, I've got a whole lot of complaints about delays, I'd like to know the answer, that he's told, "John runs his own race?"---I think that's unacceptable.

10 And surely, just harking back to I think what we agreed at the outset, if there had been inspection of Mr Buckley from people who actually knew what they were doing about this, it may be that the conduct that's subject of this investigation could have been uncovered a long time ago. Do you agree?  
---Yes.

20 THE COMMISSIONER: Mr Purcell, the issue of delays is one that perhaps deserves a bit of thought, because the experience of this Commission in many fields is that where there are constant delays, the temptation to, or corrupt conduct arises. And there has been much evidence here that it was, Mr Buckley, for example, is alleged to have used the issue of delays as an incentive to others to make payments to him to hurry things up. And we've had a number of inspectors who have said that they'd just receive payments to speed up the process. So I'm really asking you to re-examine this whole issue of delays and people causing them, because once you get inspectors renowned for holding up work, you create a situation where corruption can thrive. Do you understand that?---I, I wouldn't say that I'd drawn that conclusion but I, I would agree with you on that on reflection.

Yeah?---It certainly puts pressure back on the industry if they're constantly delayed, if you're holding up obviously developers and- - -

30 A number of contractors have said, especially if you're dealing with contractors who are not very wealthy, small, small businesses where delays can actually spell their ruin and the temptation on them to actually attempt to bribe the inspector to pass something is really quite strong. Is that understood?---Yes.

And that doesn't mean to say that you should pass things unnecessarily, but it does mean that one should be aware of it and if somebody starts getting a reputation for being much stricter than anybody else, that could be a warning sign. Do you accept that?---Yes.

40 MR PAYNE: And just to finish off this part, Mr Purcell, were you ever made aware, I'm taking what Mr Saxby has said, were you ever made aware of complaints made by constructors to people in your team about Mr Buckley and broadly speaking, the topic of money being involved in- - -?  
---No.

So none of Mr Barnes, Mr Price or Mr Hammond have ever discussed that with you until the very recent matter that brings us here today?---Not in my recollection, no.

Can I show you a document, and I just want to go through it with you quickly I hope, and just round off your evidence. It's a document, just for the record, a 1991 Sydney Water document referred to at tab 13 of the material provided by Mr Barry McClure from internal audit. And it apparently relates to fraud control in relation to the old P and D or PIAS area, so I don't suggest it was something that governed the exercise of the inspectors, the subject of this inquiry that you and I have been talking about, Mr Purcell, but I want to ask for your reaction to a number of the points made in this document, and again going forward what usefully could be done with it. Under the heading, What could go wrong, on the left-hand side, so this is an interface between an inspector and in this case a plumber, but I'd suggest a constructor or water service coordinator as well. Bribes could be offered to inspectors to approve unsatisfactory work or give preferential treatment. You accept that in any sort of interface that that is possible, particularly where there are delays of the kind that the Commissioner has been talking about?---Yes.

Board inspectors could threaten non-cooperation if kickbacks are not given. Well, again I suggest to you that that's pretty obvious. That's something that you would accept you need to address?---Yep.

Conflict of interest re sideline businesses, perhaps not so prevalent outside the PIAS area, but again if there is any additional business connection between the inspector or the constructor, that prima facie would be something undesirable so far as you were concerned?---In our neck of the woods it's more about quoting for jobs, collusion for quoting if Sydney Water was making a contribution, sizeable contribution. So yes.

Well, of the kind that now criminal offences under the Trade Practices Act. That sort of thing, are you talking about that (not transcribable) cartel of (not transcribable)?---Yes.

I see. And the last point, victimisation of honest plumbers who complain. I agree, you agree with me, don't you, that that potential is a highly significant matter that needs to be addressed in any revamped consideration of Sydney Water's response to fraud complaints?---Yes.

And at least so far as you're concerned in your area, any possibility of a suggestion that someone who complained has been victimised would be undesirable and you tell the Commissioner, I take it, that that won't happen on your watch?---No, definitely not.

THE COMMISSIONER: Mr Purcell, apart from these four risks, we've heard evidence here of work being done by an individual employed by

Sydney Water off Sydney Water's books. Do you understand what I mean?---Yes.

Is that something that comes under your audit team?---Ah, no.

Who deals with that sort of thing?---(NO AUDIBLE REPLY)

Who monitors that sort of thing?---Well, civil, civil, civil maintenance area themselves.

10

And who's in charge of that?---Eric De Rooy. Yeah, I'm putting into context, you mean, they're actually doing, doing work they've hired to do for developer works and it's not been registered on the books.

Yes. So that they'd get paid direct - - -?---Yes. Correct.

- - -and Sydney Water doesn't get any money and Sydney Water's materials go into the job. I mean in a sense it's a form of theft?---Yes.

20

MR PAYNE: In addition I think with that case, there'd be an unauthorised shutdown of the water system in that case, I think, to an entire suburb in the Eastern Suburbs. I take it Sydney Water would regard that as highly undesirable?---Well, that's correct. Our system would link to their system, the booking of that activity to, to further go into their system to audit, certainly within our, our present role.

30

And one of the things can I just suggest to you for your consideration. I know that these people don't yet report to you and it may be as you've said there are practical problems in the way of that. But if these inspectors are moved within urban growth so that in effect the people with the knowledge and responsibility are supervising these inspections, one of the things in a related area that the Commission has heard about that some success that Ms Hiddlestone introduced with the PIAS inspectors are genuinely random inspections and audits of what the inspectors are up to. Is that something you regard as desirable for these inspectors as well?---I think it is a, a consideration that has got a lot of merit. I heard Jackie Hiddlestone speak earlier and yesterday, and yesterday.

40

Yes?---And, and I am aware of that process that she's put in place.

And I suggest to you there are a number of features of what she's done there which could sensibly and should sensibly be taken on board by Sydney Water in working out what to do in the future with inspectors presently within the civil delivery system. Do you agree?---Yes.

Can I just ask you a few other things about that, and they relate, I think in part to some of the things that Ms Hiddlestone did. Inspectors not rotated, would you agree that the evidence that's emerged that Mr Buckley, in

effect, running his own race in the inner west for a decade unsupervised, is unsatisfactory so far as Sydney Water is concerned?---Yes.

Just dropping down these what could go wrong clauses. It creates amongst other things something the Commissioner took up with you or a reluctance to report incidents for fear of recriminations. Do you accept that that would be a likely consequence of leaving someone in the same place for so long unsupervised?---After listening to what we've covered today I would have to agree, yes.

10

The Commissioners point about delays in the approval process incentive to jump the queue, you create a real incentive if you put the power to issue a CAR, which can delay on at least some of the evidence before the Commission for a couple of years. The issue of a certificate that you need in order for your development consent that does create an incentive and is something that needs to be addressed by Sydney Water in revamping the inspection procedures?---Yes.

20

It goes without saying it's the regular contact between the inspector and the construction personnel that again creates potential that needs to be addressed by Sydney Water, perhaps by these random audits that Ms Hiddlestone has introduced for the PIAS inspectors, at least in part?---Yes. And I think that the separation of management has certainly not helped that situation.

30

Dropping down, the third last point, inadequate scrutiny of the inspection process itself. So, as I understand it, in urban growth you've been very focused on the work that the constructors and the water service coordinators have done. I suggest to you that actually auditing the inspection work as well is a missing link in the, in the puzzle at the moment that has facilitated Mr Buckley's conduct over such a lengthy period?---Yes, it's unfortunate. We actually do have audit programmes that audit within our own business.

Yes?---But to audit externally to, like our own business being urban growth.

Quite. I understand. Yes?---to an outside - - -

40

So, so you're auditing yourself but because they're in their separate stream in effect they've - - -?---And like I said there's other areas involved. We have had service level agreements with certain areas for turn around times and other, other such issues, but, but the short answer to your question is, yes.

And lastly, I think we discussed this at the outset and certainly Mr Saxby's experience of taking up pretty serious complaints and delay with supervisors of Mr Buckley. The unhappy experience of being told he runs his own race in effect, thanks very much, Mr Saxby, please go back to urban growth. That's quite an undesirable and inadequate response in your view?--- Yes.

And indicative of a culture, at least within civil delivery to protect their own and, and not be open to legitimate criticisms from outside, in this case, from a very senior gentleman from urban growth?---I wouldn't go that, that far. But I certainly think that respect between different managers should be there and in a lot of cases it is, but certain situations, it's not. So - - -

10 I see?---You wouldn't get that type, same type of response dealing with other areas of Sydney Water in planning and a number of, a number of others. But obviously we've got an issue.

Is what you're saying to me there's a, correct me if I'm wrong, is what you're saying there's still cultural issues in moving into the 21<sup>st</sup> century with some areas of the maintenance department. Is that the, the lack of respect that you're talking about? You're drawing attention in particular to that part of the maintenance department?---I don't know about moving into the 21<sup>st</sup> century. More about, more about their concentration on certain, what I see, is their core business. And I think you've rightly identified there, what's a priority to us in urban growth and the developer industry is not necessarily a priority to a maintenance area doing inspections.

And in effect, Mr Buckley, part of the explanation at least perhaps that Mr Buckley being able to do what he did for so long is that, is that that area has fallen between the gaps. There is no effective supervision of what he was doing?---I would agree with that.

30 Just in terms of training and so on. We've heard from the civil delivery inspectors, a number of them have worked their way up and obviously acquired skills on the job. But urban growth were the real, if I can put it this way, within Sydney Water, the real skill, experience, knowledge and study lies in, in the National Sewerage Code and so on. Have you ever provided training to these civil delivery people about how they go about their jobs? ---I believe there has been some training supplied by at least one of my people within my team. I couldn't tie a date down to it.

40 Having heard the evidence or at least been made aware of the outline of the evidence from three major areas of Sydney and the inspectors involved. Do you think it's a good idea that even if they don't move across, that your team gets involved a little bit more closely in training?---Yes.

Can I tender that document, Commissioner?

THE COMMISSIONER: Yes. Forward control of checklist is Exhibit P113.

**#EXHIBIT P113 - FRAUD CONTROL CHECKLIST**

MR PAYNE: Excuse me, Commissioner. Yes, just perhaps the last question at least from me, Mr Purcell. You talked about the negotiation with the various stakeholders within what I accept is a large government owned statutory corporation. The negotiations between the various branches and the, the legacy responsibilities of those branches, and I do understand there's a sensible imperative perhaps as well as a bureaucratic imperative that you need to be satisfied before you make changes, but has there been any formal move to bring these inspection services from civil  
10 delivery within urban growth?---The original model that have now, which was developed in the mid 90's, early to mid 90's, and that original model included that activity being, the reference has been like a flying gang or a small gang of people really as part of that structure - - -

Right?--- - - - on, on developing then the model that would work, and this related back to outsourcing of construction and design services.

So the very creation of WSCs and accredited constructors. So this is when you moved- - -?---Yes.

20

- - -from the old days when Sydney Water did the lot to having this outsourcing at least of an important function?---Yep, goes right back to regional officers as well. It was seen as, as the best model at that time, was to have that activity with some training, and I'm talking about 1995, around that period, was to use the inspection or the people involved in the maintenance areas, rightly or wrongly, but the original model was that it actually was all in within one larger area which was at the time a sub-branch known as urban development.

30 I see. And I take it from the answers you've given me earlier, there's no debate between us that urgent steps need to be taken to address whether civil delivery should become part of urban growth and we don't get this split of functions and the lack of supervision that has been revealed by the evidence in this inquiry?---Yes.

I have no further questions for Mr Purcell, Commissioner?---Can I just add one thing just on the Commissioner asked earlier? Our, our operations area would look after the treatment component.

40 Okay. Thank you?---Which is Colin Nicholson.

Okay?---I think I said maintenance. It's certainly not a maintenance problem. Thank you.

THE COMMISSIONER: Thank you. Thank you, Mr Purcell. And now, other than Mr Stevenson, is there anyone wishing to ask Mr Purcell any questions?

MR LEE: I have some questions with your leave, Commissioner?

THE COMMISSIONER: Yes.

MR LEE: Mr Purcell, I represent Mr Buckley. Do you understand that?  
---Yes.

10 A few minutes ago you gave an answer to Mr Payne in relation to the  
question he asked regarding training provided to inspectors in the civil  
delivery, the civil maintenance section?---Mmm.

And you said that you recall some training being supplied within the team.  
Do you remember giving that answer?---Yes.

Is it correct that the training, if it had been supplied, wasn't supplied back in  
the early nineties when Mr Buckley first started doing the inspection work?  
---I don't know when it was supplied.

20 Could I ask you some general questions about the nature of the inspection  
work. Is it correct that it's your preference when inspectors are inspecting  
sewerage construction work that they take a black and white approach to the  
application of Sydney Water standards the Sewerage Code in relation to  
work done on Sydney Water assets?---Not necessarily. The, the codes are  
fairly, a very clear that depending on site conditions, what's actually, you  
know, what, what, just the site conditions that you've got there, they're  
basically a fairly strong guideline but obviously there's some physical  
conditions that may, may require adjustment to those.

30 So if it was the case that a development services representative took the  
view that more inspectors should be taking a black and white approach to  
the application of the standards in the code, that's not as view that you  
would share. Is that correct?---No.

40 You can appreciate though that if there was a problem to be found later on  
with a constructor's work in relation to sewerage construction that was  
found to be faulty that effectively the buck would stop with the inspector  
that passed the job?---Ah, putting it into context, you would have to, to,  
to have made that change in the rule or, or certain consideration, you would  
have to back it up with why you'd changed that rule. As I said about the  
physical conditions of the site, whatever, whatever the reason would be.  
Certainly you wouldn't throw a sewer code or a standard out the window for  
no good reason, you'd have to justify that. And any good inspector would  
have done that and that would be part of the developer record on that job,  
same as a variation to a design.

But what I'm asking, what I was asking was that if there was a fault to be  
discovered later on in relation to a job that an inspector passed, the buck  
would effectively stop with the inspector, wouldn't it?--- Yes.

And in that circumstance wouldn't it be preferable from Sydney Water's point of view that there be a - -?---But just- - -

Just let me finish my question?---Sorry.

10 Wouldn't it be preferable from Sydney Water's point of view that there be a strict application or a black and white approach to the application of the code and standards in relation to sewerage construction work?---Depending on the circumstances on the job, but generally, yes, those, those codes are put in place for a good reason. But, but again it's got to, it's got to go hand in hand with the physical conditions of the site. To say John would also, well, not John, but the inspector, the inspector would be held completely responsible, we do have a contract with the, the providers in that case, the constructor. They would also be held accountable if that work was faulty. There are circumstances where, situations where John, or an inspector may have moved the job on but some work may have been covered up. Don't know. There's different scenarios can happen on varying levels.

20 Could I take you to paragraph 16 of your statement, which is Exhibit P111. Do you have that?---Yes.

Do you see on the third line of paragraph 16 you make some reference to being made aware of some issues in relation to Mr Buckley holding up works on minor issues?---Yes.

Do you see the reference there?---Yes.

30 Firstly, you told us earlier in evidence that there are situations where if a Corrective Action Request is issued, that if it is for a, if it is not for a critical issue, that that will not hold up work on the job. Correct?---That's right.

The work can effectively proceed and whatever paperwork or what needs to be done can be done at a later stage?---Agree.

40 Secondly, if there had been an allegation that Mr Buckley had issued a Corrective Action Request in order to hold up work, first of all, you have no knowledge whether or not that Corrective Action Request had been issued legitimately. Is that the case?---Just repeat that?

If there had been an allegation made to you that Mr Buckley had issued a CAR in order to hold up work on a job, you had no direct knowledge whether or not Mr Buckley was within his rights in order to issue that CAR. Correct?---That's right.

And secondly, if a job had been held up, you also have no knowledge that the holdup could have been because of the constructor not providing a timely or adequate response to the CAR. Is that the case?---That's right.



I have nothing further, Commissioner.

THE COMMISSIONER: Thank you. Mr Stevenson?

MR STEVENSON: (not transcribable) Do you recall the Commissioner said to you or asked you whether you thought it would be a good idea for there to be a mechanism in place whereby confidential complaints could be made to Sydney Water about corrupt conduct? Do you recall- -?---Yes.

10 - - -the Commissioner raising that issue with you? A fraud hotline was established, was it not, in June of this year?---Correct.

And as you understand it, is that fraud hotline designed to be a mechanism whereby confidential complaints can be made about corruption?---Yes.

I think you said that in May you were at one of these external quality council meetings and something was said to those gathered about the fraud hotline?---Yes.

20

What was said?---Ah, there was a presentation by, there was actually a presentation by officers from our internal audit area and ah, they had indicated that a hotline had now been introduced and was available for any issues that may come up along, along these lines.

And was any, was the hotline number, for example, distributed or- -? ---Yes, and it was included in the minutes of that meeting as part of the presentation.

30 All right. So if we get the minutes of that meeting we'll find out won't we, a record of what was said about that matter?---I believe so.

And can you recall whether anything was said about the, about whether any complaints made to the hotline would be kept confidential? Was that mentioned?---Yes.

Thank you. Thanks, Mr Purcell.

40 THE COMMISSIONER: Thank you, Mr Purcell. You may be excused.

**THE WITNESS WITHDREW**

**[12.19pm]**

MR PAYNE: Commissioner, I call Mr Barnes.

THE COMMISSIONER: Yes. Mr, Mr who? I beg your- - -

MR PAYNE: Mr Barnes. I'm sorry, Commissioner.

THE COMMISSIONER: Mr Stevenson, do you appear for Mr Barnes?

MR STEVENSON: I do. And a Section 38 order (not transcribable)

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

10 MR BARNES: Under oath.

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

And what's your occupation?---I'm senior DSR in Urban Growth with Sydney Water.

10 THE COMMISSIONER: A senior what?---Sorry, development services representative.

MR PAYNE: And you were present in court when Mr Purcell was giving his evidence?---I was.

And you're one of the, you're part of one of the two groups of officers who report up to Mr Purcell?---I am.

20 And the one that, development services representative, on the one hand he was addressing the people who looked at the paper, the initial application for section 73 the issue of the certificate, on the other hand the group that was involved in liaising with, monitoring and auditing constructors, Water Services Coordinators and other suppliers, which one are you?---The one that looks after the Water Service Coordinators and the other suppliers.

Involved in liaising with them, giving advice and auditing their work? ---Accreditation of them and monitoring of their performance.

And you've made a statement in this matter?---I have.

30 Can I show you this document please. You've had an opportunity to consider that statement recently?---I have.

And you'll notice some material is blacked at the end, accept from me that relates to a subject matter no longer before the inquiry?---I understand, yeah.

Other than that correction are there any other matters you wish to correct in the statement?---No.

40 Do you tell the Commission that the statement is true and correct to the best of your knowledge and belief?--- Yes.

I tender that statement, Commissioner.

THE COMMISSIONER: Mr Barnes' statement is Exhibit P114.

**#EXHIBIT P114 - STATEMENT OF MR BARNES**

MR PAYNE: Can I take you in the statement, Mr Barnes, to paragraph 16 and ask you some questions about that and the following paragraphs. Have you had an opportunity, I know you have been on leave, have you had an opportunity to peruse any of the evidence that's been given in the Commission either by or about Mr Buckley?---Yes, I have.

10 Having had a chance to consider that information in the last sentence at paragraph 16, "In my opinion John was always black and white and his example is what we would like to see more of," do you want to qualify that evidence in any way?---No, I don't.

You'd like to see more of Mr Buckley?---In, in, in regards to the, the work he was doing on their behalf, yes.

20 And so far as that work involved the acceptance of cash payments, am I to understand that you thought that was or was not important in determining whether you'd like to see more of Buckley?---No, no, no, nothing to do with the second part of what you said, in regards to the work he was doing on our behalf.

Did you ever conduct any audit or inspection of what Mr Buckley was doing as an inspector?---No.

And that was no part of your role?---Correct.

30 Did you ever provide any training to Mr Buckley about how he was to perform his role?---No.

You heard what Mr Purcell said, have you been involved at any time in any training of any Civil Delivery employee or inspector in relation to their inspection work?---No.

To your knowledge who, who is the person, if there be a person, who has provided any such training?---I believe one of my colleagues may have done some of that training, yes.

40 Who was that?---Jim Price.

I see. Can I ask you about paragraph 17 and you say during the last ten years you've had two or three phone calls from different constructors who complained about John Buckley and the essence of the complaint is what you set out in the second paragraph in each of those telephone conversations was it, that they were implying that for a specified fee inspection results could be manipulated or streamlined?---No, not, not in that text as you've said that, no.

I'm just, they're your words, Mr Barnes, I'm trying to understand it. What, what, what were they implying to you then?---I say here, I took it to mean that they were saying John was asking for a bribe.

Yes?---That's my words not their words. The, the phone calls were very limited in regards to that they were having problems with John and that they may be able to go away.

10 THE COMMISSIONER: Sorry, what may be able to go away, is that what he was saying to that?---No, that's what they were saying to me.

Well, what did they mean they may be able to go away?---They may be able to go away in certain instances, it was a problem for them but they may, the problems may be able to go away.

I don't understand that?---Well, that's, that's my recollection of the content.

20 But what did they mean?---Well, I took it to mean that, that based on an act that may occur, that problem may be able to go away.

Mr Barnes, I'm not sure if I understand your evidence. It may well be my fault?---No, sure.

I'm just trying to find out what you're saying. These are three different, two or three different contractors?---Yeah.

Who over a period of some years, is it?---Yes, yes.

30 Rang you and they, and they, they make, each makes a complaint to you?  
---No, no, no, no, no, no, they never rang in regards to making that complaint, it would, it was always as a secondary or third issue in the conversation.

Yes?---That they were maybe talking about the job or a job or an accreditation issue and as an off the cuff remark they would make some sort of reference to oh, John is, is causing me grief but I've been able to fix that.

Make it go away?---Make it go away, yeah.

40 It's in that context, now I understand?---Yes, yes.

All right. Yes, thank you.

MR PAYNE: Mr Barnes, you understood didn't you that they were implying that he was corrupt, didn't you?---Say that again.

You understood in the course of these conversations during the last ten years that, that two or three different constructors were implying to you that Mr Buckley was corrupt?---That's not, that's not how I, no, no.

THE COMMISSIONER: I'm sorry, Mr Barnes, you've said in your statement I took it to mean they were saying that John was asking for a bribe?---That, that - - -

10 Don't you regard that as corrupt?---Yes.

So why did you say that you didn't regard it as being corrupt?---Because that was, that was my, my thoughts not, not - - -

But that's what you understood what they were saying?---Well, that's, that's how I interpreted what they were saying.

Yes?---But they never said exactly that, that was my interpretation of what they were meaning.

20 And that means that they were saying in effect implicitly, not explicitly but implicitly that Buckley was corrupt?---Well, the word corrupt never came. As I said, no, they didn't talk about money, they didn't, they just said we could make it, that we've made it go away.

Mr Barnes you understood them to say that Buckley was asking for a bribe? ---Yes, probably, yeah, probably I understood that.

Those are your words?---Yeah, yeah.

30 So you, you understood that they were saying that Buckley was corrupt? ---Put in that context I'd have to agree with you, yes.

And you did nothing about it?---No, no, no, no. I said to them if you have an issue, if you put it in writing - - -

I beg your pardon, that's quite right, that's what you did?---Yeah.

I'm sorry?---Okay.

40 All right. Yes, Mr Payne.

MR PAYNE: I just want to take you up about that. Did you understand Sydney Water's policy at the time during the last ten years is that no action would be taken about verbal indications of corrupt conduct?---Sydney Water's policy that no actions would be taken?

Yes?---I don't understand.

Well, you, you thought, I just want to understand your thought process, you thought that two or three constructors, you had understood them to be telling you that Mr Buckley was corrupt, we've agreed about that haven't we, we agree so far?---Ah hmm.

And knowing that two or three constructors had rung you up and in the course of other conversations had either told you or let slip or implied that Mr Buckley was corrupt what was your understanding of your obligation within Sydney Water to deal with this understanding you'd reached of  
10 corruption in relation to Mr Buckley?---My understanding was that I would require them to put something in form, in writing and I would pass it on to the appropriate people. I was not going to besmirch the character of anybody based on hearsay and I've said - - -

THE COMMISSIONER: In writing or oral?---Now, I, I, I, I understand - - -

Writing has nothing to do with hearsay?---Yeah, I understand that now that that was probably not the appropriate course, yeah.

20 But if it's hearsay would you not do anything about it?---Now, no, I would take a different path.

What has happened that has led you to this epiphany?---Well, the issues that have been raised in the last week or so.

Seeing what the consequences are?---Mmm.

MR PAYNE: I just want to take up with you this idea of hearsay and understand what you thought about it. These were the actual constructors  
30 who said they'd made the problem go away, these are the people who you understood had paid the money. Correct?---Well, as I, as I said when they say make the thing go away I jump to a conclusion, make an assumption, my assumption may very well have been incorrect.

THE COMMISSIONER: Were you an inspector?---No, I was not.

MR PAYNE: I think on the basis of the evidence before this inquiry I think if I might say, Mr Barnes, what you thought at the time, whether the  
40 conclusion you jumped to is highly likely to be correct on the basis of that evidence isn't it?---Yes.

Namely that you thought they were telling you that John had asked for a bribe and it had been paid and I think the words they used was they made it "go away", strange thing to say do you agree if there hadn't been something untoward about how they had made it "go away"?---The reason that I thought it was not as big an issue was the fact that that was not what the phone call was about. It was a, it was a, I considered it a throw-away comment.

THE COMMISSIONER: But you understood they were telling you that he was asking for a bribe?---Yep. That's my assumption.

And maybe they made that phone call to you for the deliberate purpose but were too scared to tell you first and raise the other issues so that they could slip in this comment?---I, I wouldn't agree with, with that, no.

10 Do you think that they would be reluctant to tell you that they were being asked for bribes by Buckley or do you think that they would be happy to tell you that at the drop of a hat?---I think they would be reluctant.

Why is that, Mr Barnes?---Well, I don't really have an opinion on why I would think they would be reluctant. I suppose it's one of those things that, you know, it's a serious matter and, and I suppose people would be reluctant to put themselves in - - -

20 Perhaps they thought that it was likely that Sydney Water would take Buckley's side and not their side?---That may be their opinion, yeah.

What would give rise to that opinion?---I have no idea.

But it was a possibility, a reasonable possibility?---Putting it in the context that you have, yes, I would agree with that.

30 MR PAYNE: Mr Barnes, can I just ask you about the last sentence of paragraph 17. On each occasion, so there's the two or three occasions when you formed the view that you were being told that Buckley had asked for, Mr Buckley had asked for a bribe you told them to put their complaint in writing. Was that your understanding of Sydney Water's policy during that ten years namely that you would only take forward any complaint of corruption if it were made in writing?---No, no, that's just what I, you know, if you're going to say something, if you're going to be fair dinkum you should be willing to put it in writing and then we can forward that on.

40 THE COMMISSIONER: Mr Barnes, do you agree with me that if there was any fear on the part of the contractors about raising this issue it's your requirement to put it in writing would simply reinforced that fear?---Based on what you said, yes, yep.

And they wouldn't come forward again, they would be discouraged?---Yes.

MR PAYNE: And, Mr Barnes, this suggestion that if you want to make a complaint and I think your words, if you're fair dinkum about it, put it in writing I suggest to you that the person raising the issue with you could reasonably believe that your response, your initial response at least to what they were saying was a hostile one putting up barriers to investigating the complaint. Do you agree?---No, I disagree.



You don't think they could've formed that view?---No.

If you are fair dinkum putting it in writing weren't you challenging them in effect I'm not going to take this forward on the basis of what you tell me, I want something that I can come back at you with. (not transcribable)?

---The content of putting it formally in writing was to ensure that the information they were providing was, was, was, was, was correct and I would not be misquoting them in any way.

10

But was it your understanding of Sydney Water's policy in relation to corruption complaints that if they didn't put it in writing you were free to ignore them?---No, no.

Please tell me what, during that ten year period what was your understanding of Sydney Water's policy in relation to corruption complaints made verbally to you?---Off, off the top of my head I wouldn't be able to quote you what the Sydney Water requirement was.

20 THE COMMISSIONER: They may not have had a policy?---If they had a policy, correct.

MR PAYNE: Did you regard yourself as at large to determine that you would only pass on written complaints because they were the only ones which were fair dinkum?

THE COMMISSIONER: Well, you did tell Mr Mattern and he agreed?  
---Yes, I did. I did pass those on - - -

30 (not transcribable)?---Yeah.

It was Mr Mattern's decision in the end because he was your superior?  
---Correct.

MR PAYNE: Did you discuss these telephone calls and the view that you had formed that you were being told that Mr Buckley was asking for a bribe did you discuss them with other employees of Sydney Water other than Mr Mattern?

40 MR LEE: I object to phrasing the question, Mr Barnes has said that he wasn't told that Mr Buckley was asking for a bribe that was Mr Barnes' interpretation.

THE COMMISSIONER: I'll allow the question.

THE WITNESS: We spoke about it amongst our team.

MR PAYNE: And that involves Mr Saxby?---No.

He's a superior officer is he? When you say our team he's a senior man?  
---No. No, no, it wasn't Mr Saxby, our team at the time was Mr Mattern,  
Mr Price and Mr Barker but I don't believe Mr Barker was present during  
those conversations.

Did you - - -

10 THE COMMISSIONER: Sorry. What is the team, what is the - - -?---We,  
we were a board - - -

What is the job of the team?---The team was accreditation and monitoring  
of - - -

Part of the auditing section?---Yeah, well, part of the auditing section of  
Urban Growth.

20 There were a number of teams in this section?---No, no, we, we were the  
team.

That was the team whose task it was to investigate corruption?---No, no, no,  
no, no, no, our, our major role was accreditation of suppliers now known as  
providers and monitoring their performance for developer works.

So at that time there was simply no team that was involved in corruption?  
---No, not at all. Not that I'm aware of.

30 MR PAYNE: You discussed it with Mr Price. Can I ask you as you sit here  
now and I'd like you to address the period before August, 2009 when the  
complaint was passed to this Commission, so we're talking about the period  
prior to that time. We'll come back to that afterwards if you think that  
period throws any light on your answers. But in relation to that period did  
you have a discussion at any time with Mr Saxby about any allegation of  
corruption made about Mr Buckley?---Not, not that I recall.

At any time prior to that period did you have any conversation with Mr  
Purcell about any allegation of corruption made in relation to Mr Buckley?  
---Not that I recall.

40 I take it you work with, closely also with a Mr Hammond from time to time.  
He worked with you and Mr Price in your work?---That's correct.

Did you have a discussion at any time with Mr Hammond about any  
allegation of corruption which may have been made?---Not that, not that I  
recall. We were, Mr Mattern, Mr Price, myself, Mr Barker were at Padstow.  
The other areas of urban growth were in head office at that time.

I see. In relation to this conversation you talk about with Mr Mattern in paragraph 18, are you able to recollect any of the details?---Of the phone call?

No, no of the conversation with Mr Mattern after each of the phone calls? ---Not, not particularly. I just, it would've just been of the fact that someone's just mentioned something about John again. And I've asked them to put it writing.

10 I see. And what if anything did he say to you about that?---That's, that's fine. That's an appropriate course of action.

Was there any further conversation, did you ever go back to him when the writing didn't come? You remember X spoke to me and I formed the view that John Buckley was asking for bribes. I haven't got it in writing, Mr Mattern, what should I do? Did you ever follow up?---Never thought of it in that context. But I never followed it up.

20 When you say you didn't think of it in the context, you knew after each of the calls didn't you that, that your thought process was that you thought you'd been told that Mr Buckley was asking for a bribe?---Mmm. I suppose that's how I should've thought of it, but I didn't think of it in that light, no.

It was a pretty significant matter wasn't it, Mr Barnes? You remember it clearly on 11 August, 2010, when you made this statement didn't you? ---Hmm? Remember, sorry?

30 You remember the view you formed at the time during the last 10 years that you thought you'd been told that John was asking for a bribe?---That was an assumption I made. Yeah.

Well, you remember making it at the time I take it?---Yeah.

It's a pretty significant matter in your day to day work isn't it?---Yeah.

40 Did you remember during the whole time, you've been employed with Sydney Water since 17 January, 1972, getting off the phone thinking, I think I've just been told that one of my fellow employees is soliciting bribes, other than these two or three occasions?---Have I ever?

Have you ever, has that thought process ever occurred to you other than in relation to Mr Buckley?---No.

I take it it was a fairly significant even then in your professional life to, to have formed that view?---I didn't, I didn't think of it that way at the time.

Was that because even though you thought you'd been told Mr Buckley was taking a bribe, you thought that was unlikely to be of interest to those in the hierarchy at Sydney Water?---Oh, no by no means, no.

Well, I don't quite understand your answer then? Why, why didn't you, you thought you'd been told that Mr Buckley was taking a bribe, what - - -?  
---No, no, no, no, I made that assumption. The word bribe was never, was never used. That's an assumption I made based on the very limited offhanded comment in a phone conversation that wasn't specifically about that.

So when you, when say in the statement, I took it to mean they were saying John was asking for a bribe, I thought we'd agreed that that was your thought process at the time. You had understood them to be telling you that although that wasn't the actual words they used?---Correct. And I asked them to put it in writing and nothing came across, so I didn't pursue it because I figured they didn't want to pursue it.

And in terms of writing, if I could take you up about about that. I take it you made no written record of any of these conversations?---I did not.

Was there any reason for that?---Because it was an off the hand remark in a phone conversation.

Do you agree with me that you were aware from your urban growth work at the time that it was commonplace within the constructor and water service coordinator community to state that Mr Buckley was holding up work with excessive attention to detail?---No.

Well, you did know, as you say in paragraph 16, that John generated a high number of CARs?---Correct.

You'd never heard a complaint about that matter?---No.

Never heard it said that because of the high percentage of CARs which he was generating that he was being, his attention to detail was such that it was causing delays and problems for constructors and developers?---No.

Never once heard that?---No.

When you formed the view that you had been told, not in so many words that Mr Buckley was asking for a bribe, did you discuss whether or not you should record that matter with Mr Mattern?---I don't recall that.

Did you understand one way or the other whether Sydney Water's internal audit department was interested in being told of any possibility of corruption within Sydney Water?---(NO AUDIBLE REPLY)

So in that 10 year period, we're talking about, going back from today, going back 10 years?---Ah hmm.

You say your understanding of Sydney Water's policies is that you don't think internal audit were interested in allegations of corruption unless they were in writing do you?---No. That's not what I meant at all. No.

Please explain?---Well - - -

10 What did you, did you think internal audit might be interested in the fact that, that you had formed the view that although not in so many words, you'd been told that Mr Buckley was taking a bribe?---Can you say that again?

Did you think in those 10 years that your internal audit department might be interested in the fact that you had been told, although not in so many words, that by two or three constructors, that Mr Buckley was taking bribes?---No.

20 You didn't think internal audit would be interested?---Not in hearsay conversations, no.

I see. We had a discussion about hearsay. As you understood it, these are the people that actually paid the money weren't they? They had fixed it up?---Made the, made the problem go away.

Made the problem go away. What's hearsay about that?---Well, that's - - -

30 That's the person who's paid the money, Mr Barnes?---I call it hearsay after I asked them to put it in writing.

THE COMMISSIONER: You call it hearsay because it wasn't in writing?  
---Correct.

40 In this discussion that you had within the team, including Mr Price, did, and I think you say this in paragraph 18, if you want to have a look at that. You told Mr Price, you formed a consensus did you that unless it's in writing or, and you say further evidence, I take by that you mean writing, was hearsay and nothing further could be done about it?---Ah hmm. That's how I recall the, the decision of the team, yes.

MR PAYNE: Mr Mattern was involved in this discussion too was he?---I believe he was.

I see. So this is after the first occasion where you formed the view, you'd been told although not in so many words that Buckley's taking a bribe, in fairness to you, you raise it with Mattern who's your boss and Mr Price's who's what, on the same level or above you in the hierarchy?---Same level as me.

I see. And you have a discussion, you decide it's hearsay and there's nothing that can be done?---Something to be, can be done if they follow up and they put in it writing.

Sorry, you're quite right. Unless they make the complaint, unless they formalise it in writing there is nothing that can be done?---Yes.

10 Was there any discussion between the three of you when you came to that consensus about whether or not your internal audit department might be interested in this information?---No, we did not discuss that.

Was the reason for that that internal audit – to your way of thinking – wouldn't be interested in verbal complaints?---I suppose we didn't want to waste their time on hearsay information and we didn't have anything documented. If people weren't willing to formally say what was the issue.

20 You agree with me a little earlier that you've had a chance to look at some of the evidence that Mr Buckley has admitted in this Commission that he's taking cash payments over this whole ten year period that we're talking about where these complaints that were raised with you were made. Do you agree with me that it would have been useful in attempting to investigate and uncover that corruption during that ten year period if you had made a note of these conversations with the constructors and the conclusion you reached about what you were told and that that written material had made its way to internal audit?---In hindsight I should have absolutely documented it in parts (not transcribable)

30 In terms of any training or on the job experience that you've had, it's only been this inquiry really, that's brought home to you the desirability of having documented it and sent it onto internal audit. Is that what you say? ---That's correct.

And prior to that, if there had been any training on the subject that at least that point either hadn't been made to you or you hadn't appreciate it is what you tell the Commissioner?---Correct, correct.

Excuse me one moment Mr Barnes. I have nothing further for this witness Commissioner.

40 THE COMMISSIONER: Mr Ly, do you want to ask questions?

MR LEE: Yes, I do Commissioner.

Mr Barnes, do you understand that I represent Mr Buckley?---Ah hmm.

You've been in your position you said, as a DSR for the last ten to twelve years. Is that correct?---A, a senior DSR have been in urban development,

various positions but at the moment I'm a senior development services representative.

Sorry, have you been in that position for the last ten to twelve years?--- senior, I think I have been a senior for that amount of time, yes.

If there was a dispute with the CAR during that period of time between constructors or a WSC on the one hand and Mr Buckley on the other resolution of that dispute would have either gone to yourself, Jim Price or  
10 Phil Hammond. Is that correct?---Correct.

And in that time there has been no occasion where you have overturned a CAR issue by Mr Buckley. Is that correct?---That's correct.

Nothing further Commissioner.

THE COMMISSIONER: Yes.

MR STEVENSON: I have no questions, Commissioner.  
20

THE COMMISSIONER: Mr McIlwaine, do you want to ask some questions?

MR McILWAINE: Mr Barnes, I represent the interests of Mr Aoun in these proceedings.---Ah hmm.

Mr Barnes, you've given some evidence about telling, this is paragraph 17 of your statement, if you could go to that please. Sorry paragraph 18 I'm sorry, "I also told Jim Price and some of the other audit guys about these  
30 phone calls but the consensus was that that, per evidence, was hearsay, nothing further could be done about it." So you had a recollection of telling Mr Price about this matter, about this call. Is that correct?---Within our team, not specifically Jim but within our team as Fred and Jim yep.

Well, you have a recollection of him being there - - -?---Yes.

- - -to discuss this issue.---Yes.

Just on one occasion or a number of occasions?---I can only recall the one  
40 occasion, yeah.

Can you tell me what his reaction was to that when you told them?---Yeah, he agreed, hearsay.

But in terms of the allegation that Mr Buckley had been taking some money, was he taken aback by that or not surprised or what, were your thoughts?--- We didn't talk about the allegation, that was a consensus that I came to after receiving a phone call.

So, and tell me this was there a knowledge amongst your team that inspectors, particularly in relation to Mr Buckley, at Christmas time might receive a bottle of alcohol from contractors?---No.

It was not known to you?---No.

10 And do you recall in October 2008 you spoke to Mr Aoun on a building site and he asked you about whether, what, how he could go about making a complaint about an inspector. Do you remember that conversation?---I don't remember that conversation.

And you indicated to him that he had to make the complaint formally and in writing?---If, if he would have talked to me about that, which I don't recall, that's what I would have said, yes.

When you say you don't recall it, you don't deny it, because that would have been your response. Correct?---Say that again.

20 THE COMMISSIONER: I think - - -

MR McILWAINE: You don't recall it, but you don't deny the possibility that it could have occurred?---Correct.

Nothing further.

THE COMMISSIONER: Any other counsel wishing to ask Mr Barnes questions other than Mr Stevenson?

30 MR STEVENSON: I have no questions.

THE COMMISSIONER: Thank you Mr Barnes, you're excused.---Yes.

Shall we adjourn now Mr Payne?

MR PAYNE: Yes, thanks Commissioner.

THE COMMISSIONER: Commission adjourned.

40 **LUNCHEON ADJOURNMENT**

**[12.57PM]**