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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 20 SEPTEMBER 2010

AT 10.00AM

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: Commissioner, we move this week to the third matter that I raised in my opening before the Commission some two weeks ago, dealing with Mr Edward Harvey, Sydney Water and various aspects of an agreement he had entered into purportedly on behalf of Sydney Water. There are a number of counsel here present that I understand wish to seek leave in relation to that part of the inquiry.

10 THE COMMISSIONER: So I'll deal with representation now. Who seeks, does anyone seek leave to appear?

MR GORDON: May it please the Commissioner, I appear on behalf of Mr Makucha and seek leave to appear on his behalf.

THE COMMISSIONER: Is that Mr Gordon is it?

MR GORDON: Gordon is my name, yes.

20 THE COMMISSIONER: Yes, you have leave, Mr Gordon.

MR GORDON: Much obliged.

THE COMMISSIONER: Mr McIlwaine.

MR McILWAINE: Commissioner, I seek leave for Mr Edward Harvey.

THE COMMISSIONER: Yes, you have leave. Is there anyone else?

30 MR GLEESON: Commissioner, I seek leave to appear on behalf of Mr Stafford. My name is Gleeson.

THE COMMISSIONER: I beg your pardon?

MR GLEESON: I seek leave to appear on behalf of Mr Stafford. My name is Gleeson.

THE COMMISSIONER: Yes, Mr Gleeson.

40 MR THANGARAJ: Commissioner, Thangaraj, I seek leave to appear for Mr Malacco. Sorry, Commissioner, I seek leave to appear for Mr Malacco.

THE COMMISSIONER: Yes. And your name, please?

MR THANGARAJ: Thangaraj, T-H-A-N-G-A-R-A-J.

THE COMMISSIONER: Thank you, Mr Thangaraj. Yes, all counsel who have sought leave have leave. Mr Payne.

MR PAYNE: Commissioner, I call Edward Kenneth Harvey.

THE COMMISSIONER: Mr McIlwaine. Mr McIlwaine.

MR McILWAINE: Sorry, Commissioner.

THE COMMISSIONER: Do you see a Section 38 order?

10 MR McILWAINE: Yes, I do.

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

20

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

30

Mr Harvey, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR HARVEY: Under oath, Commissioner. Thank you.

THE COMMISSIONER: Would you please swear Mr Harvey in.

THE COMMISSIONER: Mr Payne.

MR PAYNE: Mr Harvey, what is your full name?---Edward Kenneth Harvey.

10 And you've made a statement dated 17 September, 2010 in this matter?  
---That's correct.

I'll show you a document. That is the statement that you have made signed by you on each page, Mr Harvey?---That's correct.

And there are four lever arch volumes of statements Exhibited to this statement. Correct?---That's correct.

20 And subject only to some corrections of internal cross-references in, in the statement, do you tell the Commission that the evidence, that the matters contained in the statement are true and correct to the best of your knowledge and belief?---That's correct. Yes.

Commissioner, I tender the statement and the four volumes of Exhibits.

THE COMMISSIONER: Yes. The statement of Mr Harvey is Exhibit P125.

30 **#EXHIBIT P125 - STATEMENT OF MR EDWARD HARVEY**

THE COMMISSIONER: And the four volumes of Exhibits attached to Mr Harvey's statement will be Exhibits P126, P127, P128 and P129, respectively.

40 **#EXHIBIT P126 - VOLUME 1 OF EXHIBITS TO MR HARVEY'S STATEMENT**

**#EXHIBIT P127 - VOLUME 2 OF EXHIBITS TO MR HARVEY'S STATEMENT**

**#EXHIBIT P128 - VOLUME 3 OF EXHIBITS TO MR HARVEY'S STATEMENT**

**#EXHIBIT P129 - VOLUME 4 OF EXHIBITS TO MR HARVEY'S STATEMENT**

THE COMMISSIONER: So that 126 is volume 1, Exhibit 127 is volume 2, and so on until volume 4.

MR PAYNE: Thank you, Commissioner. Mr Harvey, could I ask you at the outset and I'll come to the internal corrections and so on as we work  
10 through the statement and the volume of exhibits, but can I ask you some questions at the outset about your background. When did you start working at Sydney Water?---In July 2006.

And prior to that you had for a time been working at the New South Wales Department of Housing. Is that correct?---That's correct.

And immediately prior to that you had been employed by RailCorp?  
---That's correct.

20 For what period were you employed by RailCorp?---Approximately four months.

In which year?---2005.

And it's correct, isn't it, that you were dismissed by RailCorp?---Yes, basically that's correct, yes.

And that was for performance related issues as you understood it?---That is correct, yeah, my, I suppose, probation period wasn't taken up.  
30

Can I take you to some matters that you deal with in your statement and what I'll do is I'll invite you to look at the document referred to in the statement, in the exhibit and at the moment you have in front of you or you should have in front of you P125 which is the statement and folder 1 of the exhibits, which is Exhibit P126. Do you have both of those?---Yes.

And just to orient you, if you open the folder P126 the page numbers that I will be referring to that are properly cross-referenced in your statement are in the top right-hand corner in red, so you see those?---I do.  
40

So that's what we'll come to. I'm asking you some questions about what is contained in paragraph 4 of your statement and you refer there to clause 3.3 of your contract so if you could in that first volume, which is Exhibit P126 to page 64 red top right-hand corner?---Yes.

That's the part of the contract to which you draw attention in paragraphs 4 and 5 of your statement?---That's right.

You need to speak up slightly, I think, - - - Mr Harvey?---Yes, I can see that, yes.

And you tell the Commission in paragraph 6 that you have always been aware since you joined Sydney Water in July 2006 that your authority was limited as set out in that clause of that contract?---I do.

10 And if I can take you just quickly, again at a higher level, in terms of the delegations that you did have in paragraph 8 it was your understanding at all relevant times that at no time did you have any delegation provided by any document instrument or verbal statement that you had authority to approve contracts in principle, negotiate contracts or bind Sydney Water to any contract?---That's correct.

And that was your state of mind right though the time that you were employed by Sydney Water?---(NO AUDIBLE REPLY)

20 And you refer then over the page to various places which are the delegations from which you obtained that understanding about the limits to your authority on behalf of Sydney Water?---That's correct.

You were at the, whilst employed at Sydney Water a property asset manager?---That's correct.

And your immediate supervisor was a Mr Gary Inberg?---That's correct.

30 Can I ask you some questions about that relationship. As your immediate supervisor how regular was your contact with Mr Inberg?---Oh, I'd see Gary every day. We worked on the same, in the same office, the same level.

And looking forward to January this year, over that time, what percentage of your time was dealt on matters broadly speaking concerning Mr Paul Makucha, Paul Makucha Holdings and the proposed joint venture that he discussed with you throughout that period in '08 up to when you, when you left at the beginning of 2010?---Probably in the order of ten to 20 per cent.

40 And throughout that period and concentrating again if you would on the period at the end of '08 all through '09 until the beginning of 2010, having spent ten to 20 per cent of your time on issues related to Mr Makucha and the potential dealings between him and his companies and Sydney Water, it's true, isn't it, that, that you didn't have any discussions at all with Mr Inberg about those dealings?---Initially we did, there was some, I think in the early days there was a fair bit of dialogue but once the matter progressed there was probably very little contact, yes.

Or not at all, was there?---Look, there may have been, yeah, very, very little dialogue, yes.

We'll come to the detail in due course, Mr Harvey, but why was that, why did you stop discussing any matters relating to Mr Makucha and his companies and potential dealings with Sydney Water with your supervisor, Mr Inberg?---I think basically 'cause Gary didn't ask any questions and yeah, I suppose at the time I, Mr Makucha and I had discussed confidentiality arrangements and that was the key to it of maintaining confidentiality until the, we were at a point where we could submit something to the Sydney Water Board.

10 So you took a deliberate decision then not to discuss any of these matters with your supervisor, did you?---That's correct.

And you say he never asked you any questions about what you were doing in this 10 to 20 per cent of your time that you were spending on Makucha-related projects?---I wouldn't say never, but there was very cursory- - -

I see. And was there anybody else in the hierarchy within Sydney Water that had supervision responsibilities for you that you interacted with during this period, 2008/2009?---No.

20

So is what you tell the Commission that, and we'll come in some little detail to it, that you acted as you did on your own and made a deliberate decision not to discuss what you were dealing with Mr Makucha about with anybody within Sydney Water?---That's correct.

Can I take you, in your statement, just to orient you, to paragraphs 11 and following, which is on page 4. And you there deal with your initial contact with Mr Makucha and you say in November 2006 your attention was brought to a situation at premises at 111 Baxter Road in Mascot. Now, as you understood it at that time, they were, that was land owned by Sydney Water?---That's correct.

30

In respect of which there had been a lease with Mr Makucha?---(NO AUDIBLE REPLY)

You nodded. You need to- - -?---Yes, yes.

And that as you understood it, whilst the lease had expired, Mr Makucha remained in possession of those premises and your task was to try and remove him?---That's correct.

40

Can I show you, if you look in that first volume, Exhibit P126, have a look at the minute that you say was drawn to your attention. It's P138 in the top right-hand corner. And once you've found that I'd like to ask you some questions about it?---Yes, I've found it.

That's a memorandum to you from a Mr Corddry, a property manager within Sydney Water, dated 10 November, 2006?---Yes.

And I'm going to ask you some question about things that you are told in that. The second paragraph, information on file, the land was subject to a 12-year lease with a 6-year option with a Mr Paul Makucha for the purposes of a maintenance and storage compound, starting with a portable office and car parking and improvements were subject to relevant approvals. You were then told, following attempts by Sydney Water to terminate the tenancy due to outstanding rent, the matters remain dormant and no rent invoices had been issued for three years. There was a suspicion that the occupant actually lived on the site. You were told in the fifth paragraph that council rates were outstanding and the council was contemplating legal action. And when Mr Corddry attended the site, it appeared to be occupied with shipping containers and three demountable buildings connected to power and the evidence of plumbing and sewer on one.

The site was fully fenced with a chain wire fence with three strand barbed wire and there were surveillance cameras and spotlights mounted there. And then at the bottom of the page you were told, it should be noted that the occupants have a well documented history of litigation. During the previous SW attempt to terminate the tenancy an AVO application was made against a Sydney Water officer. They're all matters that you knew at the outset of these dealings with Mr Makucha?---That's true.

Did any of those matters make you wary about dealing with Mr Makucha at all?---Not at the outset. I think, no.

So nothing that was contained in this memorandum caused you any concern about dealing with Mr Makucha. Is that what you tell the Commission? ---That's correct. The concerns were more of a commercial nature that there was a person still in occupation when there'd been previous attempts. So my task would've been to correct that situation.

You say in paragraph 14 of your statement, if I can draw your attention to that, that in the May of the next year, so about six months later you engaged Sparke Helmore to in initiate court proceedings to remove Mr Makucha? ---That's correct.

Why did that take so long?---I think from memory that Sydney Water internal lawyers were dealing with the matter.

And did you personally have any dealings at all with Mr Makucha in that period, prior to the appointment of - - -?---I can't recall exactly, it was possibly I think as part of my investigations, ultimately I met with Mr Makucha.

And that's before Sparke Helmore were appointed?---I think when Sparke Helmore were, were engaged, I think.



I see?---There was a number of conferences I had jointly with Sparke Helmore and Mr Makucha.

And on 11 September, 2007, it's true isn't it that the Supreme Court of New South Wales made orders by consent the effect of which was that Sydney Water could get vacant possession of the property?---That's correct.

10 Can I just show you those orders. If you go to P157 in the top right hand corner of Exhibit P126. I'll just ask you a few questions about those orders. You'll see there in order 1 there was judgement in favour of the plaintiff being Sydney Water for possession of the land described in Annexure A, being the premises at 111 Baxter Road?---Yes.

And order 2, you understood that the court had ordered in September, 2007, that Mr Makucha was to give vacant possession of that land and that he remove all of his effects there from, including all demountable sheds and shipping containers?---That's correct.

20 So that Sydney Water was entitled to vacant possession as you understood it?---Yes.

And that the court had ordered that Mr Makucha remove all the material on that land at his own cost, again, as you understood it?---That's true.

In order 3, there was leave granted for the plaintiff to issue a writ of possession, but that was stayed until 16 November, 2007 by virtue of order 5 of orders made on that day?---That's true.

30 And if you can turn over the page, it's P158 in Exhibit P126. I draw your attention to the court noting in 8 (a) on that page that Mr Makucha would within seven days of the making of the order deposit the sum of \$25,000 into court by way of security for the performance of order 2, which you'll remember was the order that he removal all of the material that was on the land?---Yes.

40 And it was your understanding wasn't it throughout in dealings with Mr Makucha that these orders had been made by consent and could be enforced by the Supreme Court of New South Wales at the instance of Sydney Water?---Yes.

We'll come back to that. The deed of release, which was annexed to those orders. I'll just show you a few things about that. If you go to page P163 in the top right hand corner. The recitals to that deed, which is between Sydney Water and Mr Makucha, the lease commenced in October 1991 and expired back in October 2003. Recital (d), Mr Makucha has continued to occupy the land despite a request from Sydney Water to remove himself and that the parties had agreed to resolve their differences in accordance with the deed and then just looking over to Sydney Water's rights, if you can go to

page P166 and in particular can I draw your attention to paragraph 2.4 of this Deed of Release, at the top of that page you understood, didn't you, that Mr Makucha in that deed, annexed to the orders of the Supreme Court in September 2007 irrevocably acknowledged that he has no right or entitlement to occupy the land other than as provided for in the short minutes to be executed?---Yes.

10 And you understood that right was to occupy the land only insofar as the writ of possession had been stayed to a date agreed between the parties?  
---Yeah.

THE COMMISSIONER: Mr Payne, I notice that the release has not been executed.

MR PAYNE: I was going to just show, just to orient the witness. If you can go to P173, the copy I was showing you was the copy which was annexed to the orders of the Supreme Court. It was actually executed by Mr Makucha there at P173 as you understood it?---That's true, yes.

20 THE COMMISSIONER: And that I take it was executed before the Supreme Court order.

MR PAYNE: Yes. Do you understand the question, Mr Harvey? So that the process was, first of all there was a Deed of Release entered into between Sydney Water and Mr Makucha, correct?---That's right, Sparke Helmore were handling this side.

And as you understood it at least - - -?---Yes, I understand, yes.

30 - - - it was executed on behalf of Sydney Water and of Mr Makucha and there was an exchange of counterpart copies?---That would have been the normal process, yes.

And then you went to the court and the court made the orders with the document I was showing you which was a copy unsigned filed with the court?---Yeah, that's the way I understand it.

40 THE COMMISSIONER: And it's the release that gave rise to the orders by consent?---Yes.

Can I then just ask you some questions of a slightly more technical nature. In paragraph 15 of your statement Exhibit P125 it was a concern of yours, was it, that these shipping containers and other works which had been conducted on the land at Baxter Road may have created a problem with the Sydney Water sewerage system?---That's correct.

And you were told that by someone, the technical people within Sydney Water, were you?---That's right, yes, within Sydney, the operations and maintenance and technical people within Sydney Water.

And they'd informed you that potentially there was a problem and that that was why you needed to get that material off the land as soon as possible?  
---It was a concern that the, some of the buildings had been erected in a way which weren't in accordance with the initial approvals because Sydney Water had approved erection of these dwellings, sorry, these containers on the site but there was some concern that the actual location wasn't in accordance the original plans.

And the additional concern, correct me if I'm wrong, was that Sydney Water couldn't get access to the property because of the barbed wire and guard dogs that we saw in the earlier memorandum in order to inspect the sewer if there was a problem?---That wasn't a major issue I don't think, it was more the potential loadings on the underground sewer.

And as you understand it, Mr Harvey, at least until you left Sydney Water in early, in February 2010, Sydney Water had not by that stage obtained possession of the property at Baxter Road, had they?---No, they hadn't.

And the buildings and containers and so on on the property had not then be removed?---That's correct.

You understood, didn't you, that as and from September 2007 Sydney Water had the legal right to enforce the orders which had been made by consent by the Supreme Court of New South Wales that it obtain vacant possession?---Yes.

MR PAYNE: Nevertheless, you consented on many occasions to the date for execution of the writ of possession to be extended into the future?  
---That's correct.

Including to a date past when you were no longer working at Sydney Water?  
---That's true.

At least initially, Mr Harvey, my question to you is why?---There was a number of reasons which Mr Makucha put to me which in my opinion warranted an extension. He's had certainly issues about organising cranes, finding another property to go to, other commitments, health, there's a range of reasons over different times.

During this period you were still retaining Sparke Helmore Solicitors?  
---Up to what time? And I think- - -

After you obtained the writ of possession?---Yes, that's correct.

September, 2007?---That's correct.

And yet there developed a practice reasonably soon thereafter, didn't there, that Mr Makucha would contact you directly and discuss these matters?  
---That's correct.

Did it ever occur to you that it would be more appropriate that he deal with Sydney Water solicitors about these matters?---In hindsight, yes, but at the time I thought I could take on those issues.

10

And in hindsight is the reason you give, well, you tell me. What was the reason in hindsight it would have been better for him to have contacted the solicitors rather than you?---Well, it would have created a separation of issues and I acknowledge I got personally involved in a commercial decision so I - - -

20

THE COMMISSIONER: Mr Harvey, the reasons you have given for granting an extension all seem to me to relate to benefits to accrue to Mr Makucha and none to Sydney Water. Is that right?---I'm not quite sure what, could you repeat the question again? I- - -

Yes. You gave extensions to Mr Makucha to stay on the property, despite the clear terms of the court order. That's correct?---That's correct.

And you have explained what your reasons were?---(NO AUDIBLE REPLY).

Is that, would you mind just saying yes or no?---Yes, yes.

30

As I understand your reasons, they all concern the benefit and advantage of Mr Makucha, none concern the benefit and advantage of Sydney Water. Is that right?---I certainly still had the interests of Sydney Water in my mind, it was really the practical issues of, I think at the time each, each extension meant going back to the lawyers, additional costs, so certainly the legal costs were mounting and I saw that as being detrimental to Sydney Water.

Well, how is granting an extension a reason for reducing legal costs when you've got a court order?---I can't really explain it.

40

So other than the legal costs, you're not able to proffer any advantage or benefit to Sydney Water in granting extensions to Mr Makucha?---No.

Yes. Thank you.

MR PAYNE: Mr Harvey, can we go forward in your statement to paragraph 34 and these extensions and so on that we've been discussing. You say in paragraph 34 that up until November 2008 you occasionally consulted Mr Inberg about the progress of the court proceedings for vacant

possession and there was a without prejudice offer that we'll come to that was made in order to expedite him leaving the premises, but you didn't consult Mr Inberg or anyone within Sydney Water about payments you made to Mr Makucha from November 2008 onwards or developments in those proceedings right throughout the course of 2009, that we're going to come to?---That's correct.

10 And is the occasion in November 2008 that you refer to in paragraph 38, that's the point at which you made the decision to deal in various ways with Mr Makucha and not raise that with anyone else within Sydney Water, as you told me earlier?---Sorry, could you repeat that again, sorry? Sorry

20 What was it about November, 2008 that caused you to keep your dealings with Mr Makucha going forward secret from others within Sydney Water? What was it that happened that caused you to make that decision?---I think it was when Mr Makucha said there was a potential of a commercial arrangement, but it would have to remain confidential at this stage because of, he had concerns about other people becoming aware of any potential deals, 'cause in the past there'd been other cases where he had lost deals because other people had intervened. Along those lines.

Well, so you say you made a decision to keep the dealings secret because Mr Makucha asked you to?---That's correct.

30 And it didn't occur to you that it might be of interest to Sydney Water, Sydney Water's board or any other employees within Sydney Water superior to you in the organisation what it is you were doing with Mr Makucha?---I think at the time that I saw this matter being resolved fairly quickly. At that stage Mr Makucha was still making plans to removing goods and chattels from the site. He'd identified a site at Austral. He made arrangements with crane companies for a specific removal date so that gave me some confidence at that time that vacant possession was fairly imminent.

40 What's the relationship between the confidence about vacant possession and the decision to keep matters about your dealings with Mr Makucha secret from others within Sydney Water?---Look, I'm not really sure. I think there was a combination of factors. The confidentiality issue and I suppose that I saw it as being an opportunity to negotiate a better outcome for Sydney Water rather than just gathering vacant possession.

So in your mind from about this period, November, 2008, there was a link was there between obtaining vacant possession and also negotiating some sort of separate commercial agreement with Mr Makucha?---That's correct.

THE COMMISSIONER: Of course you didn't need to do that, you had a court order, you could've actually got rid of Mr Makucha whenever you liked?---That's true.

MR PAYNE: Why didn't you, Mr Harvey?---Well, I think that certainly I had some rapport with Mr Makucha that I could see the issues he was going through and trying to be a reasonable person, I, I suppose gave him that opportunity to get his affairs in order and if there was a potential of another arrangement which would be beneficial to Sydney Water, well that, that was worth exploring.

10 Mr Harvey, it was not part of your role as you understood it at any time, was it, to negotiate commercial arrangements between Sydney Water and somebody like Mr Makucha?---Not commercial deals like that. My, my focus certainly was on property matters.

You were a property manager within Sydney Water. It was no part of your responsibility was it to map out any future direction for Sydney Water about bottling water, for example?---It certainly wasn't part of position description. But I suppose I saw if there was an opportunity to broker our arrangement, it could be certainly beneficial to Sydney Water.

20 What about all these other things that, and we'll come to them in detail. A lot of these other things that were discussed between you, for example Sydney Water setting up a bank. Do you remember discussing that?---That was one of the proposals which Mr Makucha proposed.

30 Well, Mr Harvey, you understood didn't you that it was absolutely no part of your role to be discussing with anyone the possibility that Sydney Water might start its own bank?---I suppose I saw myself as a conduit between Mr Makucha and Sydney Water to offer up a potential arrangement. At all times I said to Paul that the, the, all of these arrangements will be subject to Sydney Water's board approval. I need to be able to present, I was happy to present the information from Mr Makucha and present a business case to, to Sydney Water's board.

THE COMMISSIONER: Do you accept in hindsight that the notion of a utility entity such as Sydney Water establishing a commercial bank is containing an element of absurdity?---I suppose in my mind at the time there was a range of - - -

MR MAKUCHA: Excuse me, sir, can you speak up, I can't hear you.

40 THE COMMISSIONER: Yes. I will speak up.

MR MAKUCHA: Thank you.

THE WITNESS: Look, certainly at the time it was a range of proposals which needed to be subject to what I said, a business case, an executive - - -

THE COMMISSIONER: That's not my question. My question was whether in hindsight you accept that the idea that a utility entity such as

Sydney Water would conduct, would establish its own bank, contains within it an element of absurdity?---I don't know whether I'd use the word absurdity. I think it certainly has got, I saw it having the potential, but I think, look in hindsight, it's great to have hindsight. I think sitting down in the, you know thinking about it over the last six or seven months, I think, yeah, sure. But at the time I thought that it had a potential.

10 MR PAYNE: Mr Harvey, you've never made a presentation of any kind to Sydney Water's board have you?---No, because Makucha and his consultants were still preparing what I call the high level executive summary.

Let's leave Mr Makucha out of it. You never made a presentation to Sydney Water's board about anything at any time did you?---No.

Did you actually ever have a conversation with anybody on Sydney Water's board about anything?---No, I didn't.

20 Did you even know who the board members were at the time?---Not every board member.

In your mind, how was it that as a property manager dealing with real estate matters you were going to be permitted within all the various layers of management in Sydney Water to take anything straight to the Sydney Water board?---It wasn't straight to the board, it would've been through my management team. I wasn't going to make the presentation directly to the board.

30 So you thought you would come to Mr Inberg and say, interalia, that you had negotiated the basis for Sydney Water to start its own bank. And you thought that that was something that he might, he might actually consider? ---Oh, it was a bit, in it's, if it was just specifically for a bank, I think certainly it would've been negative. But it was a whole suite of opportunities, not just one that was, I think that there was a whole range of proposals which still needed to be looked at and, and costed in for the costs and benefits. So during that process I saw that some of those potential opportunities may have been filtered out, because they just weren't financially viable.

40 THE COMMISSIONER: And this was going to take a long process was it Mr Harvey?---I think initially I didn't see it as a long process because it was centred around the patents and the water bottling. Over time the list of potential deals were, became more complex and therefore more time was being taken to prepare a submission.

And while these complex negotiations were on foot, you accepted that Mr Makucha would stay in the property in respect of which you had an order for ejection against him?---That's correct.

And you had specific instructions to eject him?---That's true.

And you did not comply with those instructions?---No.

And you didn't tell anybody why you were not complying with those instructions?---That's correct.

10 Why is that?---Well I think as I said before, I was, the confidentiality arrangement that I'd entered into with Mr Makucha until we could prepare it, that was, that was the thing which was keeping I suppose binding me to a certain extent. I saw that conflict between the two, two people, you know, the Sydney Water aspect and Mr Makucha.

You had you thought assumed a duty to Mr Makucha?---I don't know whether it'd be a duty but I, I - - -

20 Or an obligation?---Yeah, a potential obligation, I said I would take it to a certain point where, to progress the potential commercial arrangements.

Why did you assume an obligation to Mr Makucha that in your mind overrode any obligation you had to your employer?---The only way I can explain it, Commissioner, is that I saw there was a wider opportunity which would be beneficial to Sydney Water and I suppose I was endeavouring to get it to a point where that could be presented to Sydney Water.

You do appreciate that in hindsight it's a very strange situation?---True.

30 MR PAYNE: Mr Harvey, can you turn to page 252 of Exhibit P126 which for the transcript you deal with at paragraph 38 of your statement. Tell me when you're there.

THE COMMISSIONER: What page, Mr Payne?

MR PAYNE: P252 in the top right-hand corner, it's an email from a Kyera Wilson. Do you have that Mr Harvey?---Yes, I do.

Who is Kyera Wilson?---Kyera is the personal assistant to Gary Inberg.

40 And this was an email that you received on or about the date it bears, 12 November, 2008?---That's correct.

And in terms of its content, Mr Makucha had rung and left a message with Mr Inberg's assistant to the effect in the quote, "It has become impossible to negotiate with Ed Harvey because each time that Ed consults with Gary Inberg there is a 180 degree turn around and he would like it if Gary would leave Ed alone." Do you see that?---Yes, I do.



You must have been alarmed when you saw this email, Mr Harvey, surely?  
---I don't know whether I was alarmed but I think the issue at the time was Paul was trying to contact me, couldn't for whatever reason, whether I was on holidays or, I'm not, I'm not sure but I think certainly Paul wanted to, must have had the impression at the time that if I consulted with Gary that things changed.

10 Well, he says it in terms, he kept reiterating the fact that he doesn't like when Gary and Ed consult each other and he would like this to cease, do you see that?---Yes.

Mr Harvey, in all your experience working in public authorities has any outsider ever rung you and either directed you or asked you before not to tell your supervisor about contact you were having with them?---No.

It's a pretty strange thing to ask, isn't it, Mr Harvey?---In hindsight, yes.

20 Well, at the time you must have known it was, it was, this is bordering on the bizarre, that the person over whom you have an order of the Supreme Court that they be ejected from premises is ringing and leaving a message for, for your boss saying that your boss is not allowed to talk to you about anything, you'd agree that's unprecedented in your experience?---Yes.

30 THE COMMISSIONER: Was the statement true, Mr Harvey, that is, that each time that Ed consults with Gary Inberg there is a 180 degree turnaround, is that statement true?---I was trying to put my mind as to what, what was happening at that time, I think there may have been the issue about finding another site, that was one proposition I think which was put to and I consulted with Gary about that and he said no way until we get vacant possession so that's a - - -

What do you mean another site? Another site for what?---Mr Makucha had put to us whether there might be another site available for Sydney Water, on Sydney Water land which he might be able to use as an interim basis while he was trying to relocate off Baxter Road.

Use for what?---I think short-term accommodation until he could his affairs in, in order.

40 And did you think that that was an appropriate request?---No, I didn't, I think I consulted with Gary and he said look, no, we need to get vacant possession.

But according to Mr Makucha there was 180 degree turnaround, that suggests that you originally agreed to provide Mr Makucha the accommodation, then spoke to Mr Inberg who told you not to so agree. Is that what happened?---I don't, not, not to my memory, no, I think I, I said on those issues I need to consult with Gary.

And did, did you then tell Mr Makucha what Gary had told you?---I think so, yeah, I think that was embodied into a letter.

Yes, Mr Payne.

MR PAYNE: Mr Harvey, was it, was it this email then brought to your attention that was at least in part the catalyst for your decision not to talk to Mr Inberg any further about anything to do with Mr Makucha?---I don't  
10 think so, sir.

Did you ever have any discussion with Mr Inberg about the email?---I think I did and he I think, he just saw that as being the way that Paul Makucha operated.

THE COMMISSIONER: Was he happy for you not to talk to him?---No, I think he, we, I think Gary just saw this as being a throw away comment or something like that, I can't recall specifically.

20 Well, what instructions if any did you have from Mr Inberg as to communications with him concerning Mr Makucha's requests from time to time?---I think Gary wanted me to handle the issue and to get vacant possession, that was the clear message that I got from Gary.

But I asked you what, what did he say to you about getting instructions from him, Mr Inberg?---I don't think he said anything.

Even after he read this letter, this email?---I think Gary just saw that was the way I, the way things were dealing and the way that Paul Makucha had  
30 made representations in the past, he - - -

Are you saying that he was content that you not speak to him about your dealings with Mr Makucha?---No, I, I don't, I thought we were talking about, that he was happy for me to continue to negotiate with, with Paul Makucha rather than give it to someone else but, yes, certainly it was implied, I kept him informed, yes.

40 I'm asking you about the paragraph that says he kept reiterating the fact that he doesn't like it when Gary and Ed consult with each other and that he would like this to cease. What did Mr Inberg say about that?---I think it was, I don't know whether he said anything specifically but certainly we continued to consult on, on all, a whole range of issues.

Who, you and Mr Inberg?---Yes.

Until when?---Well, all the way through, on this matter it was minimal because of the confidentiality arrangement but I think certainly there was no, no specific direction to, to consult. Gary was a person who wanted

results and that's what I was trying to achieve, was achieve a successful outcome on this matter. In hindsight I took the wrong approach but, you know - - -

Mr Harvey, as I understood your reply to one of the questions Mr Payne asked you, you accepted that there came a time when you did not tell Mr Inberg about your dealings with Mr Makucha?---That's correct, certainly probably would have been in 2009 as the negotiations or the dialogue on the potential commercial arrangements progressed.

10

When in 2009?---Look, I, I'm, I can't be specific, sir.

About when?---I think early 2009.

That's not too long after this email?---All I can say is I don't, this email didn't have a direct impact on me, I, I, looking at it now I, you know, we just saw that as being the way that, that Paul spoke and raised issues.

20

Did Mr Inberg say to you that this request that you and he should not consult each other was a lot of nonsense or words to that effect?---Along that line, yes.

He did?---I would have thought so, yeah, I can't recall specifically, sir.

Yes, Mr Payne.

MR PAYNE: You knew, didn't you, Mr Harvey, at all relevant times before and after this email that you had an obligation to raise with Mr Inberg - - -

30

MR MAKUCHA: Mr (not transcribable) could you speak up, I can't hear you.

MR PAYNE: You knew - - -

THE COMMISSIONER: Excuse me. Mr Maluca I suggest you move forward.

40

MR MAKUCHA: I'm not a lawyer I can't sit at the - - -

THE COMMISSIONER: Move forward, Mr Maluca?

MR MAKUCHA: Makucha.

THE COMMISSIONER: You have a, there'll be a place, well, there will be a place made for you at the bar table closer. Please do stop interrupting the proceedings?

MR MAKUCHA: My name is Paul Makucha, Commissioner, not Maluca.

THE COMMISSIONER: Just do what I say?

MR MAKUCHA: Aye, aye, sir.

THE COMMISSIONER: Yes, Mr Payne?

10 MR PAYNE: Mr Harvey, you knew, didn't you, at all times, both before and after this email, that it was your obligation to report to Mr Inberg the content of these commercial discussions you were having with Mr Makucha, didn't you?---Yes.

And you chose not to?---That's correct.

You've told me earlier that you believe you had some sort of confidentiality obligation to Mr Makucha. Correct?---That's correct.

20 You knew, didn't you, that your duties as an employee of Sydney Water overrode any duty, whatever it was, to Mr Makucha? Correct?---Yes.

And you knew that your obligation to report your dealings with Mr Makucha to Mr Inberg and others in the Sydney Water hierarchy were more important than any duty that you thought you owed to Mr Makucha. Correct?---In hindsight, yes.

Well, at the time you thought that, didn't you?---I'm not quite sure what I thought at the time.

30 Well, can we go directly to the subject of payments and I want to ask you about a number of them, because immediately after this period in November that we're talking about, you had a conversation with Mr Makucha which you set out at paragraph 39 of your statement?---Yes, I've got that.

Mr Makucha tells you that he's concerned you're going to evict him, he needs funds for work he's doing at Austral. Now, Austral, he had told you, had he, was a place he was going to move his material to?---That was the plan, yes.

40 What concern was it of Sydney Water's where it was that Mr Makucha was going to move after he was evicted from these premises?---I don't think it was any concern, it was just that he was keeping me informed of what plans were in place.

"Giving me this money now will ensure that I have work completed and that I move out by 23 December, 2008."---Yes.

And you immediately say to him, "Please provide me with an invoice and I will process it." You knew you had no authority to make that offer, didn't you?--I know now, yes.

Well, you knew then, didn't you?--Oh, look, as I said, I'm not quite sure what I thought at the time. I obviously was prepared to, to help and that was one way of doing it.

10 Well, prepared to help, that's what I want to explore with you. Why were you prepared to help Mr Makucha, what business was it of Sydney Water's or of yours to help Mr Makucha?--I saw it as a short-term arrangement until, yeah, to assist a guy who was, you know, struggling at the time.

Did you feel it was any part of your responsibility within Sydney Water to dispense Sydney Water's funds to people you formed the view were struggling at the time?--Sorry, could you repeat that, sorry?

20 Did you regard it as part of your responsibility as an officer of Sydney Water to dispense Sydney Water's money to people if you had formed the view that they were struggling at the time?--No.

You knew you couldn't do that, didn't you, Mr Harvey?--Yes.

Can I take you to paragraphs 51 and following of your statement, and that's the first payment that you authorised be made to Mr Makucha's interests. Do you remember that?--Yes.

30 And that's the payment that followed the conversation I've just asked you about where you've told me that you felt, you felt that he was struggling and that- -?--Yep.

- - -you would authorise a payment. Have a look at page 254 in Exhibit 126, the volume?--Yes, I've got that.

That's the invoice that we're talking about, being the first payment?  
---That's correct.

40 Dated 25 November, 2008. Do you see that?--Yes, I can. Excuse me, sir, can I go to the bathroom? I'm feeling a bit uncomfortable. I'm sorry.

THE COMMISSIONER: Yes, very well. We'll adjourn for five minutes.

#### **SHORT ADJOURNMENT**

**[10.55]**

THE COMMISSIONER: Everything in order, Mr Harvey?--(NO AUDIBLE REPLY)

MR PAYNE: Mr Harvey, just before that short adjournment I was asking about the document at P254 in volume 1, which is Exhibit P126. Have you got that?---Yes, I've got that, yes.

That's the first, that's the invoice in relation to the first payment that you authorised to Mr Makucha or his interests?---That's correct.

10 Can I ask you some questions about it. It's said to be a part-payment of a total sum of \$27,500 for improvements. You had understood, hadn't you, that in October 2008, Sydney Water had made a without prejudice offer to Mr Makucha that upon his leaving the Baxter Road premises, a payment in that amount would be made for certain property. Correct?---That's correct.

And it was a condition precedent to any payment that he be gone from the Baxter Road premises?---That's correct.

20 And that in authorising this payment you deliberately went outside the instruction that you'd had from Mr Inberg about the circumstances in which any payment could be made?---That's right.

You say in paragraph 54 you did it because you felt Mr Makucha required money in order to organise another place to stay and you wanted to assist him and relocate him off the premises on a gratuitous basis?---That's correct.

30 This is at a time before there was any commercial decision or commercial confidentiality or anything else, wasn't there?---There had certainly been some discussions about potential joint ventures, hadn't gone any, into any detail. It was initially centred around the potential for a bottling plant.

But you didn't authorise this payment with any of those matters in mind, you tell us in paragraph 54, do you say you had them in mind?---Look, I can't really recall, sir. I think it's, the issue at the time, I was trying to facilitate Mr Makucha to vacate the site by providing him with some funds.

40 But you knew that your superiors had made an offer and instructed you that that was the offer Sydney Water was prepared to make, namely that once you are gone we will buy some plant and equipment from you. Correct? ---That's correct.

And you thought you knew better, did you?---I don't know whether I thought I knew better but I, you know, at the time I thought it was a, the only way I could provide any funds to Mr Makucha.

Why didn't you go back to Mr Inberg and say, look, I know we've made this offer and I know it's a condition present that Mr Makucha needs to be gone, but I recommend that we vary the terms of that offer. Why didn't you do that?---I can't recall. I really don't know why.

Do you agree it's somewhat extraordinary for you on your own initiative to do something that you knew was against your superiors' instructions and not to have any reason, Mr Harvey?---Yeah, on the face of it, it is extraordinary. I just, I, I, I really can't explain why, apart from overrepresentations that Mr Makucha made to me and I think gratuitous is probably the word I, just came to mind at the time, that's, that's the only way I can explain it.

10 THE COMMISSIONER: Why did you want to provide funds to Mr Makucha?---To assist him to set up this new site at Austral so he could vacate our site.

Did you not appreciate that you could do that, you could get him to vacate your site on the strength of the court order without providing him with any assistance of any kind?---Truthfully I suppose at the same time Sydney Water would have been still, have the problem of having, we could certainly get Mr Makucha physically off, off the site but all his, all the, the plant and equipment, the buildings still needed to be removed and so Sydney Water still would have had to have, even if you'd have got Mr Makucha himself  
20 off the site, everything else has still got to still be removed.

MR PAYNE: But you dealt with that in the settlement and the Supreme Court had made orders about it. You had \$25,000 lodged with the Supreme Court four your, as security for your costs in removing that material, didn't you?---Yes, that's right.

So Sydney Water would incur costs, you could just draw down on that amount that had been lodged with the Supreme Court. Correct?---Yep.

30 And if there was any additional money that Sydney Water spent removing that material, it could claim that from Mr Makucha if it so choose, correct? So chose. Correct?---That's correct.

You knew all of that at the time?---I certainly knew that, yes.

Well, you'd been involved in negotiating the settlement. I showed you the deed?---Yes, that's right.

40 \$25,000 had been agreed, you knew it had been lodged with the court. So the explanation you gave the Commissioner a moment ago about being worried about Sydney Water's costs, that just can't be true, can it, Mr Harvey?---Oh, it was certainly on my mind.

What was on your mind, that it was going to cost more than \$25,000 to move?---Well, potentially, yes.

And that you thought paying Mr Makucha money, even though that he hadn't moved out, would somehow lessen the sum of money that Sydney

Water had to pay. Is that what you're saying?---I think something along that line, yeah, that's, that's correct.

Can we just look at this invoice for a moment, P254. It is said to include GST but there's no Australian Business Number on the invoice, is there?  
---No, there's not.

10 You knew that one should be there if it was going to be authorised for payment by Sydney Water?---I do now. At the time I can't recall. I think certainly it wasn't anything which our accounts payable section had raised with me so- - -

Can I just ask you some questions about that. You knew, didn't you, that what accounts payable wanted to see was an authorisation from you- - -?  
---Yes.

- - -to pay the money, and that's what this box with your signature underneath it on the top right-hand corner is all about, isn't it?---That's correct.

20 And you've told the accounts payable that, so the department ID, that's your department, is it?---That's correct.

The account number, that's the account number in relation to Baxter Road and removing Mr Makucha, is it?---Ah, no. That would have been, I can't recall the structure, but it would have related within that department 3092, within the property asset management area there was a number of account numbers which related to different activities and this would have been an asset creation one, I would have thought.

30 Right?---And the project ID number was a generic number which was used for these types of projects, it wasn't specifically for this matter.

And the activity code, again that's generic, is it?---That's right, yes.

Were you surprised that no questions were raised by the accounts payable department about this invoice?---No, I wasn't surprised, no.

40 Because you thought that even though you didn't have your superiors' authority you presented enough information that it would pass unnoticed through the Sydney Water system, did you?---It was within my delegations, yes.

Well, it was only within your delegation if you were permitted to do it and you knew that you weren't permitted to do it, didn't you?---Well, that's, that's, yeah.



Is this the first occasion that you have submitted an invoice by a contractor presented to you, to your accounts payment department, knowing that the person who had given you the invoice was not entitled to be provided with the funds the subject of the invoice?---Yes.

So I ask again, you must have been concerned about submitted it, mustn't you?---I really can't think at the time what, what was on my mind, but, you know, look, I think certainly I knew I was pushing the boundaries.

10 Well, you were doing more than that, weren't you, Mr Harvey. You were, as you say in paragraph 54, you knew you were causing Mr Makucha to be provided with funds to which he was not entitled and would not, without your assistance, receive from Sydney Water?---That's correct.

It was a serious matter, wasn't it?---(NO AUDIBLE REPLY)

Were you concerned for your own position in doing what you did?---Well, it was certainly worrying me, yes. I think it was- - -

20 So I ask again Mr Harvey, why did you do it? Why did you put yourself in this position?---I really, I search my mind, I, I can't put a specific answer on it. I know certainly I was at the time under a lot of pressure at work. I think with my knowledge now I was probably depressed at the time. I still continue from that issue a number of other complaints. But in my mind I think it was one of those, a calculated risk to, to try and assist Mr Makucha.

Is the position that, that once you'd started and you had arranged a payment for Mr Makucha that you knew he wasn't entitled to, was your state of mind that you had to do everything that he then asked you to do thereafter?---I, I'm not sure of that. I think, I think once I'd made one payment I was certainly locked in there, I knew I was compromised.

Because you knew that if your superiors found out you'd done this that, that would be the immediate end of your employment with Sydney Water I take it?---That would've been the outcome, yes.

And, and I want to understand Mr Harvey, does that mean you felt beholden in some way to Mr Makucha after this day?---I can't say beholden, I don't know whether that's the right word but - - -

40 THE COMMISSIONER: What is the right word?---Well, I'm struggling to think of it, Commissioner, but - - -

But were you nervous about what you had done?---Oh, yeah. Look it started to worry me, it certainly worried me and, but I couldn't see a solution at the time.

Were, were you nervous that your employers would find out?---Certainly a catalyst, yes.

Were you nervous that anybody would tell them?---That was always the potential, yes.

Who could tell them?---Mr Makucha.

10 Did he ever suggest that he would tell them?---I don't think so, no.

What made you think that this, or did you think that this was a possibility that he might?---No, I don't think it was a possibility. I didn't think it at that time.

So you thought you were pretty safe?---No, I don't think I felt safe. I knew it was certainly, there was always the potential that the issue would come out through a council orders or whatever.

20 MR PAYNE: Did you feel, Mr Harvey, as if you could say no to Mr Makucha?---Oh, I always felt that there was the potential, yes. But I, you know I, I think looking in hindsight, once I'd made this first payment that I felt obliged to continue on.

See I want to suggest to you Mr Harvey that as things progressed you actually suggest various ways to Mr Makucha to better enable the Sydney Water systems to be fooled so that Mr Makucha could be paid money. Do you agree with that?---Sorry, could you repeat that?

30 Do you agree with me that as your relationship with Mr Makucha developed, it was you on a number of occasions who made suggestions to Mr Makucha about how he could better present invoices so as not to attract scrutiny from the Sydney Water accounts department and therefore receive payments to which he was not entitled. Do you agree?---Yes, I agree.

Why did you do that, Mr Harvey?---Well, in response to ongoing need for Mr Makucha to progress the matter.

40 So you regarded it as your role as best you could to facilitate whatever payments Mr Makucha asked for and you'd ask him to put the invoices into a particular form so as not to attract scrutiny from the accounts department. Is that what you're saying?---I don't know whether I'd say to avoid scrutiny. I think it was just in the correct format that it would, would appear to be okay. So it wasn't, you know, I don't think I tried to manufacture - - -

THE COMMISSIONER: But did you try to mislead?---Look at the time I, I think certainly there was elements of that. I think it was, I was pushing the boundaries of, I got on to the treadmill and didn't know how to get off.

MR PAYNE: Can I take you to page P282 in Exhibit P126, which is the invoice in relation to the second payment that you authorised to Mr Makucha's interests.

THE COMMISSIONER: 2-8 - - -

MR PAYNE: 282 in the top right hand corner, Commissioner.

10 THE COMMISSIONER: Yes, thank you.

MR PAYNE: And you deal with this Mr Harvey in your statement at paragraph 63?---Yes.

Now prior to being provided with this invoice, you set out a conversation you had with Mr Makucha at the top of that page, which is the end of paragraph 62 of your statement. And I'm going to ask you a question about it. You remember saying to Mr Makucha that when he asked you for funds to keep him afloat for a month or so that you say, please prepare an invoice.  
20 About the invoice you gave last time, the invoice needs to have ABN number and if you're looking for electronic funds transfer you need to provide account details. So you knew didn't you at the time that Sydney Water systems required provision of an ABN number if an invoice such as this was to be paid?---Yes.

Just looking at P282, there is no ABN number on that invoice is there?  
---No. Not that I can see.

30 Having raised this matter with Mr Makucha, why didn't you take steps to ensure that it was in a form that was unlikely to attract attention with Sydney Water and make him put an ABN on?---I can't recall. I'm not sure why I raised it with him, but I think, you know, I don't know.

You knew also didn't you that an invoice by Mr Makucha directly payment to a company, Mascot Administration Services Pty Limited, which is what this invoice does, was not in accordance with Sydney Water's procedures for the payment of invoices didn't you?---I don't know whether I was aware of it at the time. I am now.

40 I see. So it isn't something that you raised with, with Mr Makucha?---  
Sorry, raised about?

That topic, namely don't, don't direct it to a company when I'm getting an invoice from you, Mr Makucha. It wasn't something that you raised with Mr Makucha at the time?---No. No, no, it was, it was the account which Mr Makucha nominated.

And again with this payment you did it knowing that Sydney Water had no obligation or need to make the payment. Correct?---That's correct.

And knowing that it was completely inconsistent with the direction Mr Inberg had give you about the payment of any money to Mr Makucha, being conditional upon him having moved out of Baxter Road. Correct?---That's correct.

10 And you didn't consult Mr Inberg or anybody else about this, indeed, as I think you agreed with me at the outset, by this time you've agreed to keep this matter secret as best you can from everyone?---That's correct. That's correct.

Can I ask you about the third payment. Go to just over the page to P283? ---Yep.

Again, this is a payment that you made to Mr Makucha knowing that Sydney Water was not obliged to pay him any money. Correct?---That's correct.

20

And that Sydney Water could instead have enforced the writ of possession it had obtained at any time?---That's correct.

And that having done so, Sydney Water could've sought reimbursement from Mr Makucha for any funds expended in moving the material on the property. Correct?---That's correct.

30

And in order to do so your costs were secured at least to the extent of \$25,000 by money lodged with the Supreme Court?---That's correct.

In paragraph 68, you set out a conversation which I'm going to ask you some questions about. You say to Mr Makucha about this invoice that, I have to run it past accounts. What did you mean by that?---I think that I meant was to see whether there was sufficient funds in, in my accounts. That account which was, where the funds were coming and also to submit the account, submit the invoice. That's probably what I meant there.

40

By sufficient funds in your accounts it was the practice within Sydney Water for you to be allocated an amount of money to spend on your property projects, was it?---That's correct, yeah.

And so you would need to work out whether you had money no doubt earmarked for other projects available that you could use to pay to Mr Makucha?---Yes.

And when you said to Mr Makucha, I have to run it past accounts, were you intending to convey that there was some process of approval other than you in relation to payment of these invoices?---No.

And when as you say he would regularly ask you, Have you spoken to the money man, what did you understand him to mean by that?---Our accounts people.

Had you led Mr Makucha to believe that there was some approval by your accounts people of the invoices he was submitting to you?---I don't believe so.

10 Did he ever tell you anything like that, namely that he believed there was a process of approval other than you in obtaining payment of the invoices he was submitting?---I don't think so.

In relation to this invoice again you arranged for it to be paid knowing that Sydney Water wasn't obliged to pay Mr Makucha money and that all of the things that we've discussed about the writ of possession remained true at the time of this payment?---That's correct.

20 In paragraph 73 of your statement, can I ask you about that. You say in the statement that in or around December 2008 and again in January and February '09 you had face to face discussions with Mr Makucha about this joint venture proposal?---That's my recollection, yes.

Now, correct me if I'm wrong but in your statement it's torridly clear, isn't it, that what you're saying is that these initial discussions took place in December 2008 on the first occasion, correct?---Yeah, that's right.

30 And by that time you've already arranged for three payments to be made to Mr Makucha's interests which you agreed with me you knew Sydney Water wasn't obliged to pay and - - -?---Yes.

- - - indeed the payment was directly contrary to your instructions about such payments?---(NO AUDIBLE REPLY)

You're agreeing with me?---That's correct.

40 In those circumstances you knew that, as I think you've agreed, that Mr Makucha was a person that you had on a gratuitous basis agreed to keep afloat, you knew that?---That's correct.

You knew that whilst he said he was making arrangements to vacate the premises that that hadn't happened now for over a year since you'd first obtained the order of the Supreme Court of New South Wales?---That's correct.

Mr Harvey, how was it in those circumstances when approached in 2008 that you regarded Mr Makucha as a suitable potential joint venture partner for Sydney Water for bottling plants or anything else?---Well, I obviously

formed an opinion through a number of discussions that the ideas were there and had potential.

This was a man, however, the sole job you'd been given by your employer was to get him out of Baxter Road, correct?---Correct.

He was at that time living in a shipping container, wasn't he, on the premises?---That's correct.

- 10 You'd had to arrange secretly three payments from Sydney Water, you knew that you weren't authorised to have made to this man to keep him afloat prior to this discussion?---(NO AUDIBLE REPLY)

You're nodding, you agreed?---Yes, I do, yes.

In those circumstances I want to suggest to you, Mr Harvey, it was obvious to you that Mr Makucha was unlikely to be a person that the board of Sydney Water would agree to enter any sort of joint venture with, do you agree?---Well, I think at the time I didn't feel that way.

20

Can I ask you about this initial conversation. Mr Makucha says to you he has some ideas for a deal, he's thinking up ways Sydney Water and he can work together to start up a business to generate funds. This would be along the lines of a venture to develop a water bottling business. Did he tell you anything else about it in this initial conversation?---I can't remember the conversation in detail, I think it would have been fairly general. It wasn't certainly a written proposal.

30

Have you ever been involved in any of your, in any of your jobs, throughout your career have you ever been involved in creating a start up business of any kind for a government authority?---No, I haven't.

Have you ever, have you ever even whilst you were working for a government authority, have you heard of any other person within that authority getting involved in, in a start up business on a joint venture basis with anyone?---No, I haven't.

40

And then out of the blue Mr Makucha says he's got this idea for a water bottling business as a joint venture between him and Sydney Water and you tell the Commissioner seriously, do you, that you thought that sounded like it had commercial potential and that you should begin negotiating with Mr Makucha in secret about it do you?---As I said, I saw it had the potential subject to a detailed analysis.

Which I suggest to you, Mr Harvey, there was absolutely no way you were in a position to do any of that analysis, do you agree?---Not me, not me myself but I was relying upon other, a submission from Mr Makucha and his advisers which could be then analysed.

But there was nothing in your training or experience that equipped you to assess a proposal for any sort of start up business was there?---Look, I think I've had experience of looking at costs and benefits for projects and seeing whether the, the assumptions are basically correct, not a start up business but in terms of property development, property finance I've had experience.

This had nothing to do with property development or property finance, did it?---No, true.

10

It was completely outside of your experience, you agree?---That's correct.

Mr Makucha tells you in this initial conversation apparently that he's prepared to contribute his tax losses, that must have alarmed you, mustn't it?---No, I don't think so, I think knowing the history of some of Mr Makucha's companies that they were available.

Well, you say they were available, do you have any training or experience in taxation matters?---No, I don't.

20

I want to suggest to you that the idea that Mr Makucha's existing tax losses from his companies being used in any way by Sydney Water or any joint venture in which Sydney Water was a party is nonsense. Are you in a position to agree or not?---I'm not in a position to agree.

Because you haven't got the faintest idea about transfer of tax losses, have you?---That's correct.

30

You didn't have then, you don't now?---No, that's correct.

Completely outside your experience?---True.

That being raised by Mr Makucha surely, Mr Harvey, surely the alarm bells went at that point, that you needed to involve somebody who understood tax at least who could explain this proposal to you?---Well, I hadn't had a proposal at that point of time, that's what I was looking for was a detailed proposal.

40

And I suggest to you in terms of those proposal, knowing as you did that Mr Makucha was preparing to contribute tax losses that were somehow, you didn't understand how, somehow going to be used by a New South Wales government authority but you must have been very concerned to get somebody to give you some advice about whether this was possible or not, correct?---I'm not quite sure what you mean concerned.

Well, you told me a moment ago you didn't understand anything about tax losses and they being used between groups, correct?---(NO AUDIBLE REPLY)

You're nodding, you agree?---Yes.

Mr Makucha was telling you that he was going to contribute tax losses somehow to a joint venture which was somehow going to be used by the joint venture and perhaps somehow by Sydney Water. Correct?---True.

10 Did you think it was, at the time that it was prudent that you obtain some advice so that you could work out whether what you were being told was true or not?---No, I think at the time I just didn't have sufficient information to be able to submit to anyone.

As matters developed you discussed the concept of these tax losses on many occasions, didn't you?---(not transcribable) occasions, yes.

Did you ever seek advice from any person about whether or not those tax losses would be available by a joint venture or Sydney Water or anyone else?---I think there was some advice from Hall Chadwick.

20 Who were Hall Chadwick acting for?---Paul Makucha.

And you, as you understood it, were acting on behalf of Sydney Water?  
---Correct.

You didn't have the faintest idea about tax losses, did you?---No.

30 Did you think it was prudent that Sydney Water through you obtain some advice about these tax losses?---I would have thought at, at, at the, the time when I had sufficient information to be able to present a proposition to Sydney Water. At that point I didn't have a detailed proposition, all I thought it was, there was a potential, it sounded that it had potential, it could be beneficial to Sydney Water. So subject to due diligence, all those issues, that's, that's the way I was progressing. I was endeavouring to be I suppose a conduit between Paul Makucha and Sydney Water.

You were taking what Mr Makucha told you at face value, weren't you?  
---To a certain extent, yeah.

40 And you were taking no steps whatever to protect Sydney Water's interests in relation to the information that was being conveyed to you by Mr Makucha, were you?---Not at that time, no.

Well, not at any time, Mr Harvey?---No, no.

You never took a step to protect Sydney Water's interests about these matters that you knew nothing about. Do you agree?---Sure.



And indeed you did everything you can to keep it secret from Sydney Water and from people within Sydney Water who might actually know what the answer was to, for example, this tax loss question?---(NO AUDIBLE REPLY)

You're nodding. Do you agree?---Yeah, I do.

There were people within Sydney Water who look after taxation matters, aren't there?---I believe so, yes.

10

And it would have been a simple matter to have consulted any one of those people about the taxation question. Correct?---At the time it would have been, yes.

And you chose not to?---Correct.

Why?---Well, I saw it as being premature. I didn't have sufficient information. That's what I was endeavouring to elicit from Mr Makucha and his advisors, a detailed executive summary of how it would all work.

20

Just time continued to extend out because of the deal just kept on becoming more complex, more entities, more ideas I suppose.

But this took place over well over a year, didn't it, Mr Harvey?---That's correct.

And not only did you not take any advice from anybody during that year, but you took steps to keep it secret from people who could have given you that advice. Do you agree?---I agree.

30

Can we have a look at paragraph 75 of your statement, and this is at a reasonably early stage, but you understood that what was being proposed by Mr Makucha would have these features. Now, the first dot point, it would have involved the creation of new joint venture companies and the purchase by Sydney Water of shares in those companies. What if anything did you know about the ability or interest of Sydney Water to purchase shares in joint venture companies?---Nothing.

You didn't even know whether Sydney Water could do it under the Sydney Water Act, did you?---No.

40

You never took steps to find out?---No.

Even at this initial stage, and devoting 10 to 20 per cent of your time in dealing with Mr Makucha, you didn't have the faintest idea whether there was any possibility that Sydney Water could get involved in doing this, did you?---No, I didn't.

The second dot point, you understood Sydney Water would take the benefit of 10 million dollars from accumulated tax losses. Well, you agreed with me that you didn't have the faintest idea then or now about whether Sydney Water could do that. Correct?---That's correct.

And you shut your eyes or kept from the people who could have given you that advice, I suggest to you, within about five seconds, you kept from them this proposal. Agreed?---I agree.

10 The third dot point, the creation of a new water bottling plant owned and operated by the joint venture that would sell bottled water to the public under the brand name Sydney Water. Now, there were people within Sydney Water, weren't there, responsible for Sydney Water's brand, as you understood it?---I wasn't aware of who was responsible for the brand.

You knew there were such people though?---Um, I, I, I don't really know. I imagine there would have been but ah- - -

20 Well, you knew it was no part of your role, function or responsibility- - -?  
---Yep, correct.

- - -to have anything to do with intellectual property belonging to Sydney Water. Correct?---Correct.

You were in no position to deal with anyone on a preliminary or other basis about trademarks, copyright, designs. Correct?---That's correct.

30 Did you ever tell Mr Makucha that, that look, I'm terribly sorry, not only can't I commit Sydney Water, I've just got no authority whatever to even talk to you about designs, copyright, trademarks?---No, I didn't.

Why was that, Mr Harvey?---(NO AUDIBLE REPLY)

Why didn't you tell him that?---I really don't know.

40 Can you look over in the volume to P289, which is the fourth payment that you authorised to be made to Mr Makucha's interests. And you deal with this at paragraph 76 to 78 of your statement. Although it's called invoice number 3, as you point out in paragraph 76, this is in fact the fourth invoice that you authorise for payment. Correct?---Correct.

And again there's no ABN and the payment is directed to Mascot Administration Services- - -?---Yeah, that's correct.

- - -Pty Limited?---Correct.

Again it purports to be a part-payment of this sum of \$27,500 which you knew you were not authorised to complete unless and until Mr Makucha had left Baxter Road and you knew that he hadn't. Correct?---Correct.

And you knew that authorising this payment was directly contrary to the direction you'd been given by Mr Inberg about the payment of any such money to Mr Makucha?---Correct.

10 Can I just ask you about this question of authority that you deal with in paragraph 79 when this whole proposal starts, and in particular what you said to Mr Makucha that you refer to in that first paragraph. You said you told Mr Makucha on or about 13 March that the arrangement would need management and board approval and that you didn't have delegated authority to deal with it. Correct?---That's correct.

20 But you then went on to say, "It needs to be packaged up in a way to get approval. I'm happy to work with you to get it to a point where it can be presented to management." What was there in the course of your dealings with Mr Makucha to that point that led you to agree with him to work with him to get it to that point?---I think I saw the potential and I was happy to work with him in terms of getting information and giving him advice of how to put together a proposal, make sure that it complied with the requirements of a business case proposal.

Well, you've agreed with me before, you'd never seen a business case anything like this before, had you?---I'd certainly seen business cases but not like this, no.

30 Well, this is, this is of a scale and magnitude way beyond anything that you'd ever been involved in before, wasn't it, Mr Harvey?---Yep, correct.

And it involved areas of expertise that you simply didn't have. Correct? ---Correct.

Was it any part of your decision to work with Mr Makucha on this matter in the way you describe, was it any part of your decision, the fact that you had in the months immediately prior, arranged for payments to be made to him without the authority of Sydney Water?---I don't think so.

40 So you tell the Commission, do you, that those two things are quite independent or were quite independent in your mind?---They were.

And so on the one had you're helping Mr Makucha out on a gratuitous basis - - -?---To vacate the site.

Well, on a gratuitous basis, knowing that you don't have the authority to make the payments, because in effect you felt sorry for him. Is that what you say?---Correct.

And on the other hand, you agree to work with him on a proposal, the like of which I suggest to you no public authority in New South Wales has ever seen before. Do you agree?---I don't, I can't speak for other authorities. Not to my knowledge, no.

You'd certainly never seen anything like this before?---I hadn't, no.

10 Can I then ask you in terms of the joint venture proposal. There were various documents given to you Mr Makucha, which you set out at paragraph 80. Can we go to the first one, it's 291 of this bundle. Tell me when you're there?---Yes.

That's a letter Mr Makucha left with you on or about 12 March, 2009?  
---That's correct.

It's addressed to the Managing Director of Sydney Water Corporation. Do you see that?---That's correct.

20 That must've caused you some concern surely?---No, I don't think so. It was made to my attention, so it came to me.

Well, and you have actual knowledge then of all of the matters contained therein. Correct? When you're given a letter like this?---I'm not quite sure what you mean.

Well, this, this deals with matters, I want to suggest to you at the outset way beyond your knowledge, skill and abilities. Do you agree?---I agree.

30 THE COMMISSIONER: And authority?---Yes.

And was it delivered to you?---It was.

So where it says delivered by hand, it was actually delivered to you personally?---That's right.

By whom?---By Mr Makucha.

40 Even though it's addressed to the Managing Director?---That's correct.

Did you discuss with him how it was going to get into the hands of the Managing Director?---No.

Well, what was the point, did you understand what the point was of addressing it to the Managing Director?---No, I don't.

Were you going to give it to the Managing Director?---No. As far as I was concerned, it was to me.

Were you asked to give it to the Managing Director?---I don't believe so, no.

Was any discussion, was there any discussion between you and Makucha as to whether and how this letter was going to get into the hands of the Managing Director?---I don't think it was the intention to go to the Managing Director.

10 Why do you say that?---Again, we were talking confidentiality.

So then are you saying, are you suggesting that the words Managing Director was a misrepresentation?---I don't know whether it was a misrepresentation. I think it's, I don't know why it was addressed to the Managing Director. It certainly came directly to me based on our previous discussions.

Did you ask why it was addressed to the Managing Director?---No, I didn't.

20 Mr Harvey, if you could just look at paragraph 1 with me for a moment. It says, Sydney Water Corporation, so that's your employer, represented by you and Mr Makucha as the only shareholder of the Makucha group of companies, have agreed to enter into legally binding relations. Do you see that?---Yep.

You saw it at the time I take it?---I read it, yes, I would've seen it.

30 You must've been alarmed when you read that. Do you agree?---I don't know whether I was alarmed. I think that was, I saw this as an opening proposal where the ultimate outcome would've been to enter into a legally binding arrangement.

THE COMMISSIONER: That's not what it says Mr Harvey. It says we have agreed. That's not a proposal, this is a recording of an agreement?---I think looking at that now, but I think at the time I saw this as an opening, opening proposal.

40 MR PAYNE: Mr Harvey, this letter confirms the following. Point 1, you, on behalf of Sydney Water Corporation and Mr Makucha have agreed to enter into legally binding relations. Did you not understand that at the time as reflecting an agreement that Mr Makucha at least, was saying that you had made?---I, at all times I, I believe I said subject to board approval.

Even subject to board approval, the idea that you would enter into any sort of binding relationship at this time must've been alarming to you surely?---I don't, no, I can't answer that, I'm sorry.

THE COMMISSIONER: Mr Harvey, sorry Mr Payne, Mr Harvey, on page, the second page of this document which at page 292 it has handwriting?---Yep.

Whose handwriting is that?---It's Mr Makucha's.

Does your handwriting appear on this page at all?---I can't see it.

And it doesn't appear anywhere in this letter?---No. No, it doesn't.

10

Thank you.

MR PAYNE: Nonetheless, you're clear aren't you that it was given to you at this meeting that you talked about in paragraph 79 and 80 of your statement?---I believe, I believe so, yeah.

THE COMMISSIONER: Was the handwriting on it when it was given to you or was the handwriting put on it in the course of discussions with you? ---I can't recall. I would imagine it was, it was there.

20

When it was given to you?---That's correct.

MR PAYNE: Yes?---Sorry, Commissioner, I just, I just need to have a short break if you don't mind. Sorry.

THE COMMISSIONER: Yes. We will adjourn for another five minutes.

### SHORT ADJOURNMENT

[11.45am]

30

MR PAYNE: Mr Harvey, I'm just asking you about page P292 contained in Exhibit P126, which is the second page of that letter. Again, paragraph 7 deals with a series of matters to do with taxation and imputation credit. Something that you didn't understand then and don't understand now? ---That's true.

40

Did it cause you any concern that you on behalf of Sydney Water were being given a letter setting out in detail these taxation matters, said to be relevant to Sydney Water?---I don't think it gave me any concern at the time.

Did you even read them?---I normally read the letters, yes.

And having read it and decided that you didn't understand it, did you ask any questions of any person about, for example, imputation credits and how they may or may not be relevant to Sydney Water?---No, I didn't.

Did you see there that there were going to be a group of companies set up and that Mr Makucha's companies were going to be called the Makucha Sydney Water Pty Limited?---That's correct. Yep.

10 It didn't cause you any concern that your employers knew nothing about you having discussions with Mr Makucha setting up a company called Makucha Sydney Water Pty Limited?---As I said, in my mind at the time this was all subject to board approval. So, and, and the, and in order to do that it needed a detailed proposal. This was a, I saw an opening proposal where a lot more information needed to be compiled and put together in a form which could be readily understood.

But you knew didn't you that as this proposal was unfolding, Mr Makucha was actually taking active steps to use the name Sydney Water in various companies that he was having registered?---Yes, I did.

20 Separate legal personalities being created with Sydney Water in the title and, and you chose to tell your employers absolutely nothing about it? ---That's correct.

You knew if they found out they wouldn't of been very happy with you didn't you?---That's correct.

Was there any point in this process up and including when you signed the agreement that we'll come to later today where you thought, I really need some advice of my own about this. I really should discuss it with somebody in Sydney Water?---It certainly crossed my mind a number of times.

30 Why didn't you do it?---I think I was concerned that, that there wasn't sufficient information at that point in time to, to adequately put my case.

Well, didn't you think that if what you'd been doing had come out, let's leave the invoices to one side at the moment. Just these negotiations, didn't you think that if it had come out that you'd been negotiating with Mr Makucha in the terms contained in this letter that your employers were likely to be very unhappy with you?---Yeah, I thought that. Yes.

40 And nevertheless you proceeded with the negotiations with Mr Makucha. Why was that?---That's what's been exercising my mind for a long time. I really can't explain it. I got caught up with a scenario I really didn't know how to get, get off.

You're telling the Commissioner you felt completely out of your depth and powerless to do anything about this. Is that what you're saying?---That's correct. Yes.

And that, for example, when you read all about this tax treatment for Sydney Water, not only didn't you understand it, but you thought, what, that

it was unlikely to matter because Sydney Water would never agree to anything like that?---Look, at that time I, I think I said before, I saw the potential that it had potential benefits for Sydney Water.

10 Just look over the page at P293 for me, Mr Harvey and let's just test that for a moment. At the bottom of paragraph 13, there are a number of proposals set out and described as intellectual property associated goodwill, et cetera. And dropping down to the, the ideas at a high level. The first, selling globally the two separate types and purity of Sydney Water Corporation water being rain, dam, H2O and the osmosis H2O. Such water to be resold globally. Do you see that?---Yes.

What was there in your role as a property manager with Sydney Water that gave you any reason whatever to think that Sydney Water had any interest at all in selling water globally?---I think water being a scarce resource we saw that in the future would be in scarce, scare supply and high demand.

20 THE COMMISSIONER: And what was there about Sydney Water that would've made it attractive to the rest of the world?---Well, I suppose if it was available that and in times of water shortages, it would be valuable.

This was at time when there was drought in New South Wales wasn't it? ---Yeah, there was.

And, and water restrictions were being contemplated?---Also a desalination was being built.

30 I just don't understand the notion that you're going to sell Sydney water to the rest of the world. Do you know what I mean? It's just, I just don't understand it Mr Harvey. Can you explain it? I also don't understand what the quality is about, of Sydney Water that would make it attractive by the rest of the world?---As I said, in times of, where, if supply was limited and Sydney Water had it, it would be attractive. Water is one of those products which are essential to, to all life. It's - - -

Yes, Mr Payne.

40 MR PAYNE: So the circumstances you're telling the Commissioner about is when there is abundant water in Australia and Sydney in particular and, and drought elsewhere, is that what you thought this proposal was about? ---Yeah.

Had you done any research or conducted any, had you conducted any sort of research into whether there ever had been such a situation in the 200 years or so on which record were kept?---No. I think it would've been more looking forward into the future, the potential in the future as (not transcribable) increases.



I'm sorry. What's osmosis H2O?---That's the desalination process.

So you thought did you that desalinated Sydney Water would be resold globally?---It had the potential, yes.

And you thought that you were an appropriate person to negotiate with Mr Makucha about that did you?---No. I, well, I was happy to be a conduit into Sydney Water. What I was looking for was a detailed proposal which could be submitted through the management process to the board.

10

But what's this conduit business? If Mr Makucha's got an idea he wants to put to the Sydney Water board, what was stopping him?---I think, nothing was stopping him. He, we'd built up a relationship through the, the property matter and he obviously thought I was a person who he could talk through, negotiate with.

Who'd do what he wanted. Is that what you're saying?---Oh, I wouldn't put it that way, no.

20

Did you ever discuss with him in relation to these payments that had been made to date, that you were doing it without the authority of your bosses? ---No, I didn't.

You never let him know that?---No.

The second proposition, the nuclear powered ship based floating moveable water desalination plant, so you read that and understood at the time that that was part of the proposal that Mr Makucha was putting to you, that you had agreed to be conduit in relation to?---Yes, that's right.

30

THE COMMISSIONER: Where was this nuclear powered ship going to come from?---Well, most of the, as I understand it, warships are nuclear powered so that for, for, for, and they desalinate water and so it's potentially, if, if there's a shortage that's one way of generating another source of desalinated water.

Was the idea that Sydney Water together with Mr Makucha were going to buy a nuclear powered ship?---That was one of the proposals which were going to be evaluated.

40

And this was a realistic proposition?---Well, I, I, we don't know, I don't know at that stage because we're still subject to further research and analysis. It was an idea. The timeframes for these, not all of these were going to be implemented at the one time, it was potentially a long horizon. These are very much ideas which I thought had some potential. You know, in hindsight you might say that they look way out but - - -

Way out is flattering them.

MR PAYNE: Did you take any steps to investigate whether under the Sydney Water Act Sydney Water was permitted to buy nuclear powered warships?---No.

Well, you knew that they didn't have the power to do that, didn't you, Mr Harvey?---No, I - - -

10 It's absolutely inconceivable that Sydney Water would be buying nuclear powered warships, inconceivable I suggest to you.

MR MAKUCHA: That was never stated.

THE COMMISSIONER: Be quiet, please.

THE WITNESS: As I said, it was an idea.

MR MAKUCHA: Yes, your Worship.

20 MR PAYNE: The third matter, the use of water to increase land value and to turn deserts into arable lands where humans can survive, Sydney Water was going to do that, you thought that was a realistic possibility did you? ---Look, it's a, it's a potential, its potential which they could do.

Did you conduct any research whatever into Sydney Water's ability or interest to be involved in such a proposal?---I didn't make any inquiries, no.

30 You didn't have any idea of the statutory framework in what such a proposal would be considered?---No, I didn't have any thought.

The fourth matter, Makucha Sydney Water Pty Limited will develop chemicals used as medicines and anti-illness additives and nuclear war medicine, again did you conduct any research into whether Sydney Water had the legal ability to be involved in any of these matters?---No, I didn't.

THE COMMISSIONER: Or the expertise?---(NO AUDIBLE REPLY)

40 MR PAYNE: You knew didn't you, Mr Harvey, that, this fourth matter, just looking at this, that Sydney Water could never be involved in a proposal like this, didn't you?---Well, obviously at the time I thought it had a potential. Now whether that - - -

Well, what was the potential for Sydney Water in your mind to be involved in helping to develop chemicals for nuclear war medicine? What, what do you know about such matters?---Nothing.

Nothing at all?---No.

And you didn't conduct any research into the matter?---No, I didn't.

THE COMMISSIONER: And did Mr Makucha tell you that he knew anything about it?---As I said, it was an idea.

Well, did he tell you that he knew anything it?---Well, in terms of having identified it as an idea and potential, I'm just, yeah, look, it's a while ago, I'm just having, yeah, look, I just can't recall the, the conversations.

10 Yes.

MR PAYNE: Looking over the page, these are all matters drawn to your attention at this early stage in March 2009 and you told me before you thought you read this letter and did your best to understand it, correct? ---Yes.

20 So you knew that what Mr Makucha was putting that Sydney Water be involved in the matters 5 to 11 on page P294, can I ask you about the first one, new water forms being luxury waters, what was that about?---An upmarket bottled water I believe.

What was luxury about the bottled water?---Specific additives which would give it a higher value I understand.

Did you conduct any research into whether Sydney Water was interested in any such proposal?---No, I didn't.

Able to participate in any such proposal?---No.

30 Anti-drug abuse water, what's anti-drug abuse water?---My understanding is analysis of Sydney Water's waste water to identify potential drug use through the analysis of the water flowing through the waste water systems.

Do you tell the Commissioner on your oath when you read this you thought it was even remotely possible that Sydney Water was going to get involved in analysing people's sewerage to work out whether there were drugs involved?---Yeah, I saw it as the potential, like Sydney Water analyses its water all the time so with new range of tests it was possible. Like, these were ideas that it was, you know, it was, had potential.

40

Well, Mr Harvey, I want to suggest to you that you knew at the time that it was inconceivable that Sydney Water would get involved in a project that involved analysing sewerage for signs of cocaine and heroin, et cetera, inconceivable?---Well, I don't know, I can't say I saw it at that time as being inconceivable. It was, it had the potential, that's what I keep on saying, like I think at the time, you know, what frame of mind I was in I'm not sure but I didn't sort of say hey, this is completely outrageous, it had potential.

I want to suggest to you it was completely outrageous and known by you to be so at the time, do you agree?---Well, I don't know whether I can agree to that, no.

Let's have a look at number 9, airborne delivery of water, what's, what does that involve?---It would be spray, aerial spraying, the misting of water to produce humidity, that sort of thing, again these were ideas which, you know, Mr Makucha was going to further develop, they were ideas.

10

THE COMMISSIONER: Was Sydney Water going to buy some aircraft? ---Look, I can't remember how it was going to be delivered, it could have been through spray systems, I don't know. That detail hadn't been delineated.

MR MAKUCHA: It was a joint venture company.

MR PAYNE: Number 10, this, Sydney Water was going to be involved in some way via some new corporate vehicle in stopping via court action false and deceptive reselling by inter alia mafia controlled groups and also Mount Franklin, Coca Cola, Pepsi and other brands, do you see that?--- Yes.

20

I want to suggest to you that you knew it was inconceivable that Sydney Water would spend its own money on legal actions of this kind, do you agree?---I don't know whether I can agree because I think there have been cases overseas where different other government agencies have taken action against bottled water companies, basically just rebottling tap water and passing it off as, as spring water.

30 And Mr Makucha's told you about that, has he?---Yes, and I, I, I'd seen some evidence of, documentation which suggested where, where it had actually taken place.

What is there about your role within Sydney Water which equips you to have the faintest idea about whether Sydney Water would be interested in participating about any such court action?---None at all.

You didn't have the faintest idea, did you?---No, I didn't.

40 And when you read that one of the things you were going to be a conduit about was that Sydney Water put money into a company which would sue "mafia controlled groups" I want to suggest to you that you must have been alarmed?---I can't say alarmed but this is some of the language that Mr Makucha would use so I, you know, I'd spent some time with Mr Makucha and heard some of these words so I think it's not always appropriate but, but, you know, I've seen, that's the way it was but certainly with other companies, you know, the concept of mafia controlled groups, I

just sort of put that out of my mind of not really knowing about that but certainly Mount Franklin, Coke and Pepsi are, yeah.

Paragraph 14. You see here that one of the things, you have agreed to join a new board of directors of Makucha Sydney Water Pty Limited. When did you agree to do that?---I, I don't think I, I can't understand that I've, I did that.

10 You told me before you read this letter. Did you remonstrate with Mr Makucha about including that in the letter?---No, I didn't. Well, I'm not, I don't know if it was at this time or not. I said, "Look, all of these are subject to board approval so if the board doesn't want, you know, in terms of composition of who's on boards, that's, that's not my decision."

Do you tell the Commissioner that you had not agreed to joint the board?  
---I can't recall agreeing to it.

20 Is it the case that what you hoped would happen is that Sydney Water would embrace something and that as a result you would become a board member and earn fees? Is that why you were participating in this?---No. Look, I saw that as being completely Sydney Water's decision of, of, of that. I certainly, there was no motivation from me to be a director of any of these companies, I just wanted to make sure that the proposition's got a reasonable hearing and that, so, and, and that Sydney Water had the opportunity to benefit from these.

30 How were you going to arrange a reasonable hearing for proposals like Sydney Water buying its own nuclear-powered warship, how did you plan to do that, Mr Harvey?---Well, the way I, the way I thought about it was in terms of ranking these ideas, there would be a prioritised number of projects based on their returns.

THE COMMISSIONER: Do you have any idea how much such a warship would cost?---Wouldn't have the faintest idea.

40 MR PAYNE: Stay on this page, but paragraph 17 where Mr Makucha is telling you or telling the managing director, attention you, that a shareholders' agreement can be drawn up by out-of-town lawyers or accountants. What did you understand that to mean?---I saw them as being, when I read that it would have been independent lawyers or accountants. I don't know, the term out-of-town, I can't explain.

Well, I suggest to you when you read it you must have understood that what was being said to you is that lawyers not from Sydney would be involved in this?---I, I can't really explain what I, what I thought.

You'd agree with me it's a peculiar stipulation?---Well, if that's, if that's what it means, out of town, I don't know. I saw it as being independent

myself when I read it, but ah, ah, it could be interpreted as strictly out of town so I don't think at this time that Mr Makucha has engaged lawyers or accountants. I could be mistaken.

And then you see he says, "This is a standard type of transaction." Did you read that at the time?---Yes, I did.

10 And I suggest to you, you knew when you read this letter that there was nothing standard about this transaction at all, was there?---Ah, I thought this was talking about the sharehold agreement, shareholders' agreement, so whether, I don't think I was alarmed by reading it.

Well, even in terms of a shareholders' agreement, is there anything that is part of your training or experience which equips you to know what are standard terms in a typical shareholders' agreement for a joint venture? ---I can't say specifically, no, but obviously it's to represent the interests of all the shareholder stakeholders in a way which represents the agreed arrangements. And as I said, that would be produced after Sydney Water's board approach had been achieved.

20

Well, for example, I'll take you to the letter later, but you did not know at the time you entered into the agreement with Mr Makucha what a redeemable preference share was, for example, did you?---No.

So in terms of the capital structure of any joint venture, you were ill-equipped to provide any advice for Sydney Water about what was in its interests or not. Do you agree?---Correct?

30 And again within Sydney Water there are people who understand corporate law requirements in this country. Agreed?---Yes.

You could have asked them for help at any time. Agreed?---Agreed.

You chose to keep it secret from such people?---That's correct.

40 And again, I'm trying to give you every opportunity, Mr Harvey, can you offer any explanation, having read this, in particular the purporting to be legally binding relations and then setting out the scope of those relations, can you offer any reason why you didn't see such assistance at this time or any other time?---I think at this stage it was preliminary, it hadn't been ah, ah, I hadn't had the opportunity to go through this document at the time. Subsequently, yeah, look, I think certainly I should have got advice, but at this point of time it was, it was Mr Makucha demonstrating to me of, of some of the potential of how it, how it could proceed and subject to all that detailed analysis and approvals, that, you know, maybe I was, yeah, that, that's the way I thought at the, I can't, whether I was thinking logically, obviously at that point of time I'm, I can't put myself back at that point of time.

And when you saw at the beginning of this letter recording of your agreement to enter into legally binding relations concerning all of the matters that I've taken you to, do you tell the Commissioner that you did not understand that to mean what it says?---I saw that as being ultimately once all the approvals had been gained.

And did you take any steps to record with Mr Makucha the qualification that you've just given me?---I can't recall.

10

Can we go to P302, which is the second of these letters dealt with in paragraph 80 of your statement. I just want to ask you about one matter?  
---Yes.

In paragraph 2 of that letter, Mr Makucha tells you that, "We need to decide", i.e. Paul Makucha and Mr Ed Harvey, "a suitable new location for the operation of Makucha Sydney Water Pty Limited, a piece of land leased from Sydney Water Corporation." Do you see that?---Yes.

20

Now, I suggest to you that this is a collision between this role that you've taken upon yourself in relation to the commercial negotiations and the job you were given by Sydney Water, namely to get Mr Makucha off Sydney Water land. Do you agree?---Yes.

When you read that, I take it that you realised that you'd put yourself in a hopelessly conflicted position so far as your employer was concerned. Agreed?---I think in regarding to that, as I said, I keep on going back. I saw all these arrangement as being subject to all the necessary approvals.

30

THE COMMISSIONER: But did you tell Mr Makucha that?---I think I did, yes, I said they were all- - -

When did you tell him that?---It would have been when I saw the letter.

You think it would or are you sure?---Oh, well, I, well, in most cases I covered these, I said, "Paul, we need to get board approval, so that's why we need the executive"- - -

40

Well, when did you, when did you say that to him?---On a number of occasions.

When?---I can't remember the specific- - -

But at what stage?---I think all the time from once these negotiations started.

What, the negotiations that culminated in this letter?---Um, yeah, and, and, and subsequently as well.

And what did he say to you when you said that?---Well, that was the whole track of getting the accountants and lawyers involved to prepare, especially the accountants, the executive summary which would highlight the costs and the benefits of all these potential transactions.

The question I asked you was what did Mr Makucha say when you kept telling him that this is subject to board approval?---That's why he was working to - - -

10 No, no, I asked you what he said?---That we will, I'll prepare that.

He will prepare what?---An executive summary of, to back up all the, the deals. And in order to do that he was going to engage Hall Chadwick to give us a fee proposal at some stage which had been approved for that to happen.

And did he comment on the appropriateness or otherwise of getting board approval?---I think he accepted that that was a, that was absolutely necessary.

20

I'm not asking what you think, Mr Harvey. I'm asking you what Mr Makucha said or commented?---Yeah, I can't really recall exactly what he did say.

Did he say anything - - -?---I think he might've - - -

- - - about, about board approval?---He acknowledged that that had to, that had to happen.

30 In what, what, he said words to what effect?---Along the lines of yeah, we'll do that. That's why I need to engage the accountants to prepare the necessary analysis and to prepare the executive summary which would go to the board.

As I understand your evidence, you've said this, you said to him on more than one occasion during the course of these negotiations that this needed board approval?---Yes.

40 So did he get a bit irritated with you for saying this so often once he'd given you a reply?---No, I think what was complicating was that he kept on having additional ideas and wanting to expand it out to, to more, more avenues and potentials.

So when you gave, when he suggested these new ideas was that when you reiterated the need for board approval?---That's right. My word. And I was concerned of how long it was taking.



And what did, and on each occasion, well, what did he say? Did he say anything different on any other occasions to what he said in the beginning? ---I think it was, right, we'll just need to document, get the accountants on board to finalise the executive summary.

Yes, Mr Payne.

10 MR PAYNE: Mr Harvey, can I just take you off on, we've come to the subject of Hall Chadwick and you deal with that for the first time I think in paragraph 82 of your statement?---Yes. Yep.

Where you say there was certainly a lot proposed here and that's after you've read these three letters and the suitcase of documents that you refer to in paragraph 81?---Yep.

Do you see that?---Yes.

20 You need to be specific in your proposal, for instance, you mention land for the bottling plant, what land do you propose? This will need expert advice like accounting and legal advice. Do you see that?---Yes.

Hall Chadwick, I think you told me at the outset were engaged to act for Mr Makucha. Correct?---That's correct.

They were never acting for Sydney Water to your knowledge?---Not to my knowledge.

30 You said you thought these ideas had some merit and you wanted to have them presented to the board of Sydney Water. Even given that, why did you agree to pay anything for Hall Chadwick to advise Mr Makucha?---I saw them as being potentially joint venture costs which would be part of the overall arrangements.

I see. So, so even though you had told Mr Makucha, you just to the Commissioner on many occasions that this joint venture proposal was subject to board approval, you took it upon yourself to make advance payments on the basis that the joint venture would be approved did you? ---Yes.

40 Did you let Mr Makucha know that, namely, that you thought it would be approved and therefore it was okay to make those advance payments?---I don't think I made any comments about it being a fait accompli of being approved. But I suppose I was prepared to take that calculated risk of providing some funds to initiate the, get the proposal moving.

But well, it wasn't your money, Mr Harvey. How could you possibly have come to that conclusion?---Oh, well, I just really don't know my state of mind at the time of how I, I was logically thinking. But I know it was

certainly worrying me that, the path we were heading down that you know, it was, it's very complicated. I just don't know how I, how I got to that stage.

10 Do you accept that agreeing to pay for Mr Makucha's accounting fees is inconsistent with the state of mind that you said that you conveyed on many occasions that nothing could happen about this proposal until there was Sydney Water board approval?---I think in terms of the approval, it was, we needed that advice. Mr Makucha didn't have the resources to procure that advice himself. So I saw it as, you know, I took that, took that on myself to use Sydney Water's funds to do that.

Well, you just told me a moment ago we needed that advice. You didn't need advice at all about because you told me you were just acting as a conduit for some proposal by Mr Makucha that you were in no position to assess one way or the other about the essential elements of it?---I, we needed advice to prove the viability of the joint ventures.

20 I see. So, so by this time in about March, 2009, you had already in your own mind taken it upon yourself to do whatever it took within Sydney Water to provide resources to Mr Makucha so that he could prove any proposal it is that he wanted to make. Is that what you say?---Oh, not whatever resources, but I think there was a proposal, a fee proposal for the executive summary at an early stage, which was a nominal amount. But then it grew and grew and grew so I wasn't really sure what the final outcome was going to be. That's when it was, you know, it just was, it was taking a lot longer than I anticipated.

30 Mr Harvey, what was in this for you?---Nothing apart from, I suppose what I was trying to do was to broker a deal which would have great benefits for Sydney Water.

You agreed with me at least in very substantial aspects of this proposal, you weren't in a position one way or another to work out whether or not there were benefits or not to Sydney Water. Do you agree?---Okay.

40 And even, let's just deal with bottling for a moment. I think you agreed with the Commissioner that, that you weren't in a position one way or the other to work out whether start up company was or wasn't within Sydney Water's interest. Do you agree?---(NO AUDIBLE REPLY)

Nevertheless, you agreed to pay for expert accounting advice for Mr Makucha. Is that because in your mind by this time, you in effect had become a joint venturer with Mr Makucha in this proposal that he was setting out for you?---No. I don't think it was, no, the joint venture hadn't been formed. I, all I can say, I saw the potential.

Can you look over at document P363 and you deal with this at paragraph 87 of your statement. This is a letter again delivered by hand to you although formally addressed to the Managing Director of the Sydney Water Corporation?---Yes.

Again, this letter is confirming a proposed exclusive license agreement, being an essential element of the 49 per cent ownership of Makucha Sydney Water Pty Limited by Sydney Water Corporation. Do you see that?---Yes.

10 So, so the, what you understand at this time was that Mr Makucha was telling you what he was planning to do with various items of intellectual property relating to Sydney Water?---Yes.

And he was planning to do that before there was any board approval of any joint venture. Do you agree?---Yeah, I agree with, yes.

And you knew that he was going to take steps to incorporate companies and take steps to register trademarks before any joint venture proposal was agreed by the Sydney Water board?---There were some steps, some I  
20 weren't aware of.

Well, let's just go through these ones. There's a reference in the second paragraph about payments to be made for exclusive right to use the Sydney Water Corporation, Sydney Water logo in the exact shape of letters, et cetera. You've agreed with me earlier that you knew nothing about Sydney Water's intellectual property portfolio. Correct?---Ah hmm.

Do you even know who was looking after copyright design and trademark matters within Sydney Water?---No, I don't.  
30

You know it had nothing to do with your job though, don't you?---That's right.

And yet Mr Makucha is confirming various payments and licences to a company called Makucha Sydney Water Pty Limited and the use of intellectual property somewhat surprisingly described as registered under the Federal Copyright Act at the bottom, do you see that?---Yes.

There's no part of your role to make any such agreement with Mr Makucha?  
40 ----(NO AUDIBLE REPLY)

Did you tell him that?---Again, I saw this as being elements of the, the approval which we go forward.

And you thought that all the steps that Mr Makucha was taking in registering companies and approaching patent attorneys about trademark issues and so on which would involve a registration of trademarks, you thought all of those things happening before there was any agreement

ratified by the board of Sydney Water was okay from your point of view, did you?---I don't know whether I thought it was okay, some, some steps had been taken without my knowledge but I suppose it was again, it was just, it was moving ahead at, at different, on different aspects so it was, it was becoming more complex, you know, I certainly, yeah, this was part of an ongoing flow of information and documentation which Paul was providing to me.

10 THE COMMISSIONER: Mr Harvey, as I understand it, Mr Makucha was incurring expenses during this period before you had got board approval, is that right?---That is correct, yes.

Those expenses involved registering companies?---I'm not sure of all the expenses that - - -

20 Well, what were the sort of things he was doing that resulted in expenses being incurred by him?---The main one I think was getting accounting and legal advice and there was a proposal to engage a patent attorney or something like that. Now, I'm just not clear in my own memory of - - -

Was he registering designs?---I think there was, whether it was a design but a logo or - - -

Registering trademarks?---It could have been a trademark I think.

Incurring expenses in that way as well?---Yeah, but I don't think, there was no great expense I don't think.

30 Did it trouble you that he was incurring the expenses before there was an agreement, that is approved by the board?---Yeah, I suppose it did, yeah.

Pardon?---Yes.

Did you warn him?---I was concerned it was taking longer and that, you know, these costs were getting out of hand because initially I think the executive summary was - - -

40 But did you warn him? Did you say to him Paul, look, these expenses are getting out of hand, you, do you know that there's no board approval, this money might all be wasted, did you say that to him?---I can't recall it, no.

Why didn't you?---I don't know.

Mr Harvey, the impression I get, please correct me if I'm wrong, is that you did all of, your part in these transactions and your binding Sydney Water was all done by you of your own free will?---I believe so, yes.

You weren't threatened?---No.

You didn't regard yourself as being influenced by Mr Makucha, did you?  
---No, I didn't.

You just did it on your decision?---That's correct.

Without any pressure?---I suppose the only pressure would be that, that if the deal doesn't proceed it's going to be, you know, yeah, difficult.

10 You weren't bullied?---I don't believe so, no. I was frustrated by the process I suppose, that's what I was.

MR PAYNE: Can we look, turn over to page P365 in the top right-hand corner and you deal with this at paragraph 88 and you'd made a handwritten connection, correction to 366?---Yes.

That's actually incorrect, it should be P365 as it originally - - -?---Yes, okay.

20 - - - was written there, do you agree?---Yes, that's right.

This is the fifth payment you have made to Mr Makucha or authorised to Mr Makucha or his interests, correct?---Yes.

And again you knew that Sydney Water wasn't obliged to make any such payment?---That's correct.

30 And you were causing Mr Makucha to be provided with funds to which he was not entitled and without you he wouldn't have received?---That's correct.

And again this is the last of the payments making up the 27,500 but again the condition precedent that Mr Inberg had laid down, namely that Mr Makucha leave the premises before he get a cent from Sydney Water had not been met?---Yes.

40 You say in paragraph 91 that when you made the first of the \$5,000 payments you believe the payment would ensure Mr Makucha would leave the premises in a prompt manner, by the time you made this fifth payment you knew (a) that hadn't happened and (b) it wasn't going to happen didn't you?---I suppose there was still a, yeah, I think at this stage I knew it wasn't going to happen.

Because you were dealing - - -?---That's right.

- - - in a fairly intense way I suggest to you - - -?---Yeah, that's right, yeah.

- - - by this stage with Mr Makucha - - -?---That's right.

- - - about his proposed joint venture and you were I suggest to you taking extraordinary steps to ensure that Mr Makucha was assisted in putting together whatever proposal it was Mr Makucha wanted to put together and you'd do all that you could to use Sydney Water funds to funnel them to Mr Makucha so that he could develop that proposal?---That's correct.

10 And you regarded yourself by this stage as an integral part of a team with Mr Makucha in putting together a proposal which would one day go to Sydney Water?---That's correct.

Can we then, can I take you next of all in this document to 368 and this is one of the letters that Makucha gives you, Mr Makucha gives you in the last week of 2009 and you deal with this in paragraph 92 of your statement. So as I understand it you'd have these face to face meetings with Mr Makucha and he'd give you a series of letters at the meeting. Is that, is that right? ---That's correct, that's correct.

20 He would never post them to you or email them to you at Sydney Water, they'd always be hand delivered would they?---That's correct, yes.

Did you regard that as strange?---No.

Why not?---To my knowledge Mr Makucha didn't have email and he always liked to be able to talk through the, through what he'd presented to me.

30 Mr Harvey, if there was nothing that you understood be improper or unacceptable contained in these proposals what reason can you advance for you being the only person within Sydney Water who was permitted to know about them?

THE COMMISSIONER: And when they were addressed to the managing director?---I think as I said previously Mr Makucha was concerned about his ideas being exploited by others if, until an arrangement was executed so - - -

40 Did you ask him why the letters were being addressed to the managing director when you were forbidden to show them to the managing director and when they were given to you alone?---No, I didn't.

MR PAYNE: Can we just look then at this document at P368. Have a look at the third paragraph. Mr Makucha is confirming to you that an essential requirement of the new consolidated entity, Makucha Sydney Water, is that the company structure permits and is capable of being listed on various world stock exchanges, Sydney, New York, China, Dubai, Hong Kong, London and the purpose of listings would be an IPO which he explains to you is an initial public offering of shares in Makucha Sydney Water. Do you see that?---Yes.

Did that alarm you, Mr Harvey?---I don't think so.

Had you ever been involved with anything at all in the entirety of your career which involved the creation of a corporate structure capable of being listed on world stock exchanges like that?---No.

This was far and away beyond your understanding. Do you agree?

---I agree.

10

And yet you are having it confirmed by Mr Makucha that that's an essential requirement. Do you see that?---Yes.

Why didn't you get some advice at this point about this matter if you really thought that this was something that you could ever take to the board?

---I don't know.

20

Have a look at the fourth dot point, "The structure of Makucha Sydney Water must be able to utilise the tax treating existing between Malaysia and Australia at the time." You didn't know anything about tax, did you, Mr Harvey?---No, I didn't, no.

Did you even know whether there was a tax treaty between Australia and Malaysia?---No.

And you've got no idea what it provides, I take it?---No.

30

And then go over, at page 6, Mr Makucha is going to provide you at an appropriate time a copy of legislation in place between Australia, Malaysia and USA. Did you read this letter?---I believe to.

What did you understand that to mean, paragraph 6?---What it says, that sometime in the future Paul would, Mr Makucha would provide copies of that legislation.

What legislation?---In place between Australia, Malaysia and the USA.

Did you know whether there was any such thing?---No.

40

If there was any treaty to which both Australia and Malaysia were parties in relation to tax matters with the United States?---No.

Paragraph 7, you see the tax treaty benefits there described were discovered by Mr Makucha in a project he undertook in partnership with the state department of the United States involving the aerial delivery of jet fuel from Turkmenistan to Afghanistan. Were you alarmed when you read that?---No.

Did you think that your superiors within Sydney Water might be alarmed if they knew that what was being proposed was some sort of tax arrangement between Australia, Malaysia and the United States?---Um, only in the fact if it was illegal.

Do you know anything about Sydney Water's taxation position?---No, I don't.

10 Do you know, have you got the faintest idea whether the Sydney Water Board would be prepared to involve themselves in some proposal involving the use of tax treaties between Australia and Malaysia and Australia and the United States?---I don't know.

And when you read this letter, did you say anything to Mr Makucha about the matters contained in it?---I can't recall specific discussions but I know there was general discussions about taxation and all those issues and they needed to be drawn out as part of the proposal in a, in a way that could be readily understood.

20 But not by you?---No, not, not by me, no. Oh, sorry, in terms of so it could be understood by whoever was reading the, the business case or the executive summary.

Did you ever get an executive summary or business case dealing with taxation matters that you understood?---No.

Can you look over at page P370 in that bundle?---Yes.

30 Which is a letter from Hall Chadwick addressed to Mr Paul Makucha and Sydney Water Authority. Do you see that?---Yes.

You received a copy of this letter, didn't you?---Yes.

And again it was handed to you by Mr Makucha as you, as you recall?  
---That's correct.

40 Although addressed to the Sydney Water Authority, your understanding is that Mr Makucha got a copy and handed it to you rather than it being posted to Sydney Water Corporation as would be in the ordinary course of dealing with accountants, you'd agree?---That's right.

You understood that Hall Chadwick were acting for Mr Makucha and nevertheless were providing details here in relation to various taxation matters. Do you see that?---Yes.

You weren't in a position to understand one way or the other about those matters, were you?---No, I wasn't.



And yet if you turn over in the document to P374, you are acknowledging on behalf of Sydney Water Corporation and putting your property asset manager stamp, you're acknowledging receipt of this letter and of the undertaking in it to make payment for this advice to Mr Makucha aren't you?---I'm certainly acknowledging receipt. That's all.

Why do you think you're being asked to acknowledge receipt, Mr Harvey?  
---I guess so that Mr Makucha had a track record of what documents he'd provided to me and that I'd actually seen.

10

Well, Mr Makucha is acknowledging receipt as well. Do you see that?  
---Yeah.

THE COMMISSIONER: Well, it doesn't say acknowledging receipt. It just says acknowledged.

MR PAYNE: Yes. Quite so, Commissioner?---Or I was acknowledging receipt of it.

20

THE COMMISSIONER: And why, why do you say that? Does it, there's nothing in the letter that suggests that's the only purpose of your acknowledgement?---Well, that was certainly my intention, sir.

MR PAYNE: And you agreed didn't you by that acknowledgement to pay Mr Malacco and Hall Chadwick's fees for doing things that you understood to be for Mr Makucha. Correct?---That's correct.

30

THE COMMISSIONER: You were binding Sydney Water?---Subject to invoices, yes.

Did you have authority to do that?---I don't believe so.

MR PAYNE: Yes, I notice the time, Commissioner.

THE COMMISSIONER: Mr Payne, I just, just looking at the information of other counsel who are here, your continued examination of Mr Harvey, will that extend beyond the basis of the statement which has been tendered?

40

MR PAYNE: No.

THE COMMISSIONER: No. I need to know from counsel, I notice that some are not here - - -

MR PAYNE: I had a discussion with, with Mr Gleeson and Mr Thangaraj, and they didn't propose to ask Mr Harvey any questions. They were only going to be here for their client's evidence.

THE COMMISSIONER: Mr Stevenson, are you in a position to let me know how long you'll be in questioning Mr Harvey?

MR STEVENSON: Yes, it will depend a lot on what Mr Payne covers.

THE COMMISSIONER: Well, he'll cover what's in the statement. You can take that as being the case.

MR STEVENSON: Another hour or so beyond that.

10

THE COMMISSIONER: I beg your pardon?

MR STEVENSON: Another hour or so, you mean - - -

THE COMMISSIONER: An hour. That's how long you'll need.

MR STEVENSON: Or so, perhaps longer.

20

THE COMMISSIONER: Yes. I'm afraid that this inquiry is going to, I've got to, I'm going to have to give counsel time, all counsel time for examination. So I need to do that fairly before fixing times, I need to know how long you want. Perhaps you can tell me after lunch.

MR STEVENSON: Yes, thank you, I'll do that.

THE COMMISSIONER: Yes, Mr Gordon?

30

MR GORDON: Yes, Commissioner. If I could also advise after lunch. I do need, as you know I've only been in this very shortly, instructed in fact yesterday.

THE COMMISSIONER: Yes.

MR GORDON: I'd value the opportunity of having some discussion with the client at the luncheon adjournment.

THE COMMISSIONER: Yes, certainly.

40

MR GORDON: I've had (not transcribable)

THE COMMISSIONER: I would be, I have to tell you, I mean if I, trying to work out the time that we have available, I would be unlikely to agree to more than two or three hours.

MR GORDON: I don't think I'd need anything like that.

THE COMMISSIONER: Well, I appreciate that. Mr McIlwaine?

MR McILWAINE: I don't expect to have many questions at all if any.

THE COMMISSIONER: Well, on that basis, subject to anything that Mr Stevenson by saying how long Mr Payne will be, I would hope to, that Mr Harvey's evidence will be finished before the end of the day tomorrow.

We'll adjourn until 2.15pm.

10 **LUNCHEON ADJOURNMENT**

**[12.49pm]**