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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 21 SEPTEMBER 2010

AT 2.00PM

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

THE COMMISSIONER: Mr Harvey, I understand the reason for your frequent adjournments so whenever you have a need to go just let me know?---Thank you.

MR STEVENSON: Could Mr Harvey be shown Exhibit P130 please.

THE COMMISSIONER: P130? That's the Outdoor Advertising?

10 <EDWARD KENNETH HARVEY, on former oath [2.00pm]

MR STEVENSON: Yes. Now, the Commissioner's remarks then leads me to (not transcribable). Do you see on the front page of P130 someone's written the date 14 May, 2009?---Yes.

Is that your handwriting?---No, I think that's Paul Makucha's.

20 And was it Mr Makucha's practice so far as you knew to date documents that he handed to you?---In most cases, yes.

So may the Commissioner take it that it looks as if this bundle was given to you on 14 May, 2009 assuming Mr Makucha was following his usual practice? Correct?---That's right.

Do you agree, you need to - - -?---I agree, yes.

30 Now, the idea of Mr Makucha submitting invoices to you for Outdoor Advertising didn't arise did it until well after 14 May, 2009?---That's correct, yes.

It was around July 2009 was it not?---I believe so.

So is it the case that these, this bundle of diagrams that Mr Makucha gave you was concerned with the possibility of bottling water and not anything to do with any outdoor advertising?---My recollection is this was part of the way of marketing the bottled water by having advertising structures at strategic locations.

40 But looking through the bundle you see that for the most part what we see are some pictures of bottles?---Correct.

And I'm just wondering what it is about this bundle of documents that makes you think that it had to do with outdoor advertising as opposed to Mr Makucha's dream of bottling water under the Sydney Water logo?---I think apart from these, like these documents weren't specifically in terms of the Outdoor Advertising consultancy I don't think, there was other sketches and information which Mr Makucha had provided me. There was a volume of

his previous projects in the Mascot area and then there were other pretty basic sketches of I think South Dowling Street and Gardeners Road at Mascot which aren't included in here.

Right. Well, the first invoice you got from Mr Makucha about outdoor advertising was, you can take it from me, 23 July, 2009?---Yeah.

10 And you got this document some two months before that?---Well, I'm not quite sure when I received, citing them so the only indication I've got here is that, that date so whether I saw them at that date I can't confirm.

And do I understand that your evidence in response to questions Mr Payne put to you was that you thought that this document Exhibit P130 was some work that Mr Makucha had done in relation to the outdoor advertising idea?

THE COMMISSIONER: The bundle?---Yeah, the bundle. Look, I think it, it related to some of the outdoor advertising concepts so that's all I can say.

20 MR STEVENSON: Isn't this the case though that Mr Makucha provided this bundle Exhibit P130 to you quite some time before the idea was born of invoices for Outdoor Advertising? Isn't that correct?---I, I'm not sure, as I said I'm not sure when I actually received those, these documents, I remember seeing them but whether it was on that date I don't know.

Isn't the true position that in fact Sydney Water received no value at all from Mr Makucha for any of the work done and the various invoices he sent which purported to be in respect of outdoor advertising?---I think there was some nominal value.

30 Do you agree with me it doesn't find its representation in Exhibit P130?
---Look, it's, it's, it's very basic, that's for sure.

So what's very, what do you mean by that?---Well, it's, it's initial concept, that's all and I was certainly looking for more in terms of, which would give some value to Sydney Water. This, this was, as I said, very basic.

40 But overall you agree don't you that these series of invoices that Mr Makucha sent you in regard to Outdoor Advertising were a contrivance that he proposed and you agreed whereby money could be paid by Sydney Water to him between July and January, July 2009 and January 2010?
---Yes.

It was a fiction wasn't it?---Well, I think certainly, you know, yeah, we certainly received no great value, that's for sure.

None I suggest, is that fair?---I think as I said it would be some nominal, you know, there was some, some advice - - -

THE COMMISSIONER: Did you do anything with it, with the material that Mr ?---I think certainly with the, the general arrangement of structures which had been done at Mascot we certainly applied that through one of the sites we were - - -

I beg your pardon?---One of the sites we were investigating at Rookwood Road at Potts Hill for proposed signage I worked in with a guy called Peter Byrne at Sydney Water and gave him some advice based on how potentially advertising structures could be erected on that site along the lines of what
10 Mr Makucha had proposed at Mascot.

When did you do that?---I'm not sure of the date, it was some time in 2009.

What did you tell Mr Burnie?---I beg your pardon?

What did you tell Mr Burnie?---Mr Burn, I, I - - -

Mr Burn?---Mr Burn, I showed him some of the arrangements of existing signage and how they could be applied to that particular site.
20

Existing signage at Mascot?---That's correct, yes.

And what has the existing signage in Mascot got to do with Mr Makucha?
---Well, it was his signage. He provided a portfolio of the projects which he'd completed at Mascot.

And did he give them to you?---Yes.

Where are they?---At Sydney Water I believe, it's a big glossy A, bigger
30 than A4.

MR STEVENSON: So when do you say you got that document?---It was pretty much around the time when the consultancy started.

And where did you put it?---It was in my, the cabinet behind my workstation.

THE COMMISSIONER: Did you show it to anybody?---I certainly, yeah, I showed it to a couple of people, yes.
40

Who?---I think Peter Burn and maybe a couple of my colleagues at Sydney Water.

What are their names?---It would have been David Innes and maybe Colin Caudrey.

And what did you say to them about this?---I said this is a portfolio of information which Paul Makucha has given me of his past projects.

So this is just, it was a portfolio of past projects?---That's correct, yes and it did have information on rentals which were achieved at that time so - - -

But that had nothing to do with the design for Sydney Water advertising?
---Not, not, well, it showed some of the concepts which could be applied, Commissioner.

10 But this is all work he'd done in the past?---That's correct, yes.

It's not work that he'd done for you?---Not, well, not, apart from give me the information, that's right.

Yes, Mr Stevenson.

MR STEVENSON: So he was simply showing you was he earlier outdoor advertising which had featured on his billboards?---Correct.

20 You know, don't you, that Mr Makucha provided no services of any value to you or Sydney Water concerning any outdoor advertising by Sydney Water don't you?---I think as I said before very nominally, there were some sketches, this information here so yeah, very nominally.

Well, the sketches you nominated yesterday I think, correct me if I'm wrong, were those in Exhibit P130?---That's correct, yes.

30 But these don't relate to outdoor advertising do they, they relate don't they to the packaging of water with the Sydney Water logo, bottled water?
---Well, it was, well, it was, the advertising structure was based around these bottles. I think the triangle shows how it could be basically positioned so it had three dimensions to it.

Well, if the Commissioner examines the pages in Exhibit P130 he'll find out, will he, as to what Mr Makucha conveyed to you about how to advertise it?---On these diagrams here?

Yeah?---Yeah.

40 There's nothing else, is there?---As I said there were some other sketches for Gardeners Road and Mascot which I don't think are included in here.

THE COMMISSIONER: That's past advertising?---No, this was for some Sydney Water sites at Gardeners Road and also South Dowling Street. Once was a vacant site and the other one had a large pump house building.

Did he provide you with any feasibility studies?---Not, no, he didn't.

And did he provide you with construction and long term rental agreements for outdoor advertising?---No, he didn't.

Did he, did he provide you with designs for outdoor advertising?---Not what I'd call designs, no, just very basic concepts for a couple of sites.

And consultancy services?---Not to speak of, no.

10 So if you turn to page 627 please, do you have that, Mr Harvey?---Yes, I do now.

Look at item 2?---Yes.

In this item this charge of \$18,000 for example is for six months' - - -?
---Yes.

- - - work and the work is described as firstly consultancy services which you say you didn't get, is that right?---That's correct.

20 With designs for outdoor advertising which you say you didn't get?
---Apart from some very basic concepts, that's right.

No feasibility studies?---No.

And no construction long term rental agreements for Outdoor Advertising?
---That's correct.

30 Where did you get the wording from for item 2? Sorry, this is Mr Makucha's wording isn't it?---That's correct. Yes.

Yes, thank you.

MR STEVENSON: Did Mr Makucha discuss with you what wording should go in invoices such as the one on page 627?---I think from memory that they, I, we had a general discussion about what could be the scope of a consultancy and it was, those words are basically in line with that.

40 So are you saying that you and he had a discussion about what words should go in the invoices for Outdoor Advertising and between you you agreed on what wording to - - -?---No. I can, all I can remember is talking about the potential scope. Mr Makucha prepared the invoice. I had no real input into the preparation of the invoice.

No. But the wording in paragraph 2, you agree that the wording in paragraph 2 appears in each of the invoices he sent you - - -?---That's correct.

- - - in relation to this Outdoor Advertising idea?---Yes.

And isn't it the case that you and he agreed on what that wording should be?---I don't know about the specific wording. We spoke about the concept. That's, that's all and Mr Makucha put it into the words.

And well, he suggested the words and you agreed with them?---I agreed that that would be the scope of the consultancy, yes.

10 Well, you knew that there was no real consultancy didn't you?---Ultimately, but at the time I certainly was, my concept was was certainly to get those services, but I didn't.

It was a device wasn't it to use the word in your statement, a contrivance to - - -?---Well, I - - -

Just let me finish. A contrivance whereby a document could be created which would be the source of a payment of funds to Mr Makucha?---Yeah, ultimately, that's right.

20 THE COMMISSIONER: And by the time these invoices were sent you knew that what, that the services for you were being charged had never been provided?---That's correct.

And Mr Harvey, what is also the variance approvals mean in item 2?---That would've been statutory approvals like from councils or Department of Planning.

30 He charged you for getting the approvals from councils for the, for the advertising?---Well, that's part and parcel of the, any advertising structure. It's a major component getting the necessary approvals.

And did he get any approval?---No he didn't, no.

MR STEVENSON: Well, you knew he didn't intend to didn't you? It was part of the contrivance?---Well, no, I can't agree with that, sorry.

40 THE COMMISSIONER: But you were being charged on 3 December, for example, for services that had already been provided didn't you? Or was this for work in the future?---That was basically the total scope of work, you know, to be done.

MR STEVENSON: This was (not transcribable) Mr Harvey, you're being charged on 3 December for work to be done in January the next year? ---That's basically it, yes.

And the document says that, in paragraph 2, it's for a six month consultancy services commencing on 1 July, 2009. Do you see that?---Yes.

And that would finish on 31 December, 2009 wouldn't it?---True.

And he's charging you at the beginning of December, 2009 for work beyond on a six month consultancy?---Yes.

THE COMMISSIONER: That hasn't been done?---That's correct.

10 MR STEVENSON: And you knew it wasn't going to be done?---Well, I don't whether it wasn't going to be done. I had, you know, I, it was certainly, yeah, that was my intention to have it done.

THE COMMISSIONER: So you were paying in advance?---Under this arrangement, yes for services that hadn't been provided, yes.

MR STEVENSON: No services had ever been provided by Mr Makucha in relation to any of the invoices he sent you concerning Outdoor Advertising?---That's correct.

20 It was a fiction?---Yes.

It was a device that you and he agreed as a means to get Sydney Waters money into his pocket. Correct?---It was a mechanism, yes.

THE COMMISSIONER: And the reason why it was \$18,000 was to ensure that you could get it through Sydney Waters procedures?---Not necessarily. Look I, it was basically in line with what Mr Makucha's expenses were I think, that's what it was.

30 Expenses, is that a serious answer? A truthful answer?---Well, that's how it started, yeah.

What expenses? What \$18,000 was in line with his expenses?---Yeah. Living expenses.

His living expenses?---That's correct.

Why were you paying for his living expenses?---Well he didn't have any resources.

40 So why, why does Sydney Water got to pay for him, for him to live?---So we could progress the, the joint venture agreement.

Mr Harvey, this is a fairy story?---Well, that's, that's the reality, sir, sorry.

MR STEVENSON: You were by December under his spell weren't you, Mr Harvey?---You could put it that way, I don't know whether it's spell but certainly I was, you know, I didn't have control of the situation.

I don't mean as in a fairy story but you were doing his bidding and you felt unable to resist any request he made of you?---Yeah, true.

THE COMMISSIONER: And so the \$18,000 reflected in these invoices was his living expenses?---Correct.

What, for the month?---Yeah.

10 It cost him \$18,000 a month to live?---That was my understanding, yes.

Is that at the Hilton?---I, I don't know it was at the Hilton at the time but it certainly Fraser Suites I think, that's where he was at that time.

MR STEVENSON: It was also to help him pay his creditors wasn't it?
---Possibly, I don't know what creditors were around at that time.

20 Well, can you look at Exhibit P127 at page 623. This is one invoice you received in the second half of 2009 that did not purport to be only in respect of outdoor advertising?---That's correct.

Because in item 4 there's a charge of \$50,000 which of course is for the, \$50,000 for something called Makucha Group records from 1985?---That's correct.

And the invoice does refer at paragraph 2 to the consultancy services?
---Yes.

30 And that's the same formula that was in each of the other invoices from July 2009 to January 2010?---That's correct.

But in fact the only matter that was the subject of this invoice in substance was the \$50,000 figure plus GST for Makucha Group records?---Yes.

Now, you knew that Mr Makucha was not providing Makucha Group records from 1985 to that value didn't you?---We'd received that documentation I believe earlier on so it was a post-payment for it.

40 But you knew didn't you when you received this invoice that Mr Makucha wasn't really seeking for \$2,000 for his group records he wanted money to assist in paying his creditors?---Yeah, I recall that one, yes, there was a creditor who was commencing proceedings and, that's right.

And the reason you knew that was because that's exactly what he told you?
---That's correct. On this occasion here, that's right.

If you could just open up this exhibit, if you go to 258?---Yes, I've got that.

The conversation about those invoices on page 75 isn't it?---That's correct.

Mr Makucha said, "I've got a problem, I've got a creditor chasing me for money, they're taking bankruptcy proceedings against me and I need funds to get rid of them." See that?---Yes.

"What's all this about, Paul" you said, "I'm not sure I can help you out." See that?---That's correct.

10 Of course you did help him out didn't you?---Ultimately, yes.

By paying him the \$55,000?---That's correct.

Causing Sydney Water to be paying the \$55,000. Do you agree with that? ---That's correct.

20 He said, "The thing is, Ed, there were going to be bad consequences for the joint venture proposal if they bankrupt me, the accountants and lawyers are telling me there will be issues about whether we can still use the \$2 million tax losses." You understood to mean if he went bankrupt?---Yes.

So what he's saying to you is I've got \$2 million tax losses which somehow he was trying to persuade you Sydney Water could use. That's the first thing?---Yes. Yes.

He was saying that Sydney Water may not be able to use those tax losses if he went bankrupt?---Yes.

Correct?---That's right.

30 And he says, "Obviously is we can't, that is, if we can't use the tax losses the whole deal will fall over." Correct?---That's my recollection, yes.

And as Mr Makucha was explaining things to you the only basis upon which he thought this joint venture could go forward was if he could somehow organise for \$2 million in tax losses that his companies had sustained be used to the advantage of Sydney Water?---That's correct.

40 And did you play your mind to what accounting process would have to be engaged in to achieve that result?---No, I didn't.

Did it occur to you being a problem in the extreme that tax losses that Mr Makucha's companies had sustained if they had sustained them could ever be used by a state owned corporation in a joint venture?---I hadn't got detailed advice, no. No advice at all.

It didn't strike your mind as being fantasy?---I wouldn't call it fantasy, I, you know, thought it was a potential.

He goes on to say, "It's in everyone's interest that I can make this go away," he meant this creditor who was chasing him. See that?---Yes.

And you understood he meant it was in his interests that the creditor go away or his company?---Yep.

It wasn't in Sydney Water's interest was it that his creditor go away?
---Well, I think it certainly not directly but if it progressed to the ultimate conclusion which we were aiming for Sydney Water would get some benefit
10 out of the joint venture agreement.

It would've saved you some grief if he had've gone bankrupt wouldn't it?
---I don't know, I really don't know.

And he goes, he went on to say, "The creditors want over \$100,000 but the lawyers reckon I can make this go away and a payment of \$50,000 to the, sorry, with a payment of \$50,000 to the creditors then the lawyers will want \$5,000 in fees so I need \$55,000."?---That's my recollection.

20 And then you said, "That's a lot of money, Paul, I'm not sure but I'll see what I can do, if you print me another invoice then it might go through because the present invoices were acceptable but it's a question of whether or not it gets through accounts payable, if I can put it to them they might reject it, we'll see." See that?---Yes.

What you're suggesting to Mr Makucha was you'd see whether you could get another receipt under the radar in the accounts department. Correct?
---Yes, that's correct.

30 You weren't sure that you would be able to?---That's correct.

You deliberately chose didn't you the figure of \$50,000 because you knew that was the upper limit of your delegation to submit invoices to the accounts department without producing an external contract?---Well, the actual invoice was for 55,000 not 50,000 so - - -

40 Didn't you understand that your delegation was that you could authorise a payment without there being a formal contract, the value of the payment was \$50,000 plus GST?---Yes, I do, yes.

Isn't this the case, you proposed to Mr Makucha a figure which was I think upper level, uppermost level of your delegation?---I don't think I said yes to the amount, \$50,000 was what Mr Makucha was, the 55,000 was what Mr Makucha was seeking, I didn't sort of say to him that that was the limit.

Do you say it was a complete coincidence that the figure that Mr Makucha nominated happened to be to the very dollar the upper limit of your delegation?---I believe so, yes.

Surely it's the case isn't it that you had discussed on this or some other occasion with Mr Makucha what your upper level of delegation was so that he could know where the line had to be drawn?---I certainly can't recall that conversation.

Likely isn't it?---I, I, I, I can't - - -

10 It would have to be coincidence otherwise wouldn't it?---No, well, I certainly can't recall discussing my limits with Mr Makucha.

You agree that it was your idea that he put in an invoice for the figure of \$50,000 plus GST?---I think that's why I was saying that that's what you're looking for, I'll see if I can get it.

And you knew that by submitting that invoice to what I'm calling the accounts department, I'm sure it has a more sophisticated name, you were misrepresenting to it what the reason for the payment was?---That's correct.

20 THE COMMISSIONER: Do you know why Mr Makucha sent a copy of all his invoices to Mr Malacco?---I don't know the reason why but he was Mr Makucha's accountant so he was probably keeping him informed of what was transpiring.

MR STEVENSON: (not transcribable) page 623 and that's a stamp that you apply to the invoice for submission to the accounts people?---That's correct. Yes.

30 And you've written as a description "Real estate advice in relation to outdoor advertising."?---That's correct.

Well, that was false to your knowledge wasn't it?---Well, that was the account I was putting it towards, but yes, certainly the description was more than Outdoor Advertising, yes.

Well, it's worse than that isn't it? The, the bill, this fake bill from Mr Makucha was in fact for Makucha Group records from 1995, that was the - - -?---Sure.

40 - - - that was the \$50,000 wasn't it, plus GST?---That's correct.

And of course you didn't get any records from Mr Makucha did you of the kind described in paragraph 4?---I believe we did. That was in early, it was a suitcase with a lot of documentation, yes.

It was a suitcase, that's the suitcase from back in April or May that he came in with on an earlier occasion?---That's correct. Yes.

So the idea is that Mr Makucha sends you a bill for material already provided and dresses it up in the way we see it a paragraph 623?---Yes.

Did you feel trapped at this stage in Mr Makucha's web?---To a certain extent, yeah. Yeah, certainly at this stage it was, yeah, really worrying me.

And is this the case, that you did expect to be discovered at any moment?--It was always on my mind.

10 Because each time you put these invoices into the accounts department you knew you were being, you putting them in on a false basis?---That's correct.

And don't you agree that you were ensuring that each of the invoices was below \$50,000 so that you would keep, as it were, under the radar?---Look, I, I'm not quite sure what my mind was at that stage. I think it, on the face of it it looks like that, but I think certainly in this case here, that's what, the amount Mr Makucha thought he needed. You know, whether it's coincidence or not, I really don't know. I certainly, as I indicated before, I don't think I ever said to him, Paul, we can't put in any more the \$50,000
20 through.

So you don't think you said that?---I don't think I said that, no.

But you knew didn't you that if a figure of more than \$50,000 went through you'd have to produce evidence, you'd have to produce a contract?---That's correct.

Between Sydney Water and whoever it was?---That's correct.

30 And you knew your choice was either to create a fake contract with Mr Makucha or keep the invoices under 50. Correct?---That's correct.

And weren't you waiting for the knock on the door from someone at Sydney Water?---It was always on my mind.

And ultimately the knock on the door came in the form of Ms Valentine's email in January didn't it, January, 2010?---That's correct.

40 And were you relieved when you got that email?---I don't know whether I was relieved.

It was over?---Sorry?

That it was over?---Well, I can't say I was relieved, but ultimately once the whole thing was out in the open, it was, that was a relief, yes. You know not a nice consequence, but it certainly was a, it relieved some of the pressure I suppose. It created other pressures, but - - -

All right. I just want to ask you some questions about the trademark issue. And could you close that folder up and could Mr Harvey be shown Exhibit P127. I just want to show you some documents leading up to something. Sorry, could Mr Harvey be shown Exhibit P126. Can you turn to page 363 when you get it?---363?

Yes. It should be a letter from Mr Makucha to you of 17 March, 2009?
---Yes, I've got that.

10 You may have been shown this, but can I just ask you some questions about it. Now you see Mr Makucha opens his letter in his usual way by saying the letter confirms various things?---Yes.

The first thing he confirms is that the proposed, this is paragraph 1, the proposed exclusive license agreement described here is an essential element of the 49 per cent ownership of Makucha Sydney Water Pty Limited by Sydney Water Corporation?---Yes.

20 And then in paragraph 2, looking a few lines down, he says that some money will be paid in arrears for the exclusive right to use the Sydney Water Corporation, Sydney Water logo in the exact shape of letters and words as are the combination. And also to use the same colours as are now used by Sydney Water. Do you see that?---Yes.

So what he was proposing to you was that a company that he controlled would use the Sydney Water logo that I showed you this morning, which is in Exhibit P137?---Yes.

30 Didn't that strike you as a bizarre suggestion?---Again, this was part of an ongoing development of a proposal. So that's, that was a proposal which would need to be evaluated.

All right. And is this right, consistently with Mr Makucha's usual practice he would make a proposal to you verbally and then write a letter in turn suggesting that you had already agreed to what he proposed?---In some cases, yes.

Well, that was his technique with you wasn't it?---True.

40 And looking over the page at page 363, 364 sorry, paragraph 3, he says that Makucha Sydney Water Pty Limited use, I think he means will use this logo upon, upon bottled water, pre-packaged water, et cetera. Do you see that?
---Yes.

Had you agreed to that at this point?---I don't believe so. This was part of the proposal the proposal.

And in paragraph 4 he says, Sydney Water Corporation and its successors, whoever they may be, will not object in any way at any time or take any legal action that Makucha Sydney Water Pty Limited add additional words and so no. Do you see that? And he writing to you as if that's agreed isn't he?---I don't think so. I think it's a proposal.

And in paragraph 5 he says Sydney Water Corporation will not stop any process used or developed by Makucha Sydney Water or its successors et cetera, for enhancing "Sydney Water"?---Yes.

10

Again, isn't he, he's writing to you as if this was something to which you have agreed?---Again, I saw that as part of the ongoing development of a proposal.

Didn't it occur to you that Mr Makucha might've been setting a trap for you by writing letters to you, asserting you'd confirmed matters which on your evidence you hadn't?---Look, I don't know what Mr Makucha's objectives were.

20

Couldn't you see that he was spinning a web for you to be trapped in?---I, I don't think so. I thought it was, you know, I had an element of belief in the concepts which he was trying to promote. And we were working together to get it to a point where we could get some approvals.

Right. Can you turn to page 408 in that bundle. This is a couple of weeks later, this is 2 April?---Sorry, 408?

408. It's a letter to you dated 2 April, 2009?---I don't have 408.

30

THE COMMISSIONER: This is another bundle is it?

MR STEVENSON: Sorry, thank you. It's in the next bundle. Exhibit 123. Have you got page 408?---I've got 408, yes.

Just in paragraph 1, Mr Makucha tells you he's going to approach Spruson & Ferguson, one of the patent attorneys?---Yes.

Other trademark and patent attorneys were mentioned to you weren't they later, including Griffith Hack?---Yes.

40

And others?---Yes.

And in paragraph 4 he says, registration of the trademark logo Sydney Water will be to Sydney Water Corporation then to Makucha Sydney Water Pty Limited?---Yes.

And again you see he opens the letter by saying, "This letter confirms the following?"---I see that, yes.

Were, were these matters, especially the matter on paragraph 4, matters that Mr Makucha had discussed with you before you got this letter?---I can't recall honestly, there was a lot of discussions going on about certainly the trademark logo, I won't dispute that.

10 In your wildest dreams did you think you had the authority to deal with Mr Makucha in relation to Sydney Water's logo?---Not myself personally, no. As I said before, I saw myself as a mechanism of getting the proposals to the, to the, through the management hierarchy.

Well, who was it in management that you think you would need to have, sorry, from whom would you need authority to permit anyone but Sydney Water Corporation to use its own logo?---It would be the managing director or the board, I'm sure the board.

You knew that you didn't have it within your authority to make any commitment - - -?---That's correct.

20 - - - about the Sydney Water logo?---That's correct.

I'm going to show you a folder of documents, some but not all of which are in the bundle, we don't have other copies at the moment, they're coming so for the benefit of others gathered I'll use a reference to the exhibits so far tendered when I can. You see behind tab 1, Mr Harvey, is a document which is at page 461, for the benefit of others, in Exhibit P127. This is a letter you created, is it not?---That's correct.

30 Did Mr Makucha dictate to you the form of this letter?---I believe so, yes.

Did he write it out for you?---I can't recall. We certainly would have discussed it, there may have been some dot points.

And you see in the first line you say, "Sydney Water Corporation wishes to amend the existing trademarks to include the water that is provided and owned by Sydney Water Corporation," you see that?---Yes, that's correct.

40 You knew that was false, didn't you?---That's right, yeah, because it, yeah, it was, yeah, certainly Sydney Water Corporation at that point weren't wishing to amend it, yes.

Well, no one at Sydney Water Corporation had said anything to you about amending its existing trademarks?---That's correct.

MR MAKUCHA: Can you just repeat that?

MR STEVENSON: No?

MR MAKUCHA: I couldn't hear, sorry?

THE WITNESS: I said that's correct.

MR MAKUCHA: No, before that.

MR STEVENSON: No one at Sydney Water to your knowledge wished to amend its existing trademarks, you agree with that?---That's right.

10 So far as you knew?---That's, yeah, that's right, as far as I knew no one at Sydney Water wanted to amend those.

And of course it was no part of your functions as a property asset manager to have anything to do with Sydney Water's intellectual property, including its trademarks, was it?---That's, that's true.

And you then said, "I wish to confirm that Sydney Water hereby appoints Mr Makucha to instruct selected lawyers to register all classes of water by way of amendments to the following existing trademarks?"---Yes.

20

Now, you had no authority as you understood it to appoint Mr Makucha to do that?---No.

And was this language he suggested for you to append your signature to?---I believe so, yes.

And the details of the trademarks that appear, are they details that Mr Makucha gave you?---Yes.

30 Because you didn't have the faintest idea, did you, whether trademarks so described were in fact ones which had the description adjacent to them?---I can't recall whether I actually saw the documentation relating to those, I did see some, whether it was those particular ones.

THE COMMISSIONER: Did you have the number of the trademarks in your, the numbers of the trademarks in your possession?---I think it was some documentation, some printouts of the actual trademark registration or information that - - -

40 Did you have that in your possession?---I think Mr Makucha had that, not me.

Is there any way in which you could have got the details of these trademarks from anyone other than Mr Makucha?---I'd say I could have searched them, there was a - - -

Well, did you?---No, I didn't, no but as I said I think I actually saw evidence of the particular trademark, that's all, I can't, I remember seeing some of that documentation, whether it related to these I'm not sure.

I take it you wouldn't have remembered, having seen the documentation you wouldn't have remembered the numbers of the trademarks?---No, oh, no, that's right, no. Look that information here was given to me by Mr Makucha.

10 MR STEVENSON: This is an example of you taking dictation from Mr Makucha, isn't it?---Yes.

And this letter that you've signed was, I want to say it is intended that the amended trademarks will only be used by the authorised licence holder of the trademarks and that the proposed licence holder will be a joint venture company of Sydney Water Corporation and Sydney Water P Pty Limited and there's an ACN number?---Yes.

20 And all of that wording was provided to you by Mr Makucha, wasn't it?
---That's correct.

And you say Sydney Water would be responsible for payment of any agreed fees, once my approval to the proposed engagement is provided, see that?
---That's correct.

So you were holding yourself out, weren't you, as being a person whose approval was sufficient, was necessary and sufficient for an engagement in relation to these trademarks?---Yes.

30 So you were on a frolic of your own, weren't you, when you wrote this document?---Sorry, a?

Frolic of your own?---I'm not quite sure what you mean a frolic.

You were, you were not engaging in any conduct within your areas of responsibility within Sydney Water?---True.

And that you were doing Mr Makucha's bidding, correct?---True.

40 What was in it for you?---Apart from hopefully achieving some recognition for doing a, for generating additional revenue for Sydney Water through a joint venture, that was all. I suppose, trying to think about it, yeah, I was I suppose driven by the need to, for recognition.

What, within Sydney Water?---That's correct, yes.

By delivering some commercial bonanza to Sydney Water?---That's correct.

Is that what you thought?---Yes.

And you agree in retrospect it was a fantasy, don't you?---In retrospect and hindsight, but I suppose the veracity of the proposal still hadn't been really tested so I, you know, the ultimate potential I don't know.

Could you keep that in front of you but also now look at Exhibit P127, if you go to page 468.

10 THE COMMISSIONER: Is that page 2 of this bundle? I don't mean to confuse you, Mr Stevenson, I just don't know whether I must go to that bundle or to that page or I must just follow the order of the order of the pages you've given me.

MR STEVENSON: Commissioner, I'm asking the witness and may I ask you to just put the slim volume to one side and go to Exhibit P127 and go to page 468. Do you have page 468?---I do.

20 So it's another to whom it may concern document?---Yes.

And just so you understand where I'm trying to place you, behind tab 1 in the slim folder was a to whom it may concern document you signed on 14 May - - -?---Yes.

- - - 2009 and I'm drawing your attention now at page 468 of Exhibit P127 to another to whom it may concern document you signed four, which is dated four days later?---Yes.

30 And again is this, is this wording, wording which was put to you by Mr Makucha?---I, I believe so, yes.

Mr Makucha is the author of this wording not you?---That, I may have massaged it slightly but the intent was certainly drafted by Mr Makucha.

Because so far as you knew it wasn't true to say as you've said in the first paragraph that Sydney Water Corporation wished to create a registered trademark?---That's correct.

40 You understood didn't you that the Sydney Water logo which I showed you this morning in Exhibit P137 was already a registered trademark of Sydney Water Corporation?---I, I, well, I wasn't sure whether it was registered or not so - - -

Well, certainly as at 18 May, 2009 you didn't think that Sydney Water Corporation needed to do, sorry, to take any further step so far as concerns registration of any trademark?---I think the, it was to include as it's saying there the water that is provided and owned by Sydney Water Corporation. My understanding was that the water wasn't covered.

If I can follow you. So you thought that it was okay for Mr Makucha to use Sydney Water's logo in relation to what, the actual water as bottled as opposed to coming out of a tap. Was that the idea?---No, no, well, my understanding was that the trademark didn't include the water.

The water in the dam?---Well, in the pipes or whatever, yes, that's right.

MR MAKUCHA: Water is not included in the trademark at all.

10

THE COMMISSIONER: Will you please be quiet.

MR MAKUCHA: Forgive me, sir.

THE COMMISSIONER: If you interrupt again I'll have to ask you to leave the room.

MR MAKUCHA: Please forgive me, sir, I'm only trying to - - -

20

THE COMMISSIONER: Please try and, I understand that you have an intense interest in what's happening, Mr Makucha.

MR MAKUCHA: You can believe that.

THE COMMISSIONER: But please try and control yourself.

MR STEVENSON: But you understand that what Mr Makucha was telling you back then as opposed to what he was trying to tell you just then that he thought that his company could become the owner of a trademark in accordance with the Sydney Water logo that would give him some proprietary rights in relation to the actual water flowing through the pipes? ---No, that wasn't my understanding, I think Mr Makucha identified an issue with the trademark and this was in order to create a new trademark which included the water and that was a value adding to the trademark.

30

Did he tell you he thought he'd found some loophole?---If you want to call it a loophole or an admission or a, a shortfall that was the revelation, yes.

He had probably done some search of the, what we used to call the Trademarks Office, the IP Australia I think it's called now to see whether Sydney Water had a trademark registered in respect of water itself?---I believe so, yes.

40

And he was proposing to you was he that the actual Sydney Water logo used on all its infrastructure and all the correspondence you send out could be what, appropriated by him and used in relation to the sale of the water itself?---Ultimately that was one of the proposals, yes.

In a joint venture vehicle of which you would be a director?---That's right. No, I don't think I was, it had been never agreed to, there was a director of the (not transcribable) charitable trust I believe.

And you might be a director of that company?---Sorry?

And you might be a director of that company?---That was one of the proposals which I said was always subject to Sydney Water board approval.

10 THE COMMISSIONER: I just don't understand how it was contemplated that this revelation would work?---In terms of the valuation of the trademark if there was, as it existed with not including the water it would be valued at X, with the inclusion of the water component it would be X plus a, whatever percentage which would be subject to evaluation to ascertain that.

And Mr Makucha was going to obtain the added value himself was he?
---Well, the joint venture company.

20 Joint venture company?---That's correct.

And so the joint venture company would obtain some benefit - - -?---That's right. For the value adding of that, the amended trademark.

Sydney Water would pay it?---Would pay for the registration.

Yes. For the added value?---I, I can't the mechanism that there was, yeah, there was some - - -

30 But somehow or another there was a benefit that would accrue to the joint venture company?---That's right.

MR STEVENSON: And of course he was insisting wasn't he that you keep all of this secret from anyone else at Sydney Water Corporation?---At this stage, yeah.

And in particular he was asking you to keep it secret from your supervisor Mr Inberg?---Correct.

40 THE COMMISSIONER: But this was something that had the potential if everything he said was right to harm Sydney Water because if unbeknown to Sydney Water the joint venture added was value it could be, it would get the benefit of that and if Sydney Water knew the true position it might be able to protect itself and stop the joint venture from doing it?---Potentially, yes.

That's why he wanted to keep it secret I suppose?---(NO AUDIBLE REPLY)

And you understood that?---Not at that time along those lines.

But later you did?---I think ultimately, yes.

The reason to keep this secret was to allow the joint venture to make money at the expense of Sydney Water?---Not necessarily, well, - - -

10 I thought that that's what you agreed that Sydney Water would not know that there was this loophole or admission or whatever it was regarded and that the joint venture could take advantage of it?---Both, both, both parties, yes.

20 MR STEVENSON: But you understood, and we'll get to this, but you understood as at May 2009 when these to whom it may concern documents were being dictated to you by Mr Makucha that his plan was that the joint venture company or the company Sydney Water Pty Limited would become the owner of the trademark Sydney Water as depicted in Exhibit P137 didn't he?---Sorry, P137? Okay, yep. Look, to be honest the mechanisms, ultimate outcomes hadn't been clearly delineated through an executive summary so it was, you know, it was still quite a complex proposition which - - -

THE COMMISSIONER: This was really all beyond you and you didn't understand its implications. Is that what you're saying?---Yeah, not in the format, yeah, that's right, I was looking for, everyone would've been looking for a clear explanation of the costs and benefits of, of these arrangements and the impacts of each individual component. It certainly was a very complex arrangement.

30 MR STEVENSON: But can I just suggest to you that this letter that Mr Makucha dictated to you on page 461 of Exhibit P127 isn't terribly hard to follow. It's these elements isn't it, first - - -?---Sorry, 468 is it?

461?---461, sorry.

First, looking at the first - - -?---461. Yes.

40 The first paragraph he's got you saying, "Sydney Water wishes to amend its existing trademark to include water."?---That's correct.

That's the first thing?---Yes.

So the implication is that Mr Makucha dictating these words to you didn't think Sydney Water had a trademark which concerned water itself?---That's correct. That was my understanding.

Yes?---Yep.

And next looking at the third bottom line. "It's intended that the amended trademark", that is the ones with the Sydney Water logo but amended to include water itself, right, the Aqua Pura would only be used by Sydney Water P Pty Limited?---Yes.

And of course at that stage that was the company so far as you knew solely owned and controlled by Mr Makucha?---At that stage, yes.

10 So that's what he was telling, that's what he was dictating to you, you should put in a letter that he would then take to whom it may concern?
---That's right. In order to - - -

Because the idea of this letter of at 461 was that you'd give it to Mr Makucha and he would deal with it as he wished?---Well, yeah, in terms on engaging whatever expertise to, to amend the trademark and have them registered.

20 Well, did you give either of these To Whom It May Concern letters to, to anyone?---No, I didn't, no.

You gave it to Mr Makucha?---That's correct.

And you had no control over who Mr Makucha gave them to?---No.

But you expected he would give them to amongst other things patent and trademark attorneys didn't you?---That's correct.

30 So at the same time he's telling you to keep it a secret from anyone else at Sydney Water?---Yes.

And you had agreed to do that?---Yes.

And you did?---Yes.

40 And you could see couldn't you that what Mr Makucha was intending to do was to create a situation where a company he controlled owned the trademark which was identical to the Sydney Water logo for use by him in relation to bottled water?---Well, through the joint venture company which ultimately would be jointly owned between Sydney Water and Mr Makucha.

But not as you understood it until the trademark was registered in the name of this proposed joint venture company?---True.

And not before you told anyone else at Sydney Water what was going on?
---Yep.

Do you agree?---I agree.

Did it not occur to you that it would be necessary for someone on behalf of Sydney Water to tell the trademarks Commissioner, whatever he's called, that Sydney Water consented to this idea?---I wasn't aware of the process, so it hadn't crossed my mind.

Well, did it not occur to you that some form of consent from Sydney Water would be required in order that its own logo be used by someone else in relation to bottled water?---Well now that you put it to me, I, I can accept that. But at the time it hadn't crossed my mind.

10

All right. Don't you recall being asked to create a document which gave such consent?---Yes. But as to the consequences, I wasn't, it hadn't crossed my mind.

Wasn't it obvious to you from what Mr Makucha dictated to you on this document at page 461, that he was planning to apply for a trademark in his own company's name which included the very Sydney Water logo that's on, on that page, at page 461?---Yeah, I can see that. But what I was looking at was the joint venture company.

20

But when in your mind was the existence of this joint venture company going to be revealed to anyone else at Sydney Water?---Once there was a fully documented executive summary, which could be provided through management to the board.

And once the trademark was registered in Mr Makucha's company's name? ---In terms of the timing of the registration, I'm, that wasn't clear to me.

30

But isn't it quite clear, sorry, wasn't it quite clear from what Mr Makucha dictated to you in this document at page 461 that his plan was to get the trademark registered in his own company's name first and (not transcribable)?---Well, it wasn't, it wasn't clear to me at that point in time. It says to engage a consultant to do certain things. As to the timing of it, is, is certainly not clear to me in terms of this documentation.

All right. Looking at that slim folder you have there?---Yes.

Could you go to tab 2?---Yes.

40

THE COMMISSIONER: Mr Stevenson, will we finish, will you finish with Mr Harvey today?

MR STEVENSON: I think so, yes.

THE COMMISSIONER: I think you should try very hard if you don't mind.

MR STEVENSON: Yes. I'll take that as a direction.

MR MAKUCHA: Excuse me.

MR STEVENSON: Mr Makucha is trying to talk to me, Commissioner.

MR MAKUCHA: (Not transcribable).

MR STEVENSON: For the benefit of those who don't have this folder, I'm
10 sorry about this, the document I'm now going to go to is at page 469 of
Exhibit P127.

THE COMMISSIONER: I don't know if Mr Makucha has that.

MR MAKUCHA: I don't. I think it'd be fair if I had a copy. (not
transcribable) please get another one.

MR STEVENSON: For the record, the document I'm going to is at page
469 of Exhibit P127.

20 THE COMMISSIONER: Right. If Mr Makucha is going to be prejudiced
by not having it there, then I think that we should stop this examination and
continue on Thursday when it is there.

MR STEVENSON: Now for Mr Makucha's benefit the document is behind
tab 2 of that folder he's just been given. It's also in another folder he has
which is Exhibit P127, page 469. So that should be clear. Now Mr - - -?
---Excuse me, can you just repeat that?

30 The document I'm going to Mr Harvey, is behind tab 2 of the slim folder
you have before you?---Yes, I've got that.

Another copy is at page 469 of Exhibit P127?---Yes. Yes.

Now, see this is a, what appears to be a retainer and cost agreement with
Griffith Hack?---Yes.

And you'll know that they are patent and trademark attorneys?---Yes.

40 THE COMMISSIONER: I will not hear you if you, speak to Mr Gordon.

MR MAKUCHA: Mr Gordon, Commissioner (not transcribable)

THE COMMISSIONER: I'm not, I, if - - -

MR MAKUCHA: That's (not transcribable)

MR GORDON: Commissioner, I do apologise. Can I just have a moment
to take an instruction, please.

THE COMMISSIONER: Yes. Look I, this is - - -

MR GORDON: I wonder, Commissioner, if I could ask for five minutes.

THE COMMISSIONER: Yes. I will give you five minutes. But this is very unusual conduct by a person before the Commission and I will give you the five minutes, but that's not to be regarded as a precedent.

10 MR GORDON: No, I understand. I'm grateful. Thank you.

MR MAKUCHA: Thank you.

SHORT ADJOURNMENT

[3.12pm]

MR GORDON: Commissioner, thank you for your indulgence. I am grateful.

20

MR MAKUCHA: Likewise.

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Mr Harvey, can you go to the slim folder?---Yes.

Tab 2 is the Retainer and Costs Agreement with Griffith Hack?---Yes.

A copy of which is also at P127 at page 469?---Yes.

30

If you turn the pages you'll see there's some writing, some of your handwriting on the last - - -?---Yes.

The second and third-last page?---That's correct.

Now, the first paragraph starting Sydney Water - - -?---Yes.

Just see if I can read your writing, "Sydney Water requires a specific free proposal that identifies the specific deliverables and estimated costs for its deliverable?"---Yes.

40

And I think they're words you composed?---That's correct.

The balance of the handwriting at the bottom of that page and over the next page is dictated to you by Mr Makucha, correct?---I think so, yes.

All right. Well, just so you can be sure, can you go to your statement?---I don't have a copy.

THE COMMISSIONER: Mr Stevenson, we've lost time if you need to go on Thursday it will be in order.

MR STEVENSON: I really am hoping to finish with Mr Harvey today, Commissioner. Page 36, paragraph 131 of your statement is where you deal with this document. Have you got that?---Sorry, what number was it again sorry?

10 Para 131?---131, sorry, I misunderstood. Yes, I've got that now.

So you see you say on a meeting on 20 May, 2009 Mr Makucha gave you this Griffith Hack - - -?---Yes.

- - - Retainer and Costs Agreement?---Yes.

And over the page at page 37 of your statement there's a conversation and ultimately you say, "Well, Paul, you just dictate to me what you think the proposal is?---Yes.

20

This is your idea approaching these people?"---Okay, yeah.

And then in paragraph 132 you say you wrote the annotations, the first paragraph which I've just read out to you you wrote yourself?---Yes, yes.

Those are your words?---Yes, yes.

And the rest is dictated by Mr Makucha?---Okay, yeah.

30 And let me see if I can read your writing, it says, "The objective of the engagement is to register the trademark of the Sydney Water brand of bulk water as transmitted and communicated by pipes, valves, et cetera but also registration of the trademark for bottled water using its own brand of water as delivered by its own transmission pipe and delivery system, communication system et cetera, bottle Sydney Water, packaged," I think it says "can" does it, "be sold?"---"Can only be sold."

"Can only be sold by a licensee of Sydney Water brand being Sydney Water P Pty Limited?"---Yes.

40

And then over the page, "Sydney Water (SWC) confirms that the intellectual property in relation to these trademarks for the use of Sydney Water for bottled packaged water sales is the intellectual property (IP) of Paul Makucha and he will assign at fair value of the IP to the joint venture company which is to be owned by Paul Makucha and Sydney Water Corporation?"---Yes.

You see that. Now, this is material dictated to you by Mr Makucha?

---That's correct.

Was it your state of mind that the intellectual property and these trademarks was Mr Makucha's intellectual property?---I can't recall, Mr Stevenson, I think the objective of what I was trying to get there was a fee proposal which was specific out of Griffith Hack at the time. Mr Makucha wanted to amplify this, I think it was, whether it was to give more scope to Griffith Hack in understanding what the, what the engagement was about?

10 But you signed this document as you can see, twice?---Yes.

And you gave it back to Mr Makucha?---That's correct.

And didn't you expect that he would take it to at least patent attorneys Griffith Hack?---Yes.

And represent it, so represent your signature as being Sydney Water's authority to act in regard to this proposed trademark as Mr Makucha was suggesting?---Well, I don't know what Mr Makucha would have done with
20 the document, sorry.

Well, what was your state of mind as to what you were doing by writing out these words and assigning them?---It was to expand the, the brief to Griffith Hack.

Because you knew you had no authority to commit Sydney Water to the matters that your words suggest here, didn't you?---That's correct, yes.

And didn't you tell Mr Makucha that over and over again?---I did from time
30 to time but I don't think I did on this occasion.

Well, what did Mr Makucha tell you he was going, what did Mr Makucha tell you he was going to do with this endorsement you'd made at the end of the Griffith Hack retainer agreement?---I don't think he told me anything about what it was, he was going to do the, the objective was to get a revised engagement proposal from Griffith Hack.

And weren't you concerned that you were by giving Mr Makucha this document arming him with a document that he could use to represent to
40 others that you on behalf of Sydney Water had given him authority in terms of this document?---Well, it's handwritten, it's not on a Sydney Water letterhead, it's my signature of course but it's not, I just thought the only one who will see this document is Griffith Hack.

And did you, sorry, didn't you become aware that in due course this document that you wrote out and signed was submitted to IP Australia as being Sydney Water's consent to the registration of Sydney Water's own

logo as a trademark in the name of Mr Makucha's company?---No, I was completely unaware of that.

Did Mr Makucha ever tell you that that's what he intended to do?---I don't think so.

10 So when do you say you found out, if ever, that this document had been submitted to IP Australia as being Sydney Water Corporation's consent to the registration of its own logo as a trademark in Mr Makucha's company's name?---I can't remember when I saw the document, I think it's when it ah, when the actual registration had taken place and I don't think it was even done by Griffith Hack, I'm not quite, I just can't remember what, so it came as a complete surprise to me that it actually had gone through and I still, certainly I wasn't aware that this had been used as Sydney Water's consent, which I find pretty amazing really, it's, you know.

20 THE COMMISSIONER: What do you find amazing?---That IP Australia would see this as being a Sydney Water consent. This was, you know, something which was attached to a letter, a retain and cost agreement.

MR STEVENSON: But you see it's written, although in your handwriting, in informal terms, is it not?---(NO AUDIBLE REPLY)

That is your handwritten endorsement?---It is, it is, yes.

30 And what you've written is that Sydney Water confirms various matters? ---Well, yeah, if you took that, if you cut and pasted it, maybe, but I'd still find it pretty amazing that a statutory authority would accept something which is just handwritten.

THE COMMISSIONER: Do you find it amazing that Mr Makucha submitted it to IP?---Yes.

Why do you find that amazing?---Well, it certainly wasn't the intention. This was to ah, was to ah, get a revised quotation from Griffith Hack. That was the objective of this as far as these were, were just- - -

40 How do you know that that was the objective?---Well, that, that's, well, the process was that (not transcribable)

Did someone tell you that?---No. I think, you know, Mr Makucha would have said, look we've got a retain and cost agreement from Griffith Hack, I had a look at it and all it had was hourly rates, so it certainly wasn't specific on how much, how many hours were going to be involved, they didn't know whether it was a ten-minute job or a twenty-hour job. That was my reaction. And then I think then Paul said, well, can we add this to it, just to give clarity as to what, what the objective of the engagement is? I thought

that this purely document here was to procure a revised fee proposal from a consultant.

MR STEVENSON: You were putty in his hands, weren't you, Mr Harvey?
---I don't know whether I'd use that term.

We'll go to tab 3 of the slim folder, and this document is also at pages 475 and 476 of Exhibit P127. Do you recognise this as a letter that Mr Makucha wrote to you around 22 May, '09?---Yes.

10

You'll see in paragraph 1 he says, "The letter of instruction for registration of trademarks provided to Paul Makucha to confirm his authority to instruct Trademark and IP Lawyers so as to obtain legal global registration has partially omitted to clearly confirm to the trademark and patent lawyers that Paul Makucha is the owner of this intellectual property as it has been an original creation of his mind to register the water and the osmosis-produced water to be covered by the Sydney Water trademark and so on." See that?
---Yes.

20

Now, did you take Mr Makucha there to be referring to those To Whom It May Concern documents that we've just been looking at?---Ah, I'm not sure. I'm - -

Well, you see in paragraph 2 he says, "I require written confirmation of the two letters of authority for Paul Makucha to instruct Griffith Hack Patents Lawyers." They were the two To Whom It May Concern documents we were just looking at, were they not?---That's correct, yes.

30

And he goes on to say in paragraph 3 that, "The two letters of 14 May and 18 May", which we've been to- -?---Yes.

- - "are required to clearly state and confirm that the trademarks of the water as supplied by Sydney Water are the intellectual property of Paul Makucha." See that?---Yes.

But you knew that you couldn't give that confirmation, didn't you?---That's correct.

40

Because you knew it wasn't the fact that at least then the trademarks, being the Sydney Water logo, were Mr Makucha's property. (not transcribable)?
---That's correct.

And over the page at paragraph 6, Mr Makucha says that the two letters of instruction, which we've been to, are required to be changed to clearly state that Paul Makucha owns the IP of the marks. Now, my question is, did that happen?---I don't know. I can't, you know, there's a lot of documents. I can't ah, I can't recall it but ah, as I said, there was a lot of documents prepared so I really can't confirm or- - -

By the way, in the bottom right-hand corner there are some initials. Are they yours or is that Mr Makucha?---Ah, they're not my initials. I'm not sure whether they're Mr Makucha's so- - -

Well, they're not yours?---No, not mine.

Going to tab 4?---Yes.

- 10 This is a version of your To Whom It May Concern letter with Mr Makucha's writing all over it?---Yes.

Now, did he give you this?---I believe so, yes.

And you see what he says on the top is, "Attention Mr Ed Harvey. Not to be relied upon until these amendments are included", being amended to confirm that Paul Makucha is the IP lawyer's client and the marks are the IP of Paul Makucha?---Yeah.

- 20 See that?---Yep.

And at the bottom of the page it says Paul Makucha will assign his IP in the trademarks and associated goodwill to the (not transcribable) Company, Sydney Water P, Pty Limited?---Yeah.

Did you create a version of this To Whom It May Concern letter that reflected these notations that Mr Makucha made?---I don't know. I can't. I can't recall.

- 30 Is it your memory that this annotated copy of the 14 May 2009 letter was an instruction or request from Mr Makucha that the document be changed in accordance with his notes?---Well, it certainly appears that he was requiring to be changed. I really can't remember whether I, I changed it at that time.

All right. Going to tab 5. Now, this is a letter from Hall Chadwick to amongst, marked to your attention?---Yep.

You'll see on the next page you'll see you've signed it?---Yes.

- 40 THE COMMISSIONER: How did you get it?---Ah, I'm assuming it was hand-delivered by Paul and we- - -

MR STEVENSON: That's how all, sorry - - -?---Yes.

You see in the first paragraph, Mr Malacco, who has written this letter, says that he refers to recent conversations with Mr Makucha that have a (not transcribable) as a result of Sydney Water Corporation letter, August 2009, addressed to Mr Steven Vonmunster, signed by you, whereby Mr Harvey

indicated that Sydney Water had appointed Mr Makucha to act on behalf of Sydney Water in relation to trademarks et cetera. See that?---Yes.

10 We've not been able to locate the 3 August letter, but does this letter, does this letter from Mr Malacco remind you that you did write a letter on 3 August, 2009, addressed to a Mr Steven Vonmunster, who you can accept from me is from IP Australia?---No, the name doesn't ah, ring a bell with me, but again there was a lot of correspondence so I, I, I can't recall the, writing that letter, but I could have, I don't know, I just really, the name doesn't ring a bell.

Well, do, are you able to deny writing a letter to IP Australia or the Trademarks Office as it used to be called?---Yeah. I certainly, to my full knowledge I didn't write any letters to IP Australia.

You certainly know that?---Well, I'm 99 per cent. I think something like that would have- - -

20 We can't find one so- - -?---That's a pretty good indication.

And I can't show you one. Well, are you able to, you received this letter obviously 'cause you've signed it?---Yes.

And if you hadn't sent a letter to IP Australia as this first paragraph suggests surely you would've made some protest to Mr Malacco about that?---Sorry. Mr Vonmunster part of IP Australia.

30 You can assume that, yes?---Well, that sounds like it's something which Hall Chadwick gleaned from a conversation with Mr Makucha, you know.

But it's not just that, Hall Chadwick are writing a letter addressed to amongst other people you?---That's correct, yes.

Which you've acknowledged receipt of speaking about a letter that they said you'd written to Mr Vonmunster on 3 August, 2009?---I'm saying I certainly can't recall that name or IP Australia.

40 THE COMMISSIONER: This couldn't have been given to you in Hall Chadwick's offices could it?---I don't believe so.

See, it's dated 6 August and it's acknowledged by Mr Makucha on that date and acknowledged by you on that date?---Yes.

If it was (not transcribable) to you by Mr Makucha he must've got it from Mr Makucha and brought it to you all on the same day?---That happened at times, yeah.

MR STEVENSON: Because you did go did you not to Hall Chadwick's office on one occasion?---On one occasion, I think it was in September.

That was the occasion wasn't it where you told Mr Malacco that you did not have delegated authority to sign the agreement concerning any joint venture?---I believe so until the board approved it, yes.

And you told Mr Malacco that in Mr Makucha's presence?---Yes.

10 Correct?---Yes.

You place that meeting do you in September not August?---I believe so, yes.

How are you able to be sure about that?---I think at the time when I was going through the documentation with Glynn Watson that it was confirmed by I went back to my computer diary and ascertained it there.

All right. Now, this is obviously before then, this is early August 2009?
---That's correct.

20

And you see in paragraph 3 Mr Malacco says that Mr Makucha had advised presumably him from conversations with you that subsequent to the letter of 3 August, 2009 that the letter incorrectly referred to the ownership of the intellectual property belonged, sorry, that the ownership of the intellectual property belonged to Sydney Water, the letter also incorrectly inferred that Mr Makucha was acting as an agent for Sydney Water. Do you recall such conversations?---No, I don't.

30 And Mr Malacco says he understands from Mr Makucha that Sydney Water is in the process of issuing a corrected letter that indicates that the ownership of the intellectual property is that, is with Mr Makucha. See that?---Yes, I can see that but I, I, I certainly can't recall that.

And you see in the bottom paragraph Mr Malacco asks that the front page of this letter and the acknowledgement on the second page be signed which you've done?---In December, yeah.

40 In December?---I think that, agreed to the signing of the confidentiality agreement, that was the - - -

No, no, no. Bottom paragraph of Mr Makucha's letter 6 August?---Bottom paragraph, yes.

It's requested that the front page of this letter be initialled?---Yes.

And you have initialled haven't you?---Yes, that's right.

And the acknowledgements on the second page be signed. You've done that. See that?---Yes.

On 6 August, 2009?---Yes.

The copy of (not transcribable) returned to this office as an acknowledgement that the items indicated in this letter are in accordance with your understanding. See that?---Yes, I do.

10 So didn't you mean to initial the bottom of the first page and sign the second page to signify to Hall Chadwick that your understanding was as they have set out in this letter?---I think I was acknowledging receipt of the letter.

But Mr Malacco asked you to sign not just to acknowledge receipt but to acknowledge that what is in the letter is in accordance with your understanding?---I can't explain.

Why is that?---I can't explain, sorry.

20 Do you recall sending any other correspondence or getting any other indication to Hall Chadwick or anyone else that you consented on behalf of Sydney Water to Mr Makucha getting a trademark registered in his company's name?---No, I can't but again there was a lot of documentation, I can't, unless I see the documentation I'm at a loss to know exactly what letter I sent over the years.

30 Just so it's on the record the document at tab 5 of this thin bundle is not in the other exhibits. Can I show you this document which is, Commissioner, one of the ones discovered this morning. Mr Harvey, do you see this is another letter from Hall Chadwick addressed to you. You'll see on this copy you've not, you don't appear to have signed this one?---No.

Do you recall receiving it?---Not this letter, no, I don't, it's got a copy there but, no, whether I received it I couldn't say, I certainly haven't signed it so I haven't acknowledged receipt of it, it was Mr Makucha.

THE COMMISSIONER: Where was it found, Mr Stevenson?

40 MR STEVENSON: It was, I have to tell you this was discovered in Sydney Water's records, that is, your records?---Right.

Which can I suggest to you suggests that you received it?---Okay, yeah.

But it's your position that you can't recall receiving it?---No.

You see that the first paragraph refers to conversations between Mr Malacco and Mr Makucha, so it's not you, that have arisen as a result of

correspondence between you and Mr Vonmunster?---Mmm. I can see that, I don't recall the name.

So it does look as if that first paragraph is a retype of the first paragraph of the 6 August letter that I just gave you?---That's right. Yes. Yes.

THE COMMISSIONER: It contains the same spelling mistakes.

10 MR STEVENSON: You see the second paragraph says, This letter serves to confirm the subsequent discussions between Mr Makucha and you that have arisen subsequent to the letter of 3 August, 2009?---Yep.

You'll see that (not transcribable) that Mr Makucha says he had met with you and agreed to the various matters in the dot points. My question is do you have any recollection of agreeing to any of those matters with Mr Makucha?---No, I don't.

20 See in particular the first bullet point or dot point says that Sydney Water is in the process of issuing a corrected letter that indicates that the ownership of the intellectual properties with Mr Makucha?---Mmm.

See that?---Yep.

Do you have any recollection of - - -?---No, I don't. Look, I don't know whether there would've been a search done of my Word documents on my computer, that would've been - - -

30 I can't show you a corrected letter of the kind described to you?---No, no, I simply, at this point of time I can't recall it so the name is, as I said, I certainly, or any association with IP Australia.

It would've been false of you wouldn't it to write a letter on Sydney Water letterhead or otherwise saying that the ownership of the intellectual property which is the Sydney Water logo was Mr Makucha's property?---That's correct.

40 And that may be one reason why you didn't do it?---Yeah. Look I think ultimately the arrangements regarding intellectual property were going to be embodied into the subsequent agreements and for approval by the Sydney Water board.

I tender that letter, Commissioner.

THE COMMISSIONER: The letter by Paul Chadwick to the Managing Director of Sydney Water on 10 August, 2009 is Exhibit P138. It's a copy of that letter.

**#EXHIBIT 138 - LETTER FROM HALL CHADWICK TO THE
MANAGING DIRECTOR OF SYDNEY WATER**

MR STEVENSON: We'll go to tab 6. Now Mr Harvey, this is not a letter that I'm suggesting was sent to you, but, and maybe you've not seen it, but you see it's a letter from Eakin McCaffery Cox?---Yes.

To IP Australia, now signed by Mr Stafford?---Yes.

10

You recognise that name as being the name of a gentleman who you had some dealings with in 2009?---Yes.

Being a partner at Eakin McCaffery Cox?---Yes.

And you see that he, this letter is to the Registrar, IP Australia and it says he enclosed amongst other things, looking at paragraph 3, the 6 August letter from, from Hall Chadwick. Do you see that?---Yes.

20

Which appears to be the document at tab 5 of this bundle?---Yes.

But also your handwritten note with (not transcribable) at paragraph 3?---
Oh, 20 May?

Yes. Okay. Now in your statement you say at paragraph 235 that you weren't aware until a few weeks later that this letter had been sent by Eakin McCaffery to the IP Registrar?---That's right. As far as I was aware that, you know, Griffith Hack or whatever would've been dealing with these matters.

30

All right. So you think the first you knew about that you say, is when you got the letter which you'll find at tab 8 of this bundle?---Yes.

You're looking are you at the document at tab 6?---No, I'm now at tab 7.

Well, just stay with me. At tab 8 - - -?---Yes.

- - - is the letter isn't it from Mr Makucha of 24 September, 2009 that you say represented the first information you got about the lodgement of the trademark application?---Yes.

40

And you see in the second paragraph of that letter, tab 8, Mr Makucha says, as you will recall my lawyers, Eakin McCaffery Cox lodged with the consent of Sydney Water various applications for trademark?---Yes.

Now, did you recall the matters which are referred to in the second paragraph of that letter when you received it or was it news to you?---It was certainly news to me. That's, you know, as I said at that time I wasn't

aware that registration of the trademarks were on foot. In my mind, well, I was waiting on a fee proposal from Griffith Hack to deal with these matters. I wasn't aware that Eakin McCaffery Cox were dealing with it.

You see at the end of that first paragraph, Mr Makucha says, I've previously provided you with a copy of the relevant applications for registration of trademarks and gives some numbers?---Yes.

10 Was that true? Had he?---I, I think they were attached to the previous letter from Eakin McCaffery Cox.

And when you say a previous letter, are you referring to the letter at tab 7?
---That's correct. Yes.

Dated 9 September, 2009?---That's correct. Yes.

20 Well, I'll come back to that in a moment. Now going back to Mr Makucha's letter to you of 24 September 2009 at tab 8, he attaches, I see he attaches the Eakin McCaffery letter of 9 September?---Yes.

And then he says, so there's no doubt about Sydney Water being informed as to the status of the applications, can you please sign and return a copy of the letter. Do you see that?---Yes.

And you did that didn't you?---I did.

And the letter of 9 September, which is referred to there is at tab 7?---Yes.

30 And there is next to it, can't you see, on pages 3 and 4, formal acknowledgements from IP Australia of the trademark applications?
---That's correct.

So, and you can see that trademark applications have been made, looking at the bottom of the third page in respect of something called class 32?---Yes.

Which includes water?---Yes.

40 Carbonated water and so on. So, did it occur to you that some documents signifying Sydney Waters consent must have been lodged with IP Australia in order that IP Australia proceed with the applications?---Well, it certainly appears that way. Whether it occurred to me at the time, but I was more concerned that it actually had taken place without my knowledge. Now whether it needed a specific consent by Sydney Water, I don't know whether that crossed my mind and I was more concerned that, I was anticipating that Griffith Hack were doing this work not, not Eakin McCaffery Cox.

All right. Well, you do (not transcribable) at paragraph 235 of your statement don't you?---Yes.

Have you got that?---Yes I have, yes.

And so you weren't aware that Mr Makucha had lodged these applications until you got the correspondence we were just looking at?---That's correct.

10 Do you say you protested to him about it?---Yeah, I did because I think I was left out of the loop, that I wasn't aware that these actions have taken place. And I think if it was using a handwritten consent to IP Australia, I'd really have concerns.

So if you'd known that?---Hmm?

Are you saying if you had known that?---That's right, yes.

And you say - - -?---I didn't know that.

20 - - - you did not know that?---No.

But you knew of no other consent of Sydney Water Corporation that could have been provided to IP Australia?---No.

And you tell us don't you in paragraph 236 what you said to Mr Makucha after he told you that the trademark application had been lodged?---That's right.

30 What you say he said is that the trademark had been registered isn't it?
---Mmm.

Please note the good news that the trademark for Sydney Water has been registered by Eakin McCaffery Cox?---Yes.

So I assume you didn't understand whether as a matter of formality trademarks got registered did you?---No, I don't - - -

That's why he was telling you. Had it been registered?---I believe so, yes.

40 So as far as you could see then from what he was telling you it was a done deal?---That's right.

And that the Sydney Water logo trademark had been registered by Eakin McCaffery Cox in a Makucha company name?---That's correct.

This of course, still (not transcribable) you were keeping secret from anyone else at Sydney Water?---That's right.

You were alarmed surely by - - -?---Yes, I was.

- - - by that revelation?---Yep. I was.

And you say that you said to Mr Makucha, I didn't know you were progressing the registration of the trademarks. As I recall the correspondence from Griffith Hack, there was a need for them to provide a detailed fee proposal. Do you see that?---That's correct.

10 And he told you he'd used Eakin McCaffery Cox?---Yes.

And then all you did was ask what they charged? And said, in future please get my approval for any fee proposals?---That's my recollection of the words. Yeah.

So there's no, you didn't remonstrate with Mr Makucha as to why he'd gone ahead and got your employers trademark registered in Mr Makucha's private company's name without your consent?---At the time I think, it was obviously a real concern, but it was a fait accompli and I suppose in my
20 mind if it was a logical step in terms of progressing the joint venture, well it was adding value to the, to the trademark. That was a, that was the compensated (not transcribable).

You were in deep now weren't you?---Very much so.

I tender that slim folder, Commissioner.

30 THE COMMISSIONER: Yes. The folder that Mr Stevenson described as the slim folder is Exhibit P139. It's a bundle of documents produced late by Sydney Water.

#EXHIBIT 139 - BUNDLE OF DOCUMENTS PRODUCED LATE BY SYDNEY WATER

MR STEVENSON: Mr Payne asked you some questions about the signing up of documents on 3 December, 2009. Do you recall that?---Yes.

40 That is the signing up the two volumes of the - - -?---Yes.

- - - confidentiality agreement. Now, is this right, you knew when you signed that document that you had no authority to bind Sydney Water?
---That's correct.

And you say, do you, that you didn't appreciate that what you were doing was signing a final version of the document?---That's correct.

Although you accept now, don't you, that this is what you appear to do?
---True.

And were you ever asked by, sorry, who was present when you signed the document, just Mr Makucha?---Makucha, yes.

And you recall, don't you, just tell me if you want to look at the document again, that in the attestation clause adjacent to which you signed there was a reference to a book number?---That's correct.

10

The book number was left blank?---That's correct.

And you've told the Commissioner in fact there was no book that contained your authority, it was a - - -?---A power of attorney.

A power of attorney. Did you, did the thought cross your mind that you had no authority under that power of attorney to sign the document when you did?---No.

20

And you didn't intend to bind Sydney Water by signing that document - - -?
---No.

- - - did you? Did you say anything to Mr Makucha about that?---I think along the line we need to finalise the executive summary so we can get board approval to this arrangement.

30

Did you also say to him I'll have to look through this over the next month or so to make sure that it's something I can (not transcribable) Sydney Water to?---I think I, yeah, I got a lot of documentation here, I can't remember the exact words but I said I'll look over it in the next few days and if there's any comments come back to you.

And the moment you'd been dreading occurred, didn't it, when you received an email from Christine Valentine, Ms Valentine - - -?---That's correct.

- - - on 21 January, 2010?---Yes.

Could you look at Exhibit P127 at page 634?---Yes.

40

A shiver went down your spine when you got this email I suggest?---Sorry, I didn't catch that.

A shiver went down your spine metaphorically or actually when you received this email?---Yes, it did.

Because you knew the jig was up, didn't you?---Yes.

And you knew that there was no adequate response you could give to Ms Valentine's inquiries that would not reveal that you had been negotiating secretly with Mr Makucha for 12 months about a joint venture?---That's correct.

And it was also clear to you, wasn't it, when you got this email that the process whereby you had authorised money to be paid to Mr Makucha was in the course of being revealed?---That's correct.

10 Nonetheless, if you look at page 645 of the bundle?---Yes.

Weren't you tempted by Mr Makucha to assist him, sorry, didn't you assist him prepare a further tax invoice?---I think what I was doing was just running through what accounts had put to, put to me raising those with Paul, I said look, you know, we've got real issues, these are some of the, these are some of the issues that they have arranged but I said the key to it, this is what you'd have to do to correct that but the main thing is I, I'll need to go to Gary Inberg to get an approval.

20 But you didn't in your wildest dreams think Mr Inberg was going to approve retrospectively the payments you - - -?---Oh, I don't know what I thought at the time, I was in, yeah - - -

It's fair to say that - - -?---Distressed I suppose is a good word.

Sorry, which word?---Distressed.

So is it fair to say that by now you realised that your activities had been uncovered?---That's correct.

30

And that you were not thinking rationally about the way forward?---True.

Thank you, Mr Harvey. Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Stevenson. Mr Gordon, do you have anything that you wish to ask?

MR GORDON: Can I just, forgive me one moment. I have no cross-examination, thank you.

40

THE COMMISSIONER: Very well. Mr McIlwaine.

MR McILWAIN: I have no questions, Commissioner.

MR PAYNE: Just before Mr McIlwaine, there were two matters that arose during Mr Stephenson's cross-examination, there are documents I need to show, I'll be no more than five minutes, Commissioner.

THE COMMISSIONER: Yes.

MR PAYNE: You remember being taken to P130?---Yes.

I don't know whether you still have that in front of you?---Yes.

10 That bundle of documents. In answer to some questions from the Commissioner you described an A4 glossy document that you'd been given. I only have one copy, I'm sorry. It's a 1993 catalogue of Mr Makucha's then business, if I might show you that document. Is that the document you referred to in your answer to the Commissioner about a glossy document - - -?---Yes, it is.

- - - provided by Mr Makucha?---It is.

Yes. Nothing else, just that?---At the time, yes.

20 Can you open the first page of it. That's a 1993 catalogue of that company as you understood it?---That's correct, yes.

You don't suggest, do you, that Sydney Water would have paid anything for a 16 year old catalogue in 2009 do you?---No, no, not for this document, no.

Yes, Commissioner, I tender that catalogue.

THE COMMISSIONER: It's a catalogue of what?

30 MR PAYNE: Mr Makucha's Outdoor Advertising activities in 1993. If that could be shown to the Commissioner.

THE COMMISSIONER: Yes. P140 is the 1993 catalogue of Mr Makucha's Outdoor Advertising activities.

**#EXHIBIT P140 - 1993 CATALOGUE OF MR MAKUCHA'S
OUTDOOR ADVERTISING**

40 MR PAYNE: Now the other thing that you said on this topic of outdoor advertising, that in addition to P30 and that catalogue you were given by Mr Makucha you said you received some information, I think you described it as basic sketches in relation to South Dowling Street, Rookwood Road and Potts Hill, do you remember giving that evidence?---I think what I said from memory was that the concept sketches were for Gardeners Road and South Dowling Street. The reference to Rookwood Road, Potts Hill was where I consulted with Peter Byrne from Sydney Water about a proposal that they were looking at for that site.

Can I just show you then a small bundle of photographs. I suggest to you that these are photographs prepared by Mr Hearne and given to you of various outdoor advertising sites which were being considered by him in 2009?---By Mr?

Mr Herne?---Herne.

10 You've called him Mr Byrne, I want to suggest to you his name is Ross Keith Hearne, H-E-A-R-N-E?---Oh, yes. No, these documents here weren't given to me by Peter Byrne, these were concepts prepared by other consultants that Sydney Water had engaged looking at some of the aspects of outdoor advertising. Ross Hearne, sorry, yes, now I remember, Ross Hearne is a Sydney Water employee.

Yes?---He had prepared these documents which, they were colour documents which showed potential signs, locations of signs.

20 And it included sites for example at Potts Hill, the last of the photographs I've shown you?---That's correct, yes.

And South Dowling Street, the first of the photographs that I've shown you?---Yes, yes.

30 And I suggest to you that a Mr Hearne produced these on his own initiative and there was absolutely no input from you or Mr Makucha in relation to this selection. Do you agree?---No, that's certainly right. Ross Hearne had been, is a Sydney Water employee within Asset Management Division I believe who was making suggestions of where sites, signs could go which would avoid Sydney Water infrastructure, like underground pipes so this was, he had consulted with the site personnel and operations people as to which may be a, a suitable site. There was a town planning consultant APP who was looking at some of the planning issues and then there was a marketing consultant, I can't remember his name, who was looking at some of the proposals as well. This was - - -

40 Yes. And I suggest to you that there was a good deal of legitimate activity within Sydney Water at the time considering outdoor advertising and that to your knowledge Mr Makucha had nothing to do with that legitimate outdoor advertising activity. Do you agree?---Not at that time, no.

Not at any time?---Not, not what was produced. I think I may have given some of this information to Mr Makucha asking for his comments on these sites. I think there was a list of sites because I suppose having it from a technical perspective is a lot different from a marketing perspective so that was the intent of getting additional advice from Mr Makucha who'd had considerable experience in outdoor advertising. That was my intention.

So the position is that Mr Hearne produces these photographs and to your knowledge there were legitimate marketing consultants providing advice to Sydney Water on his suggestions but you gave these photographs to Mr Makucha for his comment. Is that what you say?---I can't remember whether I gave these specific ones but I gave him a list of certainly the sites and some information, whether it was these I don't know.

10 You don't suggest do you that any information you received back from Mr Makucha finds reflection in any business record of Sydney Water do you?
---No.

And I take it you would agree that whatever information you had back from Mr Makucha having given him these photographs was not something that you regarded Sydney Water as being in a position to pay any money for. Correct?---That's correct, yeah.

I tender that bundle of photographs.

20 THE COMMISSIONER: Bundle of photographs taken by Mr Hearne is P141.

#EXHIBIT P141 - BUNDLE OF PHOTOGRAPHS TAKEN MY MR HEARN

MR PAYNE: Commissioner, I have nothing else for this witness.

30 THE COMMISSIONER: And tomorrow we are - - -

MR PAYNE: Just for the benefit of those present tomorrow we'll be dealing with the remainder of the witnesses from the first two weeks which don't touch or concern the parties Mr Harvey or Mr Makucha.

THE COMMISSIONER: There will be no evidence tomorrow relating to Mr Harvey or Mr Makucha.

40 MR PAYNE: Yes. And we'll resume that evidence on Thursday morning, Commissioner.

THE COMMISSIONER: Very well. We'll adjourn tomorrow - - -

MR McILWAINE: Excuse me, Commissioner, is Mr Harvey excused from the box?

THE COMMISSIONER: Yes. I beg your pardon, Mr Harvey, you're excused from giving evidence.

THE WITNESS EXCUSED

[4.02pm]

AT 4.02 THE MATTER WAS ADJOURNED ACCORDINGLY [4.02pm]