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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 22 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 Saxby, would you return to the witness box please. Yes, Mr Payne.

MR PAYNE: Thank you, Commissioner. Mr Saxby, prior to the luncheon adjournment I had asked you a number of questions about Mr Price and I read to you what he said about three years ago he had a complaint from Mr Farrell which he says he passed onto you and I asked you whether there was any, you had any recollection of such a matter being passed on to you. Do you remember those questions and answers?---Yes, I do.

10

I want to suggest to you that there was in the last few years, so not 12 years ago, in the last few years there was a complaint made by Mr Farrell about corruption involving Mr Buckley which was brought to your attention. Do you agree?---Brought to my attention by Jim Price?

Just, question 1, brought to your attention full stop. So a complaint by Mr Farrell about Mr Buckley and corruption and brought to your attention in the last few years, do you agree?---I cannot recall one specifically.

20

Well, perhaps to be fair to you can I show you this document and I'd ask somebody else to give it to you. This is an email you sent to Mr Fox from ICAC on 10 May this year. Do you see that?---Yes.

I don't want to ask you about 1 and 2, just briefly speaking, I will ask you about 1 and 2, 1 is about a customer complaint about Mr Buckley having nothing to do with corruption, correct?---Yes, yes.

30

Number 2 was a complaint made by, by Mr Buckley about an assault allegedly carried out on him by a water service coordinator, so again nothing to do with corruption, at least not directly?---Correct.

You then say in relation to similar allegations, by that you meant allegations of corrupt conduct made about Mr Buckley?---Yes.

A few years ago, I do not have any documents in regards to this but you may wish to contact the WSC, Phillip Farrell, he was involved in this matter, I recall. Having looked at that document and refreshed your recollection, I want to suggest to you that a few years ago, not 12 years ago - - -Ah hmm.

40

- - - you were made aware of a complaint by Mr Farrell about corrupt conduct involving Mr Buckley. Do you agree?---Yes, yes, I agree. Just to clarify that though, I, I was made aware of this, but I thought your question was Mr Farrell coming directly to me.

I see?---Mr Farrell, I'm pretty sure, did not come directly to me with this allegation.

I see. Can I tender that email, Commissioner.

THE COMMISSIONER: Yes. The email from Mr Saxby to Mr Fox is Exhibit P144.

#EXHIBIT 144 - EMAIL FROM MR SAXBY TO MR FOX

10 MR PAYNE: Can you tell the Commissioner then, Mr Saxby, what it is you recollect about being told in the last few years about a complaint made by Mr Farrell about Mr Buckley and corrupt conduct, although, as you say, not directly to you by Mr Farrell?---That's right. For the last three years I was in the position of developer asset services. I was dealing directly with developer and developer applications. I was not involved with the, the, wit the team that was looking after the contractors. And therefore, I was not involved directly in these types of allegations. But I was aware that, that an allegation was made, I thought by Mr Farrell.

20 Who told you about that allegation?---I cannot recall specifically who did at that time.

And do you remember the content of the allegation?---Not the detail, only that it was an allegation made concerning a bribery allegation again.

So similar to the one that you recollect now of about 12 years ago concerning Mr Buckley?---Yes, that's correct.

30 Have you seen any document concerning this matter? I know you couldn't find one on 10 May, according to this email P144. But have you seen since that time any document recording that allegation or any investigation of that allegation?---No, I have not.

Can you assist us even with not a particular but with the likely sources of the information coming to you that a complaint had been made by Mr Farrell about bribery matters and Mr Buckley?---Well, again it didn't come from Mr Farrell directly to me.

40 I understand that, but if you can do your best to help us with where it is likely to have come from, that information that you say you now recall?---Well the only likely place where it would've come from was from that, the team that was looking after suppliers and the manager of that team.

That included Mr Price did it?---Yes, he was in that team, yes.

Do you have any recollection of Mr Price telling you about any complaint Mr Farrell had made about Mr Buckley at any time?---No. No, as I answered before, no.

Can I just put to you, Mr Saxby, for your comment what Mr Farrell said in a statement about this complaint?---Ah hmm.

And in particular he says that the complaint he had raised was discussed between he and you at External Quality Council forums. Do you remember discussing this complaint with Mr Farrell at an External Quality Council forum?---Complaints by Mr Farrell were discussed with me on numerous occasions. This particular one, no I can't recall.

10

In relation to this one and by this one I mean the complaint by Mr Farrell of corruption on the part of Mr Buckley involving a Mr Yousef Nasrallah, just to orient you. That's the complaint I'm talking about?---Yeah. No, I, I don't know that, that individual. I can't even recall that individual. We've got two or three hundred odd constructors and he is one of them. But that name doesn't even ring a bell with me at all.

20

I see. So you remember do you a complaint by Mr Farrell about Mr Buckley and corruption but not that Mr Yousef Nasrallah was the constructor involved?---In, in the recent times I was aware that a complaint had been made by Mr Farrell and that's why I mention it in this email, the detail and when it occurred.

(not transcribable)?---No, I'm not, not aware of.

Your best recollection though having refreshed your recollection from this email P144 is that that allegation was made a few years ago not 12 years ago. Correct?---Correct, yes, yes, it was in more recent times not, not, not a decade or so ago.

30

Do you recollect in relation to this more recent complaint having a telephone discussion with Mr Farrell about the matter?---I don't, no, I do not recollect that but again I was not directly responsible for this matter at that point in time. Sorry, to clarify that I was looking after the developer area and not the supplier management area.

40

Can I just put to you to complete this topic with Mr Farrell, what Mr Farrell says was the subject of conversation between you and he says this, "We were eventually told" by which I think he meant the External Quality Council, "that the investigation had concluded and found that Buckley was doing nothing wrong. Mr Saxby told us that the matter was to be dropped."?---That's certainly not correct. As I said the only investigation that I was aware of was the one in the '98, '99 and this more recent one. Other investigations I think as I stated earlier were concerning the CARs that Mr Buckley issued and, and that found nothing wrong so whether this comment's been taken out of context I don't know but certainly I was not aware of any outcome of any investigation so therefore I could not have made that comment in that context.

When was this investigation into CARs that Mr Buckley had issued that you've told us about?---There was one in 2005 and there's emails of that, my passing it back to their management to look at and I think there was a later investigation of CARs in the last couple of years but I wasn't involved in that later one but certainly in the 2005 one.

10 What was the occasion for the 2005 investigation of the CARs issued by Mr Buckley?---If, if you like I can get out the email here which details that and that can be passed on.

Is that on your statement?---No, it wasn't.

And it wasn't one of the documents you sent through to Mr Fox earlier?
---No, no, I've only sourced that document in the last two days.

20 I see. Have you found any other, just before you hand me that have you found any other documents potentially relevant to this matter that haven't been handed to ICAC before?---No, I don't. Well, there's, okay, there's another email to, there's two possible emails I can - - -

Have you given them to your lawyers?---No, not at this point in time because this didn't come up the matter - - -

(not transcribable) located them with any other person?---No, no.

I better see them then?---It's the one with CARs.

30 Can you give me both potentially relevant emails that as you understand it haven't been produced to ICAC before?---No, that's on another matter. Yeah, there's two and that's some matter are relevant to CARs and I, I didn't think that was a matter for discussion, that relevant.

Just excuse me one moment, Mr Saxby. What is it that you've handed me out? This is a printout of some email is it?---Correct, yes.

40 And this little box on both occasions is the email itself and then you've printed out the attachment have you?---That's correct, yeah, well, the detail of that email, that's correct.

The detail of the email I see, not an attachment?---Yes.

And just in relation to this most recent allegation concerning Mr Buckley passed on to you apparently made by Mr Farrell did you take any steps to raise that matter with the Internal Audit section of Sydney Water?---I think as I've stated earlier Mr Farrell didn't pass it on to me, I was made aware of it.

I'm sorry, when you became aware of the complaint made by Mr Farrell, you say not directly to you, did you take any steps to pass on that information to internal audit?---That wasn't my role at that time. Others were dealing with that within urban growth.

Who?---It'd be supplier group I would say and/or their manager.

So ultimately Mr Purcell you say?---I would think so, yes.

- 10 Can I just read some evidence from Mr Purcell to you for your comment, Mr Saxby. You've worked closely with Mr Purcell over many years?---I have, yes.

And I suggest to you that he first became aware of potential issues with Mr Buckley's performance quite a few years ago but no specific allegations were made that Mr Buckley was taking money so far as Mr Purcell was concerned. Are they the sort of rumours that you were telling me about earlier at External Quality Council meetings and so on?---Yes, yes, that's, yeah, that's correct.

20

And in terms of the matters that you were aware of at least, in terms of specific details what would you have required in order there to be sufficient specific detail for you to have made a written record of those allegations? ---Well, I think as I stated earlier there was no written record made but the details that I needed to, to pass onto internal audit to carry out an investigation was that the allegation that he was requesting a bribe to pass off work and the specifics of the, the case, the job that it supposedly occurred on, that's all.

- 30 And when that - - -?---And were not - - -

I'm sorry?--- - - - not written, as long as I had that information verbally which I obtained on two times and passed that immediately onto internal audit to, to investigate.

- 40 And absent a particular job reference you, you wouldn't make a record or pass it on, is that something (not transcribable)?---Well, if its just a allegation that he's, he's requesting bribe full stop, as I said, the quantity and volume of work that were, we were passing through our branch and through civil maintenance, its like looking for a needle in a haystack.

And you took what, an executive decision that in those circumstances you wouldn't trouble internal audit to look for that needle in a haystack?---I did because in my opinion there was no clear guidelines on what path I should follow in those circumstances.

And so you made the decision without consulting internal audit that it should stop there?---I certainly didn't consult internal audit but I consulted by senior manager at the time.

Who was that?---Its varied from, over that period of time there's been a number of managers in charge of the urban development area that Steve and I reported to.

10 And do you say that each of them upon being appraised of these allegations of corruption without the specific detail of the kind you needed, told you that's okay, don't pass it to internal audit, do you?---They agreed with my decision, yes.

And did you discuss with them whether or not you should document these, as you would put it, non-specific allegations?---I can't recall the exact details of those discussions but as I said they, I did document in my own diary all of those, those occasions, yes.

20 And those diaries are all no longer in existence you say?---Unfortunately, no.

Just finishing with Mr Purcell, Mr Purcell gave evidence that about four or five years ago he became aware that Buckley's manager at the time either a Peter Djendinovic or Richard Patterson had been involved in an investigation relating to Mr Buckley's behaviour, he thinks it was about him taking money. Do you have any recollection of becoming aware of such an investigation?---No, I do not.

30 And that's, that's something you have no recollection I take it then discussing either with Mr Purcell?---When, okay, when you say four or five years ago, we certainly as I mentioned earlier, that was discussed I thought quite some time before that, an earlier date so whether we're mixing up our timings or our, our timeframe when those investigations happened I'm not sure but I thought it was much earlier than four or five years, much longer ago than four or five years ago that was raised.

I see. When you told me prior to the luncheon adjournment about making people in civil delivery aware of complaints about Mr Buckley and bribery - - ?---Yes.

40 - - - you had in mind making aware either a Mr Djendinovic or Mr Patterson did you?---No, no. There was managers prior to them.

And again, I thought I'd asked you this, but if I haven't, do you remember what you told those managers?---Of the allegation that had been made and that was in the, the '98/'99 period and that had been reported to internal audit to investigate. That was, I made them aware at our internal meeting

that this was happening and this was a potential issue, a potential problem in their business.

So you told, you told them that you'd gone to internal audit and that as far as you knew internal audit were investigating. Is that the - - -?---That's correct.

And that's what you conveyed to those people?---Correct.

10 Those two emails you handed me a moment ago, do you have copies with you or not?---No, that was the only copy.

All right. Well, perhaps in fairness, I'll give them back to you and I just want to suggest this to you, please examine them. Those emails make no mention of corruption linked activity per se, but they do go to Mr Buckley's apparently inconsistent approach to issuing CARs and interpreting standards. Do you agree with me?---Yes, yes, that's what they do say.

20 And that's the investigation you say you carried out?---Yes, I think this is also an outcome of that specific problem on a job. And as part of investigating the CARs on that job there was a wider investigation of other CARs that Mr Buckley had issued.

30 Do you agree with me that an investigation into apparently inconsistent approach in issuing CARs and the interpretation of standards, that one of the matters that perhaps should be investigated in the course of such an inquiry is whether or not there is any link to these repeated rumours you're hearing about bribery?---Sorry, can I just go over what you said in my mind to make sure I'm clear of the question. You're saying that in addition to the CARs being investigated, the bribery matter should've been raised and investigated too. Is that your question, sorry?

Well, do you agree with me that it would be relevant in circumstances where had evidence that there was an apparently inconsistent approach from Mr Buckley in issuing CARs, that was the complaint. Correct?---Yes. Yes.

40 And an apparently inconsistent approach by Mr Buckley in the interpretation of standards, in those circumstances do you agree with me that at least in hindsight it would've been sensible to have investigated whether any corruption related matter was relevant to either of those things?---Okay. Can I just read this again? I'm not sure whether inconsistent was, was put down in this email. No, the word inconsistent wasn't used.

I thought you agreed with me that the impetus if you like for the investigation you conducted was an apparently inconsistent application of law and standards by Mr Buckley?---Sorry, no, I didn't agree with that. Now I'm reading this, what, what was stated here was that at, sorry, this

was, two CARs raised, I can read it out if you wish just to make it clear what was stated in this email.

If you think it necessary to address my question?---Yes. Two CARs raised by John Buckley. They are frequent, they are frequent comments made concerning John. He's usually very diligent but at times some of his actions for whatever reasons are not appropriate and causes considerable time wasted in our area and also for suppliers. This was alluding to the very minor items that he picked up that were defective, which could be fixed very, very quickly without putting the documentation through and causing us to write up CARs and investigate them and back to him.

Just taking you up on that, Mr Saxby. When you say for whatever reason, is that code for everyone who's going to read this email understands that allegations of corruption have been made over many years about Mr Buckley?---Certainly not. That the reason, and I'll just go on further, was that two CARs that he raised are good examples of this. He carried out an audit on the day these jobs commenced and issued CARs because no one was there. The WSC was on the site at 7.30, but then left soon after and Mr Buckley arrived on the job and issued a CAR for him not being on site. Now, that's probably not appropriate and that's why I put in there, and for whatever reason. I don't know whether he was not happy with this particular individuals work or what. There could be numerous reasons. I didn't know which, for whatever reason he was very pedantic and a minor nature not being there on the first day the water service coordinated. It certainly wasn't code for what you suggested.

Mr Saxby, I want to suggest to you that it was clear as day to you at the time you wrote those emails that Mr Buckley was doing things in relation to CARs one explanation for which might be as you had been told over a number of years he was soliciting bribes. Do you agree?---I don't agree. As I just said there could've been numerous explanations why he did that, that was only one, there could've been a host of other reasons why he did that.

You accept do you it is one possible reason?---Sorry, repeat?

You accept do you it is one possible reason that he was issuing these apparently inexplicable CARs was that he was soliciting bribes?---Its one possible reason out of many.

And you knew that at the time that it was a possible reason. Correct?---This was done in 2005 this email.

And you'd been told years before Mr Buckley was taking bribes hadn't you, Mr Saxby?---In 1998, '99, yes.

Well, you'd put that out of your mind had you?---No, no.

You knew that such allegations had been made about Mr Buckley. You knew that one possible application in relation to these CARs was that bribes were involved. Correct?---One possible application, that correct, but this - -
-

10 Why didn't you refer this matter to your Internal Audit department? Why did you conduct your own so-called investigation?---I did not conduct an investigation, I referred this to the manager of John Buckley to, to investigate.

And after that had happened you went back to the Water Service Coordinators who had been telling you on at least three or four occasions that they thought Mr Buckley was corrupt and told him that you had conducted an investigation and that he was, words to the effect, squeaky clean. Correct?---I don't recall making that statement I think as I've stated before.

20 You do remember telling them that an investigation had been conducted into Mr Buckley and that it was all okay, nothing to worry about?---An investigation in relation to his issuing of CARs was carried out and the CARs were correct in accordance with the standards that were required. The Water Servicing Coordinator in this case should've been on the job and he CAR-ed him for not being there.

30 And do you say that you ever reported to the Water Service Coordinators about any investigation into Mr Buckley and corruption?---Again the information was given to me specific to a job was passed on to Internal Audit and those matters, investigation was confidential, I did respond back to Mr Farrell that that had been passed on to be investigated but as I mentioned before I was never informed of the outcome of those investigations.

So for participants at the WSC meetings so far as they knew they had raised with you on a number of occasions allegations that Mr Buckley was corrupt. Correct?---Correct.

40 The only investigation you ever reported back to that meeting about was this one you're telling us about here which you say had nothing to do with corruption. Correct?---Correct. Because I had been not informed of any outcome of any investigation over those corruption matters.

Did you make clear when you reported the results of this investigation that you were not commenting in any way on the allegations, on the three or four occasions you'd received of corruption in relation to Mr Buckley?---I think I did make it clear because I, because I was not, didn't have any information available to clarify or to comment on that investigation.

What did you say?---I cannot recall exactly what I said, I'm taking from what you've reported to me that what I reported, what I was reported of saying and in the context of him being squeaky clean I definitely did not, that was not in the context in relation to an investigation on board. Again, I emphasise that I was not aware of any outcomes of those investigations, the only investigations I was involved with was the issue of CARs that he issued and they I've explained he was very particular and very knowledgeable of the standards and each of the CARs that he issued in relation to standards was, was correct.

10

THE COMMISSIONER: On its face?---On its face, yes, yes, as we said before, Commissioner.

MR PAYNE: Did you ever say either individually or collectively to a meeting of the WSC that although you have raised with me a number of complaints about corruption and Mr Buckley, they are insufficiently particular for me to take them forward?---No, I did not say that.

20

Did you ever say that an investigation of any allegation of corruption against Mr Buckley would or would not be undertaken?---I'll just, just clarify and make it clear, the conversations at the forum in general over that matter were ceased and discussions with the individuals making those allegations were made on the side or they were made after or were continued after the meeting so there was no general discussion made, we stopped those discussions at the meeting so they weren't going to be recorded and we deal with the particular individuals who were making those allegations.

30

So when they'd try and raise it in the meeting you'd stop them and say come and speak to me afterwards?---Correct, this is not the scope of this meeting to discuss this, these incidents at the meeting.

How many times do you recollect that you had to stop WSC meetings because somebody was going to blurt something out about Mr Buckley and corruption?---A small number of times, probably two or three times.

40

And you then took the person aside at the end and they would tell you, they would make the allegation of corruption in relation to Mr Buckley, correct? ---Correct, yes.

And in accordance with your usual practice other than perhaps some note you made in your notebook you would make no official record of that complaint, correct?---I asked the individual to, to provide details on what job this was related to so that we could then investigate it. On a number of occasions the individual came back and said my client does not, does not want to disclose his details and the job where this occurred.

So the answer to my question is yes, is it, you decided to make no official record of the matter?---Other than in my diary as I stated, that's correct.

And you certainly didn't contact anyone from internal audit about it?
---Against an allegation that wasn't then, sorry, that's correct.

And as you've told me earlier that's your understanding of Sydney Water's policy or at least it was sufficiently unclear having raised it with your manager that was your understanding of the right thing to do in those
10 circumstances?---Correct, at that point in time, correct.

THE COMMISSIONER: How many times did people tell you, how many times were you told that the contractor wasn't prepared to reveal the identity of the job?---I would say possibly half a dozen, six times.

Well, that suggests to me you must have been told at least half a dozen times about allegations concerning Mr Buckley and corruption?---Yes, yes, correct.

20 Not one or two or three but at least six and perhaps more?---Yes, this is over a long period of time, sorry, Commissioner, it didn't, it was, it was, it was approximately six.

MR PAYNE: Mr Saxby, can I just ask you some questions about paragraph 15 of your statement, Exhibit P142 and that's about this more general topic of complaints about suppliers and delays and so on concerning Mr Buckley?
---Sorry, what paragraph?

Paragraph 15?---15. You were, at the time that you're talking about here
30 you were a very senior officer in the urban growth area of Sydney Water?
---Yes.

You went to Mr Buckley's supervisor about complaints and you were told in effect John runs his own race?---That's correct.

i.e. he was beyond the reach of that particular supervisor?---No, no, the context of that was that he was the only one that was responsible for doing the connections and in this particular incident he was doing nightshift and when on nightshift they're not working the next day and the developer or
40 the supplier, the constructor trying to arrange the connection wasn't able to contact John because he was off and then when he did come back to work it was a number of days before he got back to him again. When I rang his supervisor to say well, this is really not good service his comment was John runs his own race, meaning that he was the only one that looked after that particular item or work in that area.

And my question for you is I take it as a senior officer of urban growth you regarded that as unacceptable on a number of levels?---Definitely, yes.

The fact that he was the only one doing it, point 1?---Yes.

The fact that when complaints were raised very politely I take it by you with his supervisor you were informed that he was running his own race?---Yes.

The fact that in terms of Sydney Water's overall reputation if I can put it that way in the marketplace this, this was highly undesirable in your view?
---That's correct.

10

And yet because he was in a separate department there was really not much you could do about it, do you agree?---I raised the issue here - - -

(not transcribable)?--- - - - and on the third occasions, yes, and I couldn't do, yes, that was my (not transcribable).

20

And to your observation the reaction from the, the people within civil delivery was protective of Mr Buckley rather than open to your suggestion that this was harmful to Sydney Water to have Mr Buckley behave in this way?---Probably not protective, they considered him to be a, well, yes, probably protective is the word, yes.

Can I just put these propositions to you just about this overall topic of complaints that you received, I think you've agreed with the Commissioner more than six about Mr Buckley and corruption over the period of either ten or 12 years?---No, I'm sorry, I said about six, not more than six.

30

About six, I see. Can I just put these propositions to you about those complaints. Do you accept looking back now from your own point of view that you could and should have done more about those complaints you were made aware of about Mr Buckley?---I made a statement earlier saying that, yes, the guidelines were unclear and in hindsight we should have had better guidelines to assist me in carrying out my duties.

40

And you accept I take it therefore that an official written record of these complaints and of any investigation into Mr Buckley would have been a very helpful matter in assisting you and others within Sydney Water address continuing complaints as they came up about his behaviour?---In hindsight, yes.

I'm putting that question to you in hindsight. Do you accept that part at least of the problem, if I can put it that way, is that there was this split in functions between urban growth and civil delivery so that you were receiving complaints and yet the people responsible for Mr Buckley in his day to day operations were not responsible to you?---I don't think that's quite correct because the, the businesses that we rely on to provide information for the developer process including civil maintenance have got a, what we internally call a service level agreement with the urban

development indicating the timeframes they must look at work and progress work on, so there was some responsibility of the managers in that area to ensure that the developer work was processed in a reasonable manner and within the timeframes agreed to in the service level agreement between the various businesses.

10 Do you accept that if there had been a thorough investigation of complaints, the six you say complaints you're aware of of bribery and Mr Buckley you received over a course of some years, it is likely that Mr Buckley's corrupt practices we've heard about in this inquiry would have been discovered years ago?---No, I don't, don't accept that for the reason that again the allegations that were made were just pure statements that he was taking bribes, there was no detail or no information to direct any investigation to a particular job or a particular constructor. Mr Buckley if approached would have denied that so I don't, it may or may not have, I don't accept that it would have stopped that practice.

20 Just in relation finally, prior to the evidence which has emerged before this Commission, were you aware of any allegations concerning acceptance of cash payments from constructors in relation to either a Mr Bryan Kane or a Mr Funovski?---No, no, I was never made any, aware of anything (not transcribable) with the other people.

I have nothing further for Mr Saxby, Commissioner.

THE COMMISSIONER: Mr Bouris.

MR BOURIS: Thank you, Commissioner.

30 MR PAYNE: I'm sorry, before I sit down, perhaps I should tender those two documents that Mr Saxby produced. If you can give them to the Commissioner's assistant.

THE COMMISSIONER: They don't appear, are they dated?---The emails on the back, Commissioner, have got dates on there (not transcribable)

MR PAYNE: In the box, Commissioner, that's the email itself?---Yeah, in the box.

40 It's the tiny print (not transcribable)

THE COMMISSIONER: Well, document containing email from Mr Saxby on 13 May, 2005 is Exhibit P145. Together with other material. And document containing an email of 21 November, 2005 from Mr Sinclair is Exhibit P146.

#EXHIBIT P145 - DOCUMENT CONTAINING EMAIL FROM MR SAXBY TO MR SINCLAIR WITH OTHER MATERIAL DATED 13 MAY 2005

#EXHIBIT P146 - DOCUMENT CONTAINING EMAIL FROM MR HAMMOND WITH OTHER MATERIAL DATED 21 NOVEMBER 2005

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THE COMMISSIONER: Mr Bouris, yes.

MR BOURIS: Mr Saxby, you have given some evidence today about the fact that as you say, there was no requirement that you're aware of in Sydney Water that complaints of bribery or corruption had to be in writing. Do you recall giving that evidence?---Yes. Just to clarify that though, the, the complaint, sorry, yes. I'm getting muddled up, I'm sorry. I'm sorry, could you ask that again?

20

Is it the case that you, there was no policy within Sydney Water requiring that complaints of bribery or corruption be in writing before they would be passed on by anyone receiving those complaints?---Certainly not. No, it didn't have to be in writing.

All right. And was there a policy within Sydney Water that you're aware of to be the effect that specific details had to be included in a complaint that you received for example, before you would pass that on?---I, I don't think there was any policy detailing, going into that level of detail, no.

30

THE COMMISSIONER: But it was a practice that you applied?---Well, certainly there was a, yes, sorry, yes, Commissioner.

MR BOURIS: Did that practice come to you as a result of talking to anyone else or was it something that developed over the years?---I think as I, as I mentioned, it was discussed not only with, it wasn't a decision that I made on my, by myself. It was a decision that was made in contemplation with my next manager up the line that this has happened and this is what I think we should do. And there was agreement, yes.

40

Right. So you say it came out of that discussion with your superiors over time and that's how you evolved your practice?---That's correct.

And that would be Mr Mattern or would it be others as well?---No, not Mr Mattern. Mr Mattern was at the same level as myself. My senior managers over time (not transcribable) change. I can go through those names if you wish, but yeah, there were various managers in charge of the urban development teams, which I was the manager of only one particular team.

Do you recall discussing it with any specific superior of yours?---Not a specific one, no.

But it's the general impression you formed over time that you had such discussions?---Certainly, yes.

All right. Now internal audit never told you anything about a policy of not passing on complaints unless they were in writing?---No, they didn't. No, they didn't, didn't give that instruction as you've just stated.

10

Nor did they give you instruction I take it about not passing on complaints, not about you necessarily, but anyone, passing on complaints they received if they didn't reach a certain level of detail, contained a certain level of detail?---No. I think as I said before there were no clear guidelines whether it was internal audit or corporate area, dealing with those specific circumstances.

20

Do you think, do you believe as you sit there that there were guidelines at all that were unclear or do you say there were no guidelines?---No, certainly there were policy and guidelines. But they were at a higher level and more generic. And they, in my opinion, they didn't apply to the specific circumstances that we were dealing with in those situations.

Do recall attending any training in terms of bribery, corruption, ethics, conflicts of interest, anything of that kind?---Oh, certainly, I've done that over the years. Probably a couple of times in the last five or six years, yes.

30

And who normally conducts or who conducted the training that you went to?---Most of our training in the last, I don't recall who, but most of the training in the last five years was done by external consultants that came in and give us training.

Do you recall the identity of those external consultants?---No, I'm sorry.

The name?---No, I don't.

40

All right. Now you've given some evidence about the early period, which you now indicate in your statement it was 1998 or 1999 rather than 2000 or a year or two either way?---Correct.

Part of your evidence in that regard, well I take it that paragraph 14 of your original statement, do you have it there?---Yes. Yep, I've got it here. Yes.

Now this is correct is it not, it's the case that this paragraph is essentially correct, as you understand it and recall it, except that the date is different, it's 1998, '99?---That's correct. Yes.

Right?---And in addition to that now in hindsight Steve Purcell was not at

that management level to attend those meetings. He was still a team leader at the time and only attended on some occasions, not as a regular.

THE COMMISSIONER: Mr Bouris we've got really not much time left for this inquiry and I really need to finish it. None of these questions seem to raise any fresh matter. They all deal with evidence that's already been given. So I would request you please to only deal with matters where you're not seeking an affirmation of evidence already given.

10 MR BOURIS: Very well, Commissioner. The matter was referred, you indicated, to Mr Barry McClure back in 1998/'99 by you?---Yes.

And you don't believe it was done by email or in writing?---That's correct.

And you didn't hear anything about the outcome of that investigation as you understood it?---That's correct.

20 Do you recall, do you recall what level of detail you may have had in relation to the complaint that you've indicated you referred to Mr McClure at that time?---I don't recall the specifics, but it would've had to have the job, which would then clearly indicate the constructor and who was involved, the suppliers involved.

You've referred in your evidence earlier today to the internal management meeting in 1998 and 1999 that followed the External Quality Council meeting?---Yes.

30 You've indicated you can't remember the people that were present, the individuals present. Do you recall the categories of people (not transcribable) present at that time?---Certainly. Certainly. It was the businesses that were involved in our process, that contributed to our process, which was the Planning areas that provide information on water sewer pipes, capacities, group property, provide information on property easements, operations area, provide information on water sewer operation aspects of the job, civil maintenance who were then in '98/'99 referred to was called network services and, and environment groups and safety groups on occasion when there was those specific matters. So it was a wide range of managers from the various businesses and Sydney Water dealing with the developer process.

40

And while you've given evidence, you can't recall which particular managers were present at a meeting where Mr Buckley and alleged corruption was discussed, you can't recall that?---That, that's correct because the managers sometimes appeared, most of the time appeared, but a lot of times their next level down also turned up in their place. So the, the attendees varied from time to time.

Are you able to provide the names of any individuals who might've been those persons attending who held those roles as managers at the time?

---Yes, I can, for the Civil Maintenance area I can.

THE COMMISSIONER: Why is that relevant, Mr Bouris? I mean, we're not investigating the competence of individuals. What's that got to do with the inquiry?

MR BOURIS: It's a matter relating to (not transcribable).

10

THE COMMISSIONER: Well, I won't allow it and I have to say that you've got until 3 o'clock.

MR BOURIS: Thanks, Commissioner. I have nothing further, Commissioner.

THE COMMISSIONER: Yes. Does anybody else wish to question Mr Saxby?

20

MS WHITE: I just have one brief question, Commissioner.

THE COMMISSIONER: Yes.

MS WHITE: Mr Saxby, my name is Ms White and I'm appearing for Mr Funovski. I just want to ask you about paragraphs 11 and 12 of your statement. You're talking in those paragraphs about project validation certificates?---Yes, that's correct.

30

So you're familiar with those documents?---Yes.

And you say in paragraph 12 that when you, it appeared that Mr Buckley had struck out sections 2 and 3 of the document and you've never seen anything like that before?---That's correct.

So the document is normally fully completed?---That's correct.

So if you received a project validation certificate with parts of it incomplete you would think that would be irregular?---Yes.

40

Could the witness be shown Exhibit P90. If you turn to page 3 of that exhibit, Mr Saxby. I think that's the sewer project validation certificate?---Yes, I can see that.

Do you agree that the information in the first three lines which says Case Number, WSC, Project Location and Sydney Water DSR is blank?---Yes, they are blank.

Would you consider to be irregular?---The previous ones provide all that information whether it's an oversight or whatever but certainly it's a mistake, it should've been filled in.

And section 1 which is blank do you consider that to be irregular?

---Normally that is filled in so in this case depending on what the job was, what the works are they may at times combine the two together.

Confirmation, request confirmation, sorry, just going section 1 is the request and that is from the response back to the constructor, water service coordinator confirming when the inspection will be on. Section 2 confirms the details of when it was carried out so again it looks like an oversight they didn't confirm the request for the day of inspection so it's, it's not a major issue.

And would you normally expect to find signatures in the areas where it says signature or that's not normal?---Signatures, signatures, yes.

Yes?---Should be signature there.

20 Thank you, nothing further.

THE COMMISSIONER: This P90 has been tendered as a bundle of documents and they all relate to the same job and they all relate to 13 November. Should they all be read together or do they form separate, to be regarded as separate sewer main construction reports?---Commissioner, that document does come in a bundle but the complete, all those three together from the maintenance area, yes.

30 And are they ordinarily read together?---Yes, that's evidence for the Urban Growth that all the works have been satisfactorily completed and connected to our system.

Thank you. Is there - - -

MR PAYNE: On that same date a last document if the witness could just be shown that.

THE COMMISSIONER: Yes.

40 MR PAYNE: The section 73 certificate?---That's correct.

That's what your, the Urban Growth department are responsible for issuing?---Correct.

And you get this bundle from Civil Delivery containing all of that information as you tell the Commissioner read together to work out whether you can issue the section 73 certificate?---Yes, that's one of the documents we need to - - -

In order to issue it?---Before we issue it, correct.

THE COMMISSIONER: Yes, thank you. You may be excused, Mr Saxby?---Thank you.

THE WITNESS EXCUSED

[2.56pm]

10

MR PAYNE: Commissioner, I call Mr David McClure.

MS WHITE: Might I be excused?

THE COMMISSIONER: Yes, certainly.

MS WHITE: Thank you.

20 MR PAYNE: And for the information of those present I don't propose to ask Mr David McClure anything about Mr Funovski.

MR BOURIS: I seek leave to appear on behalf of this witness.

THE COMMISSIONER: Yes. Are you asking for a section 38 order?

MR BOURIS: No.

30 THE COMMISSIONER: No. Mr McClure, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR McCLURE: Affirm please.

<DAVID PAUL McCLURE, affirmed

[2.56pm]

THE COMMISSIONER: Yes, Mr Payne.

MR PAYNE: Your full name?---David Paul McClure.

Your occupation?---An internal auditor.

10 THE COMMISSIONER: I beg your pardon?---An internal auditor.

MR PAYNE: For Sydney Water?---That's correct.

For how long have you been an internal auditor for Sydney Water?
---Approximately 23 years.

Prior to that time what were you, what was your occupation?---I worked in Sydney Water in various roles mainly as an accountant in various areas within Sydney Water.

20

And Sydney Water's been your sole employer then throughout your career?
---That's correct.

In those, you've worked 23 years solidly in the Internal Audit department, you haven't been seconded to any other part of Sydney Water during that 23 years?---Yes, I have. For a period of a few years from 1997 through to towards the end of 2001 I was seconded to the Audit Manager of a wholly owned subsidiary of Sydney Water known as Australian Water Technologies Pty Limited but returned to Internal Audit in Sydney Water in approximately September 2001.

30

You have not made a formal statement in this matter but you have made a statement in response to a notice from this Commission?---That's correct.

Can I show you this document. That's a statement of information given by you to this Commission in response to a notice I think doing the best I can dated 6 August this year, 2010?---That's correct.

40

Do you tell the Commission that the evidence contained in that statement of information is true and correct to the best of your knowledge and belief?---It is but I, I have omitted, I refer to nine depots there and the, it should be actually eight. At the time I prepared this I thought there was nine depots. I'll tell you whereabouts, it's paragraph 13, second dot point, should be nine, sorry, eight civil delivery depots.

Subject to that correction are there any matters that you wish to correct in this statement of information?---No.

Commissioner, I tender that document.

THE COMMISSIONER: The statement of information by Mr David McClure is Exhibit P147.

#EXHIBIT P147 - STATEMENT OF MR D MCCLURE

10 MR PAYNE: Now, Mr McClure, you were involved weren't you in relation to a complaint about corrupt conduct involving a Mr John Buckley made by Ms Odelia Potts first on 17 October, 2008?---Yes, there was no mention of a name in the October exchanges between myself and Odelia Potts.

Well, just so we're - - -

20 THE COMMISSIONER: It's mentioned in paragraph 15 of your statement?---Ms Potts made reference to John Buckley's name in her email to me on 4 February, 2009 not in October 2008. In October 2008 she asked the service centre who do you report corruption by inspectors of Sydney Water, that matter was referred to me and I sent to an email to Odelia Potts introducing myself but the request from Odelia Potts was of a general nature, Mr Buckley's name wasn't mentioned in that exchange in October 2008.

30 MR PAYNE: So the identity that you're talking about is the identity of Mr Buckley not being known to you at that stage?---In October 2008, that's correct.

And other than this email, the email itself, did you make any record of Ms Potts' inquiry in October 2008?---No.

40 Was it in accordance with Sydney Water's policies and practices for you to follow up and email which asked who do we report corruption by inspectors within Sydney Corporation to, for you to send an email to that person rather than visit them in person?---At the time she asked it was of a general nature as to who within Sydney Water is the appropriate person to report corruption by inspectors. I didn't know at the time whether it was she who was interested or perhaps someone who had asked her to find out.

So what's the answer to my question? Was it in accordance with Sydney water's policies and practices for you to approach Ms Potts by email rather than in person?---At the time I believe it was appropriate to receive that email and to make contact with her via email. There was nothing I was aware of that made me think that I had to visit her in person.

Do you agree that somebody who is reporting corrupt conduct to Sydney Water may be nervous about the consequences of making that report?
---That was certainly the case in February, but in October there was a simple question about who within Sydney Water do I report corruption by inspectors to.

And when you read that, do you tell the Commissioner that your state of mind was that that was just a general or non-specific inquiry and did not at least potentially relate to an allegation of corruption within Sydney Water?
10 ---I can't recall exactly what I thought at the time but my expectation would have, to get something back from a person, having introduced myself and my role.

And that's, you regarded it as appropriate, you've told me, to go back via email. What I'm asking you is whether there was any policy or practice within Sydney Water about how you dealt with inquiries of this kind. Is there such a policy or practice?---I'm not aware of any.

Did you talk to anybody else about what you should do about this email in
20 October 2008?---No.

Did you make any note of the emails?---I kept a copy of that email in a folder.

And when in 2009 a much more detailed email complaint was made to you, were you in a position immediately to put that together with the material you had received in 2008?---Yes.

How were you able to do that?---Because her email to me of 4 February was
30 in response to my email of 17 October when I introduced myself to her.

And so it was all on the one email chain?---That's correct.

So it was what Ms Potts did, if you like, in forwarding it on the, on the same email chain which was able to identify, at least so far as you were concerned, the earlier email?---That's correct.

Do you have a copy there with you of Ms Potts' email of 4 February, 2009?
40 ---I haven't, but I can recall it fairly well.

Well, rather than do that, why don't you look at this bundle of documents. It's part of Ms Potts' statement, which is Exhibit, I'll get the exhibit number for you in a moment, but, P51, but I'll hand you the emails themselves?
---Thank you.

And perhaps the easiest way to go through this email, we'll look at the one on the first page of the document I've just given you, which is her email of 4 February, 2009, at 8.17am. See that?---Yes.

You are told that Ms Potts is writing to you in response to your email of 17 October, 2008?---That's correct.

And that she gave you a great deal of specific information about allegations of corruption about a Mr John Buckley?---I acknowledge that there was information given about Mr Buckley and his style of operating.

10 Is that, are you attempting to draw a distinction in terms of the question that I asked you? You don't regard this as containing specific information. Is that what you say?---That's correct.

I see. And what would you regard as sufficient information?---I would regard as sufficient information, information about the Corrective Actions that she refers to. I would have thought there could be information regarding the properties at which Mr Buckley had made the alleged suggestion that cash be provided to her.

20 Mmm?---I would have thought there may have been information regarding the dates on which Mr Buckley had done those things, I would have thought there could be information regarding the time frame in which Mr Buckley had been involved in this behaviour. The email refers to other constructors that she believes also know about Mr Buckley's behaviour. Again, that information could have been provided. And it was, the information I've just outlined to you was information that I was clearly after in trying to arrange a meeting with her.

30 We'll examine each of those one by one, but prior to doing that, when you received this complaint that Mr Buckley was soliciting bribes in relation to his role as an inspector, did you search within internal audit for any document concerning any other allegation about Mr Buckley?---I can't recall doing that but our investigations database had been transitioned from an earlier model in 2001, that is information going up to 2001 to 2001 and beyond. Since 2001 I was getting more involved in some investigation activity and had a fairly reasonable understanding of, of, of names of people that would come forward in terms of allegations.

40 What's the answer to my question? Did you look for information concerning Mr John Buckley?---I can't recall doing that.

Have you ever looked for information in any database, whether electronic or manual, run by internal audit for information about Mr John Buckley?---No.

You've never even looked?---No.

THE COMMISSIONER: Why not?---The database had undergone a change. I was confident that the information from 2001 to 2008 when I

received the information would have been known to myself and my manager.

MR PAYNE: Because you carry it around in your head. Is that what you say?---A recollection of matters, yes.

THE COMMISSIONER: Over seven years?---In answer to the question, I can't recall making a search of the database. That's the truth.

10 I asked you why. You said it's because you relied on your memory?
---That's correct.

For seven years, was my question, and I suppose the answer is yes?---Yes.

There's no documentary, there's no file which you can go and look at to see what complaints have been made?---We have a database which has a record of investigation matters which are undertaken.

But not complaints?---That's correct.

20

So a complaint is made, not dealt with and then is lost?---That's correct.

So there's no record of complaints made against any individual Sydney Water employee?---Not in internal audit, there's no record of- - -

There's no record made anywhere?---I know there's no record kept in Sydney Water of just complaints there is of investigation matters.

30 And I mean I can understand no complaints being made about defective work, that might be a matter of policy, but collect, don't you think that it would be a good idea to make a record of complaints about corruption?
---That's correct.

MR PAYNE: Just so I understand it Mr McClure, as you sit here today if Ms Potts were to do this again, there's another inspector out there tomorrow who solicits a \$500 bribe from her husband and makes a complaint, do you tell the Commissioner that there is still no mechanism for the recording of complaints within Sydney Water?---As of today, that's correct. But I'm sure that's going to be addressed quickly after the result of this Commission.

40

Mr McClure you've been in internal audit for 23 years, did it never occur to you that it might be neutrally useful to have a written record, an official record of complaints that have been made about Sydney Water officers involved in corruption?---Complaints were kept, but they were more hardcopy then in a computerised system.

So that for example if an email complaint was made to internal audit and there were no official investigation, you'd just delete it would you?---No. The hardcopy information would be retained in files.

THE COMMISSIONER: But not collected so that you could get access to that readily?---That's correct. Electronically.

10 So that if hardcopy complaints of the kind that the Commission has heard evidence about, sorry, I withdraw that. If the complaints the Commission has heard evidence about makes a, urban growth, for example, the six, you were here when Mr Saxby was giving evidence, if they had been actually recorded as an official record by Mr Saxby, and I don't suggest that he did, but if he had done that and sent it to internal audit, when you received this from Ms Potts on 4 February, 2009, you'd have been none the wiser because you had no method of finding those official written complaints?---That's correct. It would be up to us to identify who else within the unit may be aware of matters which had been passed on by Mr Saxby.

20 And how many members of internal audit are there?---There's five.

Has there been any turnover over the last 12 years?---Yes.

And if somebody left, the information contained in their head would leave with them?---It depends on what the information was. If it's information like what you're talking about, just allegations which didn't result in an investigation, that's possibly true. But investigations were, once allegations were received and investigations had commenced, the information goes into an investigations database.

30 Mr McClure you're an internal auditor for Sydney Water and one of your jobs is developing best practice right across the organisation isn't it?
---Mmm. That's correct.

And it hadn't occurred to you or so far as you're aware anyone within Sydney Water that keeping a record of complaints of corruption might be a useful thing?---It should've been recorded in our investigations database, but as I said, our database was mainly for investigations which then became investigations.

40 Well, is the answer to my question it did occur to you it was a good idea or not?---No.

So it was only when these matters have been raised in this Commission is it that it first occurred to you at least, as an internal auditor, that it might be a good idea to keep a record, an official record of complaints of corruption that are made within Sydney Water?---Electronically, yes.

At all?---Records are maintained in files of matters which are passed on to Water when they're allegations.

Yes, but nobody can find them unless they happen to remember it. There is no system whereby, you've got Mr Buckley's name here, assuming six official records of complaints about Mr Buckley have been made and sent to internal audit, you'd have no way of finding those complaints?---That's correct.

- 10 Can I ask you about investigations? Did you then on 4 February, 2009 or at any time subsequently conduct any search of Sydney Water's records to work out whether there'd been any investigation into Mr Buckley's conduct, as distinct from a complaint?---It wouldn't of been across Sydney Water. It would've only been within the context of internal audit.

As you understand Sydney Water's practices and policies, and I'm going right back to the time when you started, 23 years ago, tell me if it changed. Was it the policy of Sydney Water that allegations of corruption made about Sydney Water employees should be reported to internal audit?---Correct.

20

You understand that's not something that you needed to wait for the Commission to tell you. That's been Sydney Water policy throughout as you understood it?---That's correct.

You were here I think earlier today and I think a little bit of last week and heard various officers from civil delivery and urban growth give evidence. That's right isn't it?---I've seen some of the transcripts.

- 30 In terms of the forwarding of complaints of corruption that were made, was there any policy within Sydney Water that only written allegations of corruption should be forwarded to internal audit?---No.

Was that ever made clear?---No.

THE COMMISSIONER: Were you aware that some people thought that that was the case?---The first I became aware of it was when I was in the Commission on Friday and heard that evidence.

- 40 MR PAYNE: These are pretty senior officers of urban growth that have been in and out of this witness box while you've been sitting here, Mr McClure. You recognise that?---That's correct.

In fact Mr Saxby was a very senior officer, he says, I think you heard his evidence that it was unclear to him what it was that Sydney Water's policies were about this matter. Is that a fair comment by Mr Saxby about Sydney Water's policies?---No. There were a number of Sydney Water policies regarding reporting corrupt conduct. We have a fraud prevention control policy which clearly has a section dealing with reporting of such matters.

Up to fairly recently we had a Values at Work Ethics and Action Guide, which clearly outlined reporting such matters. And that now has become a document called, Working At Sydney Water, which clearly outlines the reporting requirements. And in all the fraud prevention workshops and awareness training which we conduct. That's one of the highlights of the, the messages, the need to report matters to internal audit.

10 And over what period of these policies and the need to report things to internal audit about corruption been developed?---The fraud prevention control policy was developed around about 2006 and 2007. But the other documents in various forms have existed as far as I can remember, 'cause they're the general conduct policies, ethics policies, which organisations have.

And despite being internal audit for 23 years, you tell the Commissioner that the first time you heard that senior officers within urban growth were unclear about precisely what they were to do with complaints of corruption was last Friday?---That's correct.

20 It is, have you ever either given or supervised training of Sydney Water officers about what you say Sydney Water's policies of reporting corruption are or should be?---Yes, I have done quite a number of presentations since about 2005 on matters relating to that.

Had you made it clear in those presentations that verbal complaints should be reported to internal audit of corruption?---No, because I was not sure people would have that idea that verbal complaints were not to be reported. It was, as far as I was concerned, verbal or written, they were all complaints and all to be dealt with validly and are reported to internal audit.

30 So as far as you were concerned it went without saying that if it was a verbal complaint of corruption, of course it should be reported to internal audit. Is that what you're saying?---Yes, correct.

It didn't occur to you that these senior officers you were lecturing were sitting there wondering what to do with verbal complaints?---No. I was surprised to hear that.

40 In terms of verbal complaints, was it, was it at any time in the past or is it now Sydney Water's policy that an official record should be made of those complaints prior to forwarding it to internal audit?---I would've thought business areas would keep records of matters coming to them so they could then refer that to us. But even if it was only via phone call we'd be quite happy to receive information along those lines.

And you say do you that you would make a written record of that phone call if it was received?---Correct.

And in accordance with the policy, you told me earlier it'd be put on a file somewhere but not entered into any database that could be searched. Is that correct?---That's correct, until it became an investigation matter.

Can I just take you up on the sort of specific information that you are looking for from Ms Potts. The first is details of the CARs. Do you agree with me that Ms Potts had identified one, the accredited constructor namely Aoun Constructions?---That wasn't a CAR.

10 Just have a look at the email with me, the third paragraph. "Aoun Constructions has recently been issued with four Corrective Actions." You understood a Corrective Action was a CAR?---That's correct.

So when you said you needed more detail about the CARs I suggest to you that you had more than enough information. Do you agree?---The information I was suggesting as wrong was the details of those CARs, what properties did they relate to.

20 THE COMMISSIONER: Why couldn't you find that out yourself, Mr McClure?---At the time Ms Potts wrote to us she was concerned about confidentiality and as with many investigations you're in a dilemma as to how close to the business you get to extract some of that information and I thought at the time the best source of information was Odelia Potts herself.

30 Could you not on your own get copies of the Corrective Actions once you knew who the constructor was?---And that was what I was trying to do through Odelia, the other way of getting it would've meant contacting someone within the Urban Growth or the Civil Delivery area and that's high risk sometimes.

So this doesn't go, the Corrective, CARs don't go onto the computer?---I'm not aware of whether they go on the computer or they're a manual record.

Wouldn't they go onto the computer?---I'm not aware, Commissioner.

MR PAYNE: Mr McClure, have you heard of the e-Developer system?
---Yes.

40 And you're an internal auditor within Sydney Water, e-Developer is a critical computer-based recording system within Sydney Water?---I understand.

CARs are an integral part of the e-Developer system aren't they, Mr McClure?---I'm not aware of that, sorry.

Have you got any training or experience in the e-Developer system, Mr McClure?---No.

THE COMMISSIONER: Isn't it a basic tool of your work as internal auditor to be able to have access to the e-Developer system?---We have access to our major systems like our financial system and our customer system but e-Developer isn't compared to those other systems as major so we haven't by normal practice have access to that. We, if we wanted to we could.

10 How do you find out whether a particular inspector has been at a particular job site? Wouldn't you find that on the e-Developer system?---Probably not, there's probably other ways and that would be through our, our Works and Asset Management System, another system.

Whatever it is, I mean is it just difficult to accept that in this day and age you couldn't find the information you needed about at least the CARs issued to Aoun Constructions without alerting anybody that you were looking? ---At the time I had no understanding of how CARs were recorded.

I see.

20 MR PAYNE: Mr McClure, I want to be fair to you but Internal Audit has an obligation of auditing and correcting problems right across the Sydney Water business doesn't it?---That's correct.

And you told the Commissioner there about your workplace system, that's know as WAMS isn't it?---That's correct.

30 So I want to suggest to you that between the WAMS system and the e-Developer system that the five things you identified for me at the outset that you were looking for from Ms Potts you could have obtained very easily from the WAMS and e-Developer system. Do you agree?---At the time I wasn't aware of the workings of the e-Developer system, probably a little bit more familiar with the WAMS system.

But surely you're familiar with the e-Developer system now as you sit here today?---Just a little bit through the reading of the transcripts.

40 I see. Through my questions of Sydney Water witnesses you've learnt more about the e-Developer system than in 23 years as an internal auditor. Is that what you say?---In the work that I've done during those years my particular role hasn't been to become trained in the e-Developer system and know that in any intricate detail.

Well, from whatever source including reading the transcripts of my questions you know don't you that all of the five things you identified for me that you were looking for from Odelia Potts you could get from the e-Developer and WAMS system. Correct?---At the time I wasn't aware of that.

THE COMMISSIONER: But you know now?---That's correct.

I think we're going to move on from this, Mr Payne.

MR PAYNE: If the Commission please. Can I just ask you then what you did. So your response to Ms Potts at your email back to her asking for further information that was all you did in relation to this complaint?---No.

10 What else did you do?---In relation to the complaint I had a meeting with my manager and we - - -

Who is?---Mr Jonathon Sesel.

I see. And did he tell you, did you discuss with him that you needed to know about CARs, properties, dates, timeframe and other contractors?---I outlined to him that we needed to obtain more information and that Ms Potts is indicating in her email that there's a number or sources of information available.

20 Did you tell Mr Sesel about the five things you told me you needed to know?---No.

What did you tell Mr Sesel?---Explained to Mr Sesel that we had an email from Odelia Potts, the matter was serious, we needed to obtain more information about the matter to get a little bit more substance behind some of the things that she's claimed and, and that she's offering in her email a number of sources of additional information that we can obtain about the matter. And so the approach was to arrange a meeting with Odelia Potts to extract information from her.

30 When you say the approach was, is that what Mr Sesel told you to do? ---That's what we agreed to do.

And did he tell you whether to go back via email or personally?---I can't recall whether that was the case.

40 Did you agree with him that if she didn't respond to the email you'd just forget about the complaint?---No, what happened subsequent to my email of about an hour later to Ms Potts acknowledging the email and indicating that I would make contact with her I can recall making two phone calls to Odelia Potts between 4 February and 13 March trying to line up a meeting with a view to seeing her face to face to obtain more specific information from her.

Did you make any record of these telephone conversations with Ms Potts? ---No record at all but in my email to her on 13 March I refer to the fact that the last time we spoke which confirms to me that there was more than one phone call made and I have got a recollection of two phone calls made to Ms Potts.

Did you have any further discussion with Mr Sesel about what to do about what you regarded as a very serious complaint having been rebuffed in these telephone calls you've told us about?---I can't recall any specific conversation with Mr Sesel about the matter.

So did you take it upon yourself at that point to drop the matter?---What was decided to do was that, our aim was to speak with Odelia Potts, that was clearly what I was trying to do with the phone calls and the emails.

10 Approximately two months later in, in May to June 2009 that's when we start our water planning and the decision was made that based upon Ms Potts' comments that as part of our fraud prevention program for 2009, 2010 we would include fraud awareness training to our inspectorial function which included our plumbing people and our civil delivery inspectors.

Is the answer to my question you decided yourself to drop the complaint? ---The decision was made by me that we had no further information from Ms Potts to go on.

20 And you tell the Commission that the five things you needed to know, you now know you could have got easily from the WAMS and e-Developer systems?---I wasn't aware at the time that it was such an easy thing to get those five things

But you know now?---That's correct.

And you never raised with anybody within internal audit whether or not you could get this information a way other than talking to Ms Potts?---That's correct.

30 You accept, don't you, Mr McClure, that somebody making what I suggest to you was a very detailed allegation of corruption is very conscious of the possibility of victimisation as a result of having made a complaint?---That's correct.

And that's, that's certainly the experience of Sydney Water internal audit. Correct?---Can you clarify that?

40 THE COMMISSIONER: You know that that's what the people outside who would like to complain- - -?---Fear.

- - -fear, they know or believe rather, they're very, they're nervous about possible victimisation should they complain about particular individuals? ---That's always a risk. And you could see in Ms Potts' email that she was concerned and asked for utmost confidentiality. And I do remember thinking at the time, do I approach the business, but I was unclear as to whether that was the best course of action.

MR PAYNE: Did you discuss that with Mr Sesel?---I don't believe I did.

10 Just staying with Ms Potts for a moment, do you accept, do you, that somebody making a serious complaint of corruption about Sydney Water can be concerned not only about overt prejudice, if I can put it that way, namely someone retaliating directly because of the complaint, but also more subtle influences, namely that people in the business responsible for monitoring that person will hear about the complaint and consciously or even unconsciously take it into account against them?---That's always a risk.

20 And what do internal audit do in managing Sydney Water's business to make sure that consciously or unconsciously there is no retaliation by Sydney Water?---In investigations which we've conducted where that's the case, we make it quite clear that the work that we do in internal audit will be done confidentially, securely and we'll do our utmost to preserve their identity and if there's any hint of repercussions as a result of them speaking to internal audit, we're to be notified straightaway and take the matter forward.

20 What steps have you taken on behalf of internal audit in relation to Ms Odelia Potts and this complaint, if any, to notify the businesses in that way? ---I was concerned at the time in February 2009 that she not be the subject of retaliation. That's why at that time I made the decision not to go to the business about the matter. I have not talked to the business about the allegations made by Odelia Potts, it's gone no further than myself and Jonathon Sesel.

30 Is there any mechanism within Sydney Water internal audit to ensure that there is no retaliation against a complainant in relation to corrupt conduct? ---Mechanism is for that person or that company to come forward to us with those sort of details and we will deal with that.

40 Do you take any steps in relation to complaints of corruption made to internal audit to make sure that in the future those people who are monitoring those complainants and have the right of life or death, if I could put it that way, commercial life or death over those complainants, to ensure that they are not victimised or treated less favourably in any way?---Of course. We will do our utmost.

What do you do?---All we really can do is offer that if anything untoward happens, then they're to come to internal audit for us to look into the matter.

So make another complaint, in other words?---Yes.

There's nothing proactively that you would do to try and make sure that the conscious or unconscious prejudice that you accept may exist is not brought to bear on a particular complainant?---Depends on what the matter is. If, if

we've gone some concerns that there might be some retaliation action, we could keep an eye on the situation but we're dealing with possibilities and hypotheticals, but that's, we could do that, we could, we could monitor the situation if we thought there was a real risk of retaliation.

10 When you went back to Ms Potts on 4 February, 2009, you said to her, "The matter will be investigated." What did you mean by that?---I had a view that we would speak with Ms Potts, get some more information and then having done what we refer to as a preliminary assessment, then conduct a detailed investigation.

20 And you tell the Commissioner that after the telephone calls that you made, you and you alone made the decision, because Ms Potts wouldn't meet you, that the investigation would be dropped?---I can't recall whether or not I spoke with my manager, Jonathon Sesel, about the matter. We've got a small team but we sit within a couple of feet of each other and I can't recall whether or not I mentioned to her about, him about the update of the matter. Most certainly by May/June, a few months later when we were talking about the plan, Odelia Potts and her allegations were the catalyst in having some fraud prevention training identified for certain groups within Sydney Water that were inspectors.

30 Do you accept, Mr McClure, that looking back at your handling of Ms Potts' complaint and knowing what you do now, with the benefit of hindsight your actions were not acceptable?---In hindsight looking back I wish I had have pursued Ms Potts' more than I did. At the time I made two phone calls. The second phone call she was indicating that she had now heard from her, she'd now informed her husband that she'd come forward and he was asking her to drop the matter. And so my concern was that it now looked like in having coming, in having come forward to Sydney Water she was now going to drop the matter and the email back to her on 13 March was a reaching out to her to see if we could get that meeting going and to express our concern that we would dearly love to investigate the matter.

And other than the conversation you've told me about with Mr Sesel, did you have any conversations with Mr Barry McClure about this complaint? ---I can't recall that.

40 Anybody else within internal audit?---There wouldn't have been anybody else.

In relation to Mr Buckley, I think we've established that if there were any written complaints about Mr Buckley, you didn't know about them and you had no way of finding them at the time. Correct?---Only if he was a feature in our investigations database and he, and he- - -

Yes. I think you told me you didn't look at that but you're confident he wasn't in there because you carry that around in your head?---That's correct. That's what I said.

Does the same answer apply to any investigation of Mr Buckley, namely that so far as you know there never has been one?---In our, in internal audit, as far as our investigations database exists at the moment, there's no other, there's no mention of Mr Buckley under investigation.

10 So as far as internal audit records reveal, there's never been a complaint so far as you're aware, at least so far as internal audit record reveal, about Mr Buckley and corruption ever?---That's correct. I only became aware of Mr Buckley in February 2009.

And the evidence, some of which you've sat through and the rest no doubt you've read in the transcript of complaints having been made of varying degrees of specificity at what seems to be all levels, at least to the urban growth department and the civil delivery departments within Sydney Water, all of those matters are news to you in the course of this inquiry, I take it?
20 ---That's correct.

Do you accept it may have been useful if those matters had been recorded and sent to internal audit as you say Sydney Water's policies have always required?---That's correct.

Have you assisted business areas of Sydney Water and in particular I'm thinking of the maintenance department, in addressing corruption risks?
---Yes, I have. As part of our fraud prevention program we do fraud awareness training and fraud risk workshops. I can recall doing a fraud risk workshop which involved fraud awareness training in our civil maintenance and construction area in November 2007. I can then recall that from April 2009 through to the beginning of 2010 we did eight workshops and then went for about half a day each at eight civil delivery depots where we gave a fraud awareness presentation and then worked them through a fraud risk assessment workshop.
30

Prior to this inquiry, Mr McClure, had you ever heard any rumour about a bribe or gift culture in any parts of Sydney Water?---No.

40 Never heard a single suggestion for example in relation to the PIAS inspectors that there might be a culture of payments by plumbers?---No, I heard nothing.

THE COMMISSIONER: Ms Hiddlestone - - -?---Mmm.

- - - she's got nothing to do with audit has she?---That's correct.

And she's a relative newcomer to Sydney Water?---Probably mid-2000s I think.

She heard rumours about this. Can you explain why someone like that hears rumours but the internal auditors never heard this, the internal audit section has never heard of this?---My understanding is Ms Hiddlestone was a manager in the plumbing area at the time, that may be an explanation as to why she may have been hearing things but - - -

- 10 There should be a system in Sydney Water for rumours of that kind to be passed onto internal audit shouldn't there?---I agree but I'm, I'm not aware of rumours or whispers because our approach would have been, Commissioner, well, let's hear about it, either verbally or in writing, let's hear about the matters. Simply people can't say to us someone's on the take and for us not to do anything about it.

- MR PAYNE: And the suggestions made in evidence by a number of witnesses to the effect that internal audit wouldn't be interested in something unless it had a real specificity and someone wanted to put
20 themselves forward and be fair dinkum, I take it from what you say you reject all of that evidence?---I reject that. They're happy to receive all levels of information and allow us to do the assessment work.

Do you accept at least at the moment in circumstances where, at least until this inquiry is concluded that record keeping about complaints in internal audit is such that evidence of rumours of corruption may not have done much good in the past?---I accept that.

- 30 And that really internal audit needs to get those systems and processes in order in the future to do the sort of job that the Commissioner is asking you about, namely to root out corruption within Sydney Water?---I accept that we have got a data, an investigations database. I don't see there might be too much trouble in, in adding something to that where we can record all information including the, even the most scantiest of issues like whispers and rumours so we've got a record.

- 40 And just to complete the training picture, on the other side of the, of the corrupt payments if I can put it that way, so far as plumbers and accredited constructors and so on are concerned, a number have given evidence that they haven't been, their attention has not been drawn by Sydney Water specifically in any forum to their obligations to act ethically and perhaps more importantly to how they're going to be protected if they, if they refuse to play ball with corrupt inspectors. I'd ask you accept that that evidence has been given. Are there any moves afoot with your internal audit department to address education and corruption training issues so far as they relate to the people who have actually being paying these bribes?---Are you talking about external to Sydney Water?

I am, I'm talking about the plumbers and accredited constructors who are external to Sydney Water but they're the object really of the Mr Buckley's of this world?---Yeah. It is, it's, it's a lot easier to provide fraud awareness training to staff members as it is to the community and to stakeholders. We have in the past as recently as November 2009 instructed 110 of our major contractors and suppliers, we brought them in for a seminar and spoke to them about Sydney Water's values and ethics and what was expected of them. We've got another training session planned for this financial year but also on our website we have recently made that a lot more transparent about Sydney Water's business ethics so its there on the front page, there's a link. So we've been doing bits and pieces but it is somewhat more difficult than instructing your own employees about those matters.

Do you accept that to date Sydney Water's efforts in relation to that wider education have been fragmented and incomplete?---I don't know whether I'd use those terms. It's somewhat difficult and things were happening but there's acknowledgement that we probably need to do better in that space.

And part of doing better, I'd suggest to you would be conveying in a meaningful way to that group of plumbers and accredited constructors, developers et cetera, that the internal audit department will take positive steps to make sure that sure any complaints of corruption don't result in unfavourable treatment by Sydney Water. Do you agree?---Yep. I agree.

And that that's a two step process. One is to actually develop proactive systems within internal audit, so that you make sure that there is no victimisation as a result of making a complaint. Do you agree?---I agree.

And that the existing systems, as least in that regard, they're insufficient and they need attention?---They need attention.

And then you need to communicate that to the, to the community that's being dealt with by Sydney Water so that they know that there's going to be a real examination of any step against them as a result of any complaint that they make?---I agree.

You used the fraud prevention language on a number of occasions. Is there any reason for the preference within Sydney Water for fraud prevention as against corruption prevention as a term?---Our current strategy is called the fraud and corruption prevention strategy, so it's probably an oversight on my part that I'm using fraud more then I'm using corruption.

And you'd accept from an internal audit perspective that the concept of corruption is a broader one then mere fraud?---Oh, most definitely.

And that internal audit is interested in all aspects of corrupt conduct and doing it's best to eliminate that within Sydney Water?---That's correct.

Excuse me one second, Commissioner. I have nothing further for Mr McClure.

THE COMMISSIONER: Yes, thank you. Mr McIlwaine.

MR McILWAINE: Yes, I have some questions, Commissioner. Mr McClure, I act for Ms Potts and also for Mr Aoun. You've said in your statement at paragraph 16 that subsequent to the email of 4 February, 2009, you spoke to Ms Potts by telephone. Is that correct?---I did speak with Ms Potts, yes.

And you have a recollection of that being on two occasions?---Yes. And as I said in evidence to Mr Payne, in my email to her on the 13th, I refer to the last time I spoke indicating there were at least two calls.

Okay. Now in your statement you used the words, she was reluctant, this in paragraph 16, she was reluctant to meet to provide more specific information. They're your words. Correct?---That's correct.

20 Does one draw from that, that she didn't refuse to meet, it was your understanding that she was reluctant?---The two phone calls I had with her both indicated that I was keen to have a face to face meeting with her. The first phone call she said, I will get back to you. The second phone call she indicated that she had since told her husband of the fact that she had come forward and he wanted her to drop the matter. And she felt nervous about Sydney Water now examining the matter. And the phone call was left with, I'd still like to speak with you, Odelia, and she was to get back to me.

30 Is that the extent of your memory of the phone call?---Yes.

All right. So nowhere in that, in that evidence have you said that she refused to speak to me have you?---I can't recall her refusing to meet with me at all and using those language. She was polite on the phone, but she, particularly the second phone call, expressing a great degree of nervousness about progressing the matter.

Did you ever say to her, I'd like to meet you to discuss this matter?---Yes.

40 I suggest to you that you never said that to her in either of those conversations. What do you say to that?---I would say that on both those phone calls I offered to meet her face to face 'cause that was what the aim of me contacting her on the phone was to meet her face to face to get further information.

But of course you have no record of that conversation do you?---That's correct.

And you being an auditor would appreciate the importance of written documentation of matters such as this?---That's correct.

So do you agree it was a failing on your part not to record these conversations?---I agree the second conversation should've been recorded, it was a longer conversation, the first conversation was simply a matter of we need to speak face to face and for Odelia, and she said, I'll get back to you on that.

10 So you're saying that you said to her, We need to speak face to face. And she said, I'll get back to you on that. Is that the first conversation or the second?---First.

Now, you would agree, Mr McClure, the matters set out in Ms Potts' letter, email 4 February, 2009 it was an extremely serious allegation. Correct?
---Correct.

A criminal offence is it was proven. Agree?---Correct.

20 And you say you had these two conversations where she expressed reluctance to meet with you. Correct?---Correct.

But no blanket refusal. Do you agree with that?---That's correct.

And then you sent, none further happens until you send an email on 13 March. Is that correct?---That's correct.

30 Because in that email on 13 March you make no reference to her refusing to meet with you. Do you agree with that?---That's correct and I just refer to the fact that last time we spoke she was just, can I just refer to it?

Certainly, have a look at the email.

THE COMMISSIONER: The email speaks for itself, Mr McIlwaine. Look, I know you don't usually ask a lot of questions, Mr McIlwaine, but we're under considerable pressure to finish this inquiry.

40 MR McILWAINE: Perhaps I might go to another topic. You've been asked some questions about recordkeeping in relation to complaints. In relation to this complaint did you record it somewhere?---In my working papers, in my files there were record maintained.

In your personal files?---That's correct. They're Internal Audit working papers.

So if someone came along a month after this complaint and had received a complaint about Mr Buckley would they have known about this complaint that you'd been dealing with?---Possibly not, Mr McIlwaine. They would

have to refer to the detail on the, the file which is maintained in hardcopy form in our unit.

Is there some index to those?---Yes.

Nothing further, Commissioner.

THE COMMISSIONER: Thank you. Mr Bouris?

10 MR BOURIS: Thank you, Commissioner. Mr McClure, you may heard some evidence given that at some stage in the last ten years or so there was a document circulating within Sydney Water which may have stated that matters relating to bribery, allegations of bribery, corruption should be in writing before they were referred further within Sydney Water. Do you have any knowledge of such a document?---I haven't and I would supremely doubt that that document would exist.

Have you had dealings with Mr Norman Mann. Do you know Mr Mann?
---I've only ever met Mr Mann once.

20

That was on an occasion of a WSC Water Services Coordinator forum. Is that right?---That's correct.

Do you recall when that was?---That was in May 2010 after the ICAC investigation or well into the ICAC investigation.

Do you recall Mr Mann saying something to you or to the gathering on that occasion about corruption within Sydney Water?---Only that he indicated that it was well known in the industry that ICAC were doing an
30 investigation about John Buckley and that, you know, John Buckley had been doing things for a long period of time.

Did you see anything to that meeting or to Mr Mann on that occasion?---The information provided was that we best not talk about this because there's an ICAC investigation in progress as we speak.

But you said that to Mr Mann did you?---Well, we said, we said that to the body of the group.

40 Did you say anything else to the body of the group on that occasion?---No.

The Commissioner asked you about Ms Hiddlestone. Did you at some point in 2008 give some training to Ms Hiddlestone's group of plumbers?---That was in October 2009 when, as I said, based up on Odelia Potts' concerns, we decided that in our 2009 and 2010 fraud prevention work we had to cover the inspectors, including the plumbing inspectors and the civil delivery inspectors. We did a fraud awareness training session, lasted for

about two and a half hours, of the plumbing inspectors, including Ms Hiddlestone.

When did you decide to do those courses, that training?---That was decided when we developed our 2009 and 2010 audit program, which would have been around May/June 2009.

Would you say that your experience with Ms Potts was a factor in reaching that decision to provide that training?---Yes.

10

I don't have anything.

THE COMMISSIONER: Yes, thank you. Mr Payne, I think that completes Mr McClure's evidence, does it?

MR PAYNE: That concludes Mr McClure's evidence, Yes.

THE COMMISSIONER: Thank you, Mr McClure. You are excused from the summons.

20

<THE WITNESS EXCUSED

[3.56pm]

MR PAYNE: I'm in the Commissioner's hands, there is another witness here but I do notice the time. I won't finish today.

THE COMMISSIONER: You won't finish.

30 MR PAYNE: No. For the benefit of those present, we're going back to minutes relating to Mr Harvey and Makucha tomorrow.

THE COMMISSIONER: Yes.

MR PAYNE: There are I think three remaining witnesses in this part of the inquiry and I'd hope we get to those on Monday next week.

THE COMMISSIONER: All right. Those acting for them would be informed?

40

MR PAYNE: Will be informed by Ms Colquhoun, yes.

THE COMMISSIONER: Yes. Very well. We'll adjourn until 10.00am tomorrow.

AT 3.57 THE MATTER WAS ADJOURNED ACCORDINGLY

[3.57pm]