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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 28 SEPTEMBER 2010

AT 2.05PM

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

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Before Mr Gordon commences, may I tender two certificates of registration of trademarks, being trademarks 1-1-6-4-7-1-6 and 1-8 being the two Sydney Water trademarks.

THE COMMISSIONER: What are the, what are these trademarks, Mr Stevenson?

10 MR STEVENSON: They're the two Sydney Water trademarks and these are certificates of registration of those marks.

THE COMMISSIONER: I see. Yes, Exhibit P - - -?---Which classes were these?

THE COMMISSIONER: - - - is trademark number 1-1-6-4-7-1-6, that's in respect of classes 37, 39, 40 and 41.

20 **#EXHIBIT P184 - CERTIFICATE OF TRADE MARK
REGISTRATION FOR 1164716 IN CLASSES 37, 39, 40& 41**

THE COMMISSIONER: Exhibit P185 is trademark number 1-1-6-4-7-1-8 and that's in respect of classes 27, 39, 40 and 41.

30 **#EXHIBIT P185 - CERTIFICATE OF TRADE MARK
REGISTRATION FOR 1164718 IN CLASSES 37, 39, 40& 41**

THE COMMISSIONER: Mr Gordon?

MR GORDON: Commissioner, I am instructed that Mr Makucha is content to leave the evidence as it stands now subject only to my tendering a two-page photocopy of the text to which he referred in cross-examination, pages 232 and 233. I don't have the book to hand so I can't tell you precisely which book it is I'm afraid at the moment?---I can.

- 10 THE COMMISSIONER: Yes, Mr Makucha?---It's a book I purchased in 2008, in July, it's a book produced by LexisNexis and it was written by two intellectual property lecturers at the University of New England, I can't remember their names.

MR GORDON: Do you remember the title of the book, please?---It may well be on the footer of the page.

No, it's not.

- 20 THE COMMISSIONER: Mr Gordon, if you find out what the name of the book is could you please let the Commission know.

MR GORDON: Indeed I shall?---Excuse me.

THE COMMISSIONER: Yes. The two pages, the page in the affidavit missing Harvey's signature which was juxtaposed to the location of Makucha's signature page, if you could ask the Commissioner if we could file that perhaps tomorrow morning.

- 30 MR GORDON: Commissioner, I'm not quite sure what - - -

THE COMMISSIONER: Well, you can, when you've discover, if you find anything that you want to add as an exhibit you're at liberty to do so before this inquiry ends tomorrow.

MR GORDON: I'm obliged?---Thank you, Commissioner.

May Mr Makucha be excused?

- 40 THE COMMISSIONER: Yes, Mr Makucha may be excused.

THE WITNESS EXCUSED

[2.12pm]

THE COMMISSIONER: Exhibit P186 comprises two pages from an unidentified textbook or unidentified LexisNexis study guide on intellectual property.

**#EXHIBIT P186 - TWO PAGES FROM UNIDENTIFIED
LEXISNEXIS TEXTBOOK ON TRADEMARKS**

MR PAYNE: Commissioner, the next witness was to be Mr Sesel, I've just asked whether he's arrived as yet. If I could just, Mr Sesel is here, I call Mr Sesel.

10 MR STEVENSON: I seek leave to appear for Mr Sesel.

THE COMMISSIONER: Yes.

MR STEVENSON: No section 38 order is required.

MR PAYNE: And just for the benefit of those present and particularly Mr Gordon, Mr Sesel is the last witness touching or concerning his client that this inquiry will hear from.

20 THE COMMISSIONER: Yes. Mr Stevenson, you don't want a section 38 order?

MR STEVENSON: No.

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

MR SESEL: An oath is fine.

30 THE COMMISSIONER: Would you swear Mr Sesel in, please.

THE COMMISSIONER: Yes, Mr Payne.

MR PAYNE: Mr Sesel, what is your full name?---My full name is Jonathon Sesel.

And your occupation?---My occupation is auditor.

10

You're employed by the Sydney Water Corporation?---Yes.

And have been so since I think 1999?---Yes.

You're the head of the internal audit section within Sydney Water, correct?
---Yes.

And have been throughout that period?---No. For the first year I was head
of risk management.

20

I see. And then in 2000 became the head of internal audit did you?---Yes.

Now, there are a number of documents relevant to your evidence and I'll
need to show each of them to you. The first is you have made a response to
a notice from this Commission concerning matters, if I can put it broadly
speaking, concerning the inspectors and PIAS inspectors in the maintenance
division of Sydney Water?---Yes.

30

Can I show you that document. I'll come back to it in a moment. You have
also made two statements in the matter concerning Mr Harvey and his
activities and there are there volumes of exhibits to those statements?---Yes.

I'll show you those statements and those exhibits. Just one at a time. Just
open that folder up if you would, Mr Sesel. That folder at the outset
contains two statements you have made relevant to the matters arising from,
if I can put it this way, Mr Harvey's activities?---Yes.

For the purpose of the transcript you need to audibly if you can just respond
to my questions yes or no?---Yes.

40

And you've had a chance to review those statements recently?---Yes.

Are there any corrections you wish to make to either of those statements?
---No.

Can you read onto the record please the date that each of those statements
was made by you?---The date is 27 August, 2010.

In respect of both statements?---(NO AUDIBLE REPLY)

Commissioner, do you have those copies?

THE WITNESS: There is a second statement 27 August, 2010.

THE COMMISSIONER: Both statements are dated 27 August.

10 MR PAYNE: Yes. And you tell the Commission that the contents of each statement is true and correct to the best of your knowledge and belief?
---Yes.

There are contained within that folder a number of exhibits and two additional folders of exhibits to those statements. Do you agree?---Yes.

Commissioner, I tender each statement and the folders of exhibits that travel with them.

20 THE COMMISSIONER: Mr Payne, I have two statements and a book of exhibits. Sorry, the two statements and this appear to be exhibits in the folder in which the statements are contained.

MR PAYNE: Yes, Commissioner.

THE COMMISSIONER: So I'm not sure what you're tendering.

MR PAYNE: I'm tendering both statements, the remainder of that book contains exhibits and there are two further books of exhibits.

30 THE COMMISSIONER: All exhibits to these two statements?

MR PAYNE: Yes, Commissioner.

THE COMMISSIONER: So there are - - -

MR PAYNE: There are three folders in all.

40 THE COMMISSIONER: - - - three folders. So Exhibit P187 is comprised of three folders the first of which contains two statements by Mr Sesel of 27 August, 2010 together with other exhibits, together with exhibits and the other two folders also contain exhibits to Mr Sesel's two statements.

#EXHIBIT P187 - 3 FOLDERS (1ST CONTAINS 2 STATEMENTS BY MR SESEL TOGETHER WITH EXHIBITS & THE OTHER 2 FOLDERS ALSO CONTAIN EXHIBITS TO MR SESEL'S STATEMENTS)

MR PAYNE: Mr Sesel, I promised you to show you earlier your response to the section 21 Notice from this Commission. I'll show you this document. Is that your response to the Notice to this Commission under section 21?---Yes.

I tender that document, Commissioner.

10 THE COMMISSIONER: Exhibit P188 is the response by Mr Sesel to this Commission's section 21 Notice served on him.

#EXHIBIT P188 - RESPONSE BY MR SESEL TO S21 NOTICE

MR PAYNE: And finally Mr Sesel, I think yesterday you caused your solicitors Mallesons Stephen Jaques to provide another statement to the Commission?---Yes.

20 Can I show you this bundle of documents. If you open that folder, does that contain a statement dated 27 September, 2009?---Yes.

You've had a chance to review it plainly enough. Are there any corrections you wish to make to that statement?---No.

Do you tell the Commissioner that the contents of that statement are true and correct to the best of your knowledge and belief?---Yes.

30 And remainder of that folder contains Exhibits to that statement referred to in the statement?---Yes.

Commissioner, I tender that statement and the folder of Exhibits.

THE COMMISSIONER: Yes. Exhibit P189 is a folder containing statements, containing a statement by Mr Sesel dated 27 September, 2010 and Exhibits.

40 **#EXHIBIT P189 - STATEMENT & EXHIBITS OF MR SESEL DATED 27 SEPTEMBER 2010**

MR GORDON: Is there one for us, we haven't got those?

MR PAYNE: Excuse me one moment, Commissioner. Mr Sesel, can I first ask you, you have a number of documents there. Perhaps we might do this one at a time. If I could ask the court officer to take back from you everything except P188, your answer to the section 21 Notice, which I'll ask

you some questions about to start with. I'm sorry, Mr Sesel, I wasn't conscious, you've prepared yet another document have you?---Yes.

Correcting matters in your 21 statement. Is that - - -?---Yes.

10 Do you have any, excuse me Commissioner, are there any copies of this document? I'll show you this document. This is a statement you've prepared dated yesterday is it, with your solicitors Mallesons Stephen Jaques concerning some matters contained in your section 21 response?
---Yes.

Do you tell the Commissioner that the contents of this statement are true and correct to the best of your knowledge and belief?---Yes.

Commissioner, I tender that statement also.

20 MR GORDON: Commissioner, may I (not transcribable) and say we've only just a moment or two ago been given a copy of this statement and a bundle of documents. If only I'd got them - - -

THE COMMISSIONER: You're not alone, you're not alone Mr - - -

MR GORDON: Plainly I can read it in time to be effective in any way. I wonder whether I shouldn't perhaps be given time to at least go through it.

THE COMMISSIONER: Well, now I understand your predicament but we will, we will commence and then you will be given time either during this afternoon or overnight.

30 MR GORDON: I'm obliged.

THE COMMISSIONER: And this latest statement, Mr Payne, did I hear you say this concerns the response to the section 21 notice?

MR PAYNE: Apparently so, Commissioner. I wasn't conscious of it myself until just a moment ago.

40 THE COMMISSIONER: Well, I, Mr Stevenson, this is unfortunate and in fact it is an extremely irritating nuisance that we have got these documents so late because we've only got until half past 11.00 to finish this inquiry.

MR STEVENSON: Commissioner, I did email these to Mr Payne last night. I assumed thereby it would get into the right hands.

MR PAYNE: If I received it I apologise, I'm not conscious of having received it, I certainly - - -

THE COMMISSIONER: But I mean, it's more than that. I mean all of these statements, I don't know how, when did the Commission first get these statements? Mr Sesel's, when did the Commission receive Exhibits 187, 188, 189 and 190?

MR STEVENSON: 187 and 188 I think the Commissioner's had for a large number of weeks.

10 MR PAYNE: We have and copies of those have all been made available to everyone including Mr Gordon.

THE COMMISSIONER: Right.

MR PAYNE: The only thing that Mr Gordon received is Exhibit P189 which is a copy of a statement - - -

THE COMMISSIONER: Which he hasn't received?

20 MR PAYNE: It was given to him just recently.

THE COMMISSIONER: Today?

MR GORDON: Moments ago.

MR PAYNE: Today.

THE COMMISSIONER: That's 189.

30 MR PAYNE: That's 189.

THE COMMISSIONER: And is that a folder relating to the aspect of the inquiry in which Mr Makucha's interested?

MR PAYNE: I don't believe so, Commissioner, no. It's about future steps in relation to corporate risk management.

THE COMMISSIONER: Well, that, well, that doesn't need to be given to Mr Makucha.

40 MR MAKUCHA: Excuse me, could I please have a copy?

THE COMMISSIONER: No. We haven't got, we're not in the business of giving irrelevant material to people.

MR PAYNE: Just so the record is clear, Commissioner, that was given, a copy of that was given to us last night but the copies to distribute were made available this morning, during the course I think of Mr Makucha's evidence.

THE COMMISSIONER: And what the response to the section 21 notice, does that concern Mr Makucha?

MR PAYNE: I don't believe so. That's all about Operation Siren matters.

THE COMMISSIONER: Well, Mr Gordon, it seems that you have had everything in time in which you're interested.

10 MR GORDON: It would so seem. Of course, I can't say yes or no, I don't know but - - -

THE COMMISSIONER: Well, if Mr Payne is accurately recording the nature of the documents that appears, then it follows, doesn't it?

MR GORDON: It does, I agree.

MR PAYNE: Commissioner, just to be clear I'll be making no submission about Mr Gordon's client whatever based on the document at P189.

20 MR MAKUCHA: What about the other - - -

THE COMMISSIONER: And P190?

MR PAYNE: And P190, yes, yes, Commissioner.

THE COMMISSIONER: Yes. P190 is the statement by Mr Sesel dated 27 September, 2010 explaining the response to the section 21 notice.

30 **#EXHIBIT 190 - STATEMENT BY MR SESEL DATED 27
SEPTEMBER 2010 IN RESPONSE TO S21 NOTICE**

THE COMMISSIONER: All right.

MR PAYNE: Right.

THE COMMISSIONER: Well, Mr Stevenson, I'd better withdraw what I said.

40

MR STEVENSON: You're very gracious, Commissioner.

MR PAYNE: Mr Sesel, what I hope you have in front of you is your original response, P188 to the section 21 notice and I'd also like you to be shown P190, this document also dated yesterday dealing with the, excuse me, the complaint by Mrs Potts concerning Buckley and Aoun Constructions. Do you have both of those documents in front of you?
---Yes.

Can I just ask you firstly about P188 and in particular from paragraphs 15 on. The Manager, Investigations you're there talking about. Is that Mr David McClure?---Yes.

10 And you say that, "The manager had contact with Ms Potts some time in October 2008 and discussed it with me." Is there any correction that you seek to make in P190 to that evidence?---I did not know that the contact was with Odelia Potts. I answered the question understanding that it was asking when the matter had first arisen and the first time I became aware of the matter was in October 2008.

So when you say in paragraph 16 of Exhibit P188 that, "The Manager, Investigations had contacted Odelia Potts some time in October 2008 and discussed it with me" one of the matters that was discussed was not, do you say, the fact that it was Ms Potts or anyone to do with Aoun Constructions that was complaining?---Yes.

20 And you say the allegation was general in nature and did not mention Mr Buckley's name?---Yes.

Had it been brought to your attention prior to this time that the internal audit department of Sydney Water had had complaints about Mr Buckley and bribery reported to it in the past?---No.

When was the first time you became aware that any complaint had been passed on to internal audit about Mr Buckley and bribery?---In the end of July 2009.

30 Which is Yousef Nasrallah's tape recording you're talking about?---28 July, 2009.

You're aware of the evidence before this Commission I take it that a complaint of bribery was passed on to Mr Barry McClure by Mr Paul Saxby probably some time in 1988/89. I'm sorry, '98/'99?---Yes, I am aware.

40 And did you cause any searches to be made of the records of internal audit to work out whether or not you had any record of such a complaint?---Yes, I did. I looked up the investigation database and there were no mention of Buckley in the investigations database.

Is it true, Mr Sesel, that the investigations database before the year 2001 was deleted at your direction at some time in the recent past?---No.

You're aware aren't you of evidence Mr Barry McClure gave to this Commission?---Yes, I am.

Do you recall reading that he said that the electronic investigations database prior to 2001 had been to his understanding deleted?---I'm aware of that but that's not correct.

I see. So the investigations database going back to when is still available?
---To 2001.

10 And prior to 2001?---In 2001 I came in to take over the unit. The investigation manager had left, there was an investigations clerk who had an investigations database on a laptop. I was told that it was inaccessible and that it did not have the password and that it was not supported anymore. I had a look and tried to open it myself, I could not. I tried to find out who the developer was and track the developer, I could not find the developer. I tried to get the former manager Paul to find out whether he could help, was unable to make any progress with that so I caused in 2001 a new investigations database to be established.

20 What happened to this laptop with Sydney Water's internal audit investigations prior to, 2001 and prior?---I do not know.

Did you throw it out?---No.

Did you cause any steps to have some expert in information technology come and examine the laptop?---I went to Sydney Water IT and I asked them whether they could assist and they said they could not.

And there you left it?---Yes.

30 So what Mr Barry McClure told the Commission is correct in the sense that any record of investigation before 2001 is not accessible to internal audit?
---Yes.

But for the reasons you give it wasn't any decision of yours to delete it it was simply that you couldn't access it after taking the steps that you've described to the Commission you decided to leave it?---And establish a database that we could continue on with.

40 Can I take you back then to Exhibit P188 and the information contained therein and in particular I want to ask you about paragraph 17. You discussed the much more detailed email from Ms Potts about bribery and Mr Buckley with Mr McClure did you?---No.

When is the first time you say you saw the email containing information about Mr Buckley and bribery from Ms Potts?---First time I saw that email was when I was shown it by Sydney Water's lawyers in September a few weeks ago.

Nevertheless you had a discussion with Mr David McClure about that email?---I have no recollection of discussion with Mr McClure about that email in question 17. When I say I discussed the call that was the first call that came through the call centre in October '08.

I want to ask you about that, Mr Sesel, because just have a look at the paragraph above in paragraph 16. You say, "Requests to meet with Ms Potts were unsuccessful as she claims she had spoken to her husband Mr Khare Aoun and he told her to drop the matter." You see that?---Yes.

10

Where did you get that information from?---That information because I had no recollections I got from David McClure at the time and at the time I quoted it to the ICAC because I had no recollection but I wanted it to be absolutely transparent that it was a quote.

Where do you say that it's a quote?---The Manager, Investigations has in his section 21 response provided precise details from his records.

I'm sorry. So all of this is you're quoting simply from what Mr McClure said?---Correct.

20

When you say in paragraph 17 you discussed the call what you're seeking to say is that the only thing you discussed with him was the earlier telephone call in October is it?---Correct. In October '08 I discussed the call with him that had come through from the call centre and at that time I did not have a view that it was necessary to notify the ICAC.

And when you say there were not reasonable grounds to suspect corrupt conduct you're talking about the telephone conversation October 2008 are you?---Yes.

30

In relation to the email now that you have seen it I take it you agree with me that there is sufficient detailed information in there for you to form reasonable grounds to suspect corrupt conduct?---Yes.

Would you tell the Commissioner had it been brought to your attention you would've referred it to this Commission?---Yes, I would've walked it straight into the Managing Director's office and notified the ICAC immediately.

40

Mr David McClure was a very experienced member of your team in 2009 wasn't he, Mr Sesel?---Yes.

Can you offer any explanation as to why it was in your view given his experience and training Mr David McClure took no steps in relation to that email other than attempts to contact Ms Potts?---In my view a causal factor would be the lack of having a complaints database and complaints procedures.

So far as Mr David McClure's evidence is concerned that there is no ready way in which complaints can be accessed within internal audit do you tell the Commission that that evidence is correct?---Yes.

And is that a matter that following the evidence in this Commission you're going to seek to address in some way?---Yes. And in fact I've already established an interim measure just last Friday because I realised the importance through this Commission.

10

And please explain to me what is involved in this interim measure?---In the interim measure we've established an Excel database that breaks up a complaint into the date, who made it, the area, any of the people who any allegations are made against, any other information that is known and is referenced to a file. And I've also established some interim procedures and the reason I did that is that we had a complaint come in on Friday and I wanted to get that recorded immediately. Notwithstanding that I'm going to have that temporary database and the procedures reviewed externally as part of the follow up to this inquiry.

20

Yes. Can I ask you then, Mr Sesel about some of the evidence that the Commission has heard about the widespread nature of complaints of bribery and Mr Buckley apparently made to senior officers at the Urban Growth area of Sydney Water. You're aware of that evidence?---Yes, I am.

And for example, I think Mr Price actually reported in writing one such bribery allegation to his superior, then superior, Mr Saxby. You're nodding. Do you agree?---Yes.

30

Is there any policy, was there any policy at the time within Sydney Water requiring notification of a complaint of that nature to internal audit?---Yes, there was.

Can you offer any reason to the Commissioner for the failure of the Urban Growth department to notify that complaint?---When I look at it now I think that the notification procedures for complaining and alleging corrupt conduct had not been sufficiently actively promoted.

40

Mr Sesel, has there been at any time within Sydney Water some policy or practice that only written complaints of corruption should be reported to internal audit on the one hand or the ICAC on the other?---No.

Again, do you accept that the evidence before this Commission as you understand it indicates that it may be that that policy has not been communicated effectively to senior staff?---Yes, I agree.

What steps are in place within Sydney Water to correct that matter?---The steps that we are taking are to make it very precise clear that reporting can

be done orally, verbally or to an external fraud hotline. And we're making sure there's a very strong communication process to all staff and all third parties letting them know how to report and in what form they can do so.

Can I ask you about this test of sufficient grounds to suspect corrupt conduct. There has been some evidence before the Commissioner, the confusion of precisely what that test requires. You're aware of that?---Yes.

10 Including I think some confusion amongst members of your own staff about what that test requires?---Yes.

What steps are you going to take to address that matter?---I'm putting in training for my staff including expert training in the finer legal details as well as training for the Sydney Water senior executive.

That's external training is it?---External training.

And who's to carry that out?---I'm going to look to an expert legal person.

20 Can I just ask you, turning to complaints of corruption from the supplier population, if I can put it that way. You agree with me that suppliers to Sydney Water such as constructors and water service coordinators, appear to be very nervous about making complaints of corruption to Sydney Water? ---Yes.

And I think in your statement, I'll take you to it in a moment, that you're going to take steps to address that matter with, again, with education amongst that supplier category of persons?---Yes.

30 I want to suggest to you that one of the reasons to your knowledge that suppliers are concerned about complaints of corruption that they make is the fear of retaliation or victimisation by Sydney Water. Do you agree?---Yes.

And that fear can be both of a conscious retaliation or indeed a subconscious or reflexive retaliation in that their livelihoods depend to a large extent on Sydney Water. Do you agree?---Yes.

40 What steps do you as head of internal audit plan to take to make sure that there is no intentional or subconscious retaliation against people who have made complaints of corruption which have come before this Commission? ---Two steps. The first is to make all people internally and externally aware that Sydney Water is totally committed to take action against anybody who brings retribution against any party from making a complaint. And the second is to do compliance checking having established a complaint system to do proactive checks of the complaint system to any staff that are going through a disciplinary process or any suppliers that are being performance managed or leave or terminated from the organisation and doing proactive steps to actually compare to see were there any people that we think are

witnesses are in any way receiving some form of retribution. At the same time I can say that I have dealt with a number of complaints myself, in a busy office where we've had staff who have had concerns and I always follow the staff up to make sure that they are comfortable to let them know, to let them know immediately if there is any sign of any retribution from management and on occasion I've even been to talk to management to make sure that they know that there'll be a lot of trouble and they'll be reported to the MD and the ICAC in such cases. That particular set of actions will be documented as part of upgrading our documented procedures so that it becomes systemic with the internal audit unit and within Sydney Water.

That's principally addressing internal retribution, if I can put it that way from whistleblowers and those otherwise covered by protected disclosures. My question was really addressing the external providers, will a similar system be put in place in relation to those people?---Yes. A similar system for those people.

So there will be an internal review of any disciplinary action against a person who makes a complaint of corruption?---Yes.

20

Will that involve all persons who have made complaints of corruption to this Commission?---Yes.

So it'll be retrospective at least to that extent?---Yes.

Can I then ask you a few questions just about compliance with statutory notices to produce documents to this Commission. You're aware of Mr Barry McClure's evidence and the steps he took to comply with notices? ---Yes.

30

Do you have anything to say to the Commissioner about that compliance? ---Yes. I say that it's very disappointing that the compliance was not 100 per cent. It should've been and we need to take steps in future to make sure that that does not happen again. The only point that I would make in mitigation is that there had been a lot of requests for information and at times it was not easy to get the information. And I do believe that Barry McClure made a genuine mistake. Having said that, it does constitute non-compliance and as I said before, not acceptable.

40 And in relation to, heaven forbid, such notices in future, I take it that you're going to take steps to both educate your staff and ensure that notices are complied with?---Yes.

And sending request for information to one part of the business only, you agree with me was unacceptable under the circumstances?---Yes. That's a job not done properly and not acceptable.

Mr Sesel, can I ask you then, put those two documents aside. And if Mr Sesel - - -

THE COMMISSIONER: Well, before you go there Mr Payne - - -

MR PAYNE: Yes, Commissioner.

10 THE COMMISSIONER: On the question of notices, there's something that I would like to ask Mr Sesel. And that concerns a document that was provided to the Commission in the course of the investigations, I think by Sydney Water. Do we have a copy of document headed Prepared for Compliance et cetera.

MR PAYNE: Perhaps if the court officer might just show - - -

THE COMMISSIONER: Yes.

MR PAYNE: - - - you first, Commissioner, and make sure we're dealing with the same document.
20

THE COMMISSIONER: Right.

MR PAYNE: Yes. I show you that document.

THE COMMISSIONER: Do you recognise this document, Mr Sesel?
---Yes, I do.

The handwriting on it, do you know whose that is?---No, I don't.

30 Do you know how it came to have handwriting on it?---I don't know how it came to have the handwriting on it but - - -

Can you tell, sorry?---What, what I do know is that I was going on leave and I collated all my documents that I had and I made this table and I left the table together with all the documents with Sydney Water and I went on leave.

In whose possession did you leave it?---I left it with Barry McClure.

40 The comments on this document, are they yours?---Yes, they are.

And what was your intention in preparing this document? What was the purpose of the document?---The purpose was to provide as much information as possible about a particular document and an explanation of what, what the particular item was.

Do you notice the word "out"?---Yes, I do.

Those documents were not provided to the Commission. Do you have an explanation for that?---I have no, no knowledge.

And someone has ticked some of the documents, you see that? Those documents were given to the Commission. The inference I draw from this document is that somebody at Sydney Water, I think Sydney Water, it might be their legal representatives, I don't know, has gone through this schedule to see what documents Sydney Water was prepared to provide to the Commission and what documents it was not and then provided what it
10 thought it should provide and didn't provide what it didn't wish to provide. That, that inference might be wrong but in the absence of any explanation of this document that's the inference that I draw. Do you know where I can get an explanation from?---The only suggestion I would make would be ask Sydney Water's corporate legal and Mallesons.

You see, this Commission is very jealous of its powers and really expects government agencies to respond with forthrightness and openness to the Commission, I'd sure you'd understand that?---Yes.

20 And that comes as, as a shock to suspect government agencies from withholding documents from the Commission?---This is a shock to me too.

Yes, very well. Yes, thank you.

MR PAYNE: Can Mr Sesel be shown Exhibit P189 please. Mr Sesel, this is the statement that you signed yesterday, principally addressing things that had been done about, if I could put it this way, corruption control within Sydney Water and steps that are planned for the future, correct?---Yes.

30 Can I take you first of all to paragraph 6 of that statement which deals with the annual audit programme. Do you have that?---Yes.

Other than compliance audits how are anomalies in compliance with Sydney Water Corporation's policies and procedures detected?---Through compliance audits and through data mining.

Can I just ask you about data mining. What do you mean by that?---Data mining is where we do an annual suspicious transactions analysis by one of the big accounting firms of our financial systems and our payroll and then in
40 internal audit we do some tests of the databases, the financial databases.

In relation to these compliance audits, that's a paper review is it of the matters set out in paragraph 6 about overtime allowances et cetera?---Yes, it is.

Are there any plans afoot within internal audit to take any more proactive auditing steps about possible corruption or compliance risks?---Yes, we're increasing the size of the audit programme. We're also, we've separated the

fraud risk work from internal audit and internal audit is introducing a new programme which will be to review all the risk, fraud risk, fraud and corruption risk workshops. All the fraud and corruption risk work that is done across Sydney Water will be independently reviewed by internal audit and that's been done across the whole corporation and the reviews will look at the effectiveness of the controls for managing the identified risks.

10 Would be a good suggestion in your view, Mr Sesel, if at the end of that process there was some external review or, by externally qualified persons of the efficacy of those steps?---Yes, and, and that part of the programme that I've just described is going to be outsourced to experts.

In terms of the investigation of corruption matters conducted by Sydney Water itself, you'd be aware of the evidence I think of Mr David McClure that he wasn't aware for example that he could access the e-Developer system and obtain very easily the details that he thought he needed in relation to Ms Potts' complaint, you remember that evidence?---Yes.

20 Is there merit in a suggestion in your view that so far as internal audit resources are concerned it would be sensible to, to create either a separate body or a body within internal audit with responsibility for investigations of the kind that Mr McClure didn't carry out?---Yes, and I have the foundations of that in progress through what I described before as data mining. We in internal audit have got access to all the major financial systems, the billing, the accounts payable and the financial system and we do analysis of those and we're familiar with how those systems work and the analysis is to detect fraud or anomalies or any corruption. Its on the plans and we are going to bring that forward instead of to a year from now, we're bringing that forward to the next two or three months to bring that
30 capability for the asset management system called WAMs and for the e-Developer system so that the auditors will be trained in how to access those systems, they'll have direct access to those systems and they will do testing for anomalies on a monthly basis.

40 Can I just ask you a hypothetical. Let's say the system had worked as you've told the Commissioner it should have worked and about three years ago when a complaint of corruption was made about Mr Buckley to Mr Price who passed it on to Mr Saxby, he'd have told internal audit, do you agree, leaving data mining and everything else to one side, do you agree that internal audit within Sydney Water in order to investigate that complaint had it actually been received by you would need at the very least considerable additional training and/or resources?---Yes.

Is that planned to happen?---Yes.

How?---The, the managing director of Sydney Water is very, very committed to addressing the issues that have arisen in this inquiry and has

told me that we will be given the resources to do what we need to do in the regard so we - - -

Sorry?---So we will be having extensive training for my unit to make sure that not only are there the procedures in place to make sure that a complaint is followed up from beginning to end but also the capability and the access to the systems is also there.

10 So at least from your point of view a recommendation by this Commission for additional resources and perhaps a separate investigation arm for internal audit you would regard as well warranted on what you understand the evidence to be before the Commission?---I think that it has merit.

Thank you. Can I ask you about paragraph 7, just a question. Who, Mr Sesel, is formally responsible for risk management within Sydney Water? ---Sydney Water has a corporate risk manager who sits in the Corporate Services Division.

20 What relationship is there between that person and Internal Audit?---There's a work interface in that the corporate risk framework which is worked on by the corporate risk manager is used by internal audit to determine which are the inherently high strategic and divisional risks that get included in the strategic and divisional risk audit programs.

Can I ask you some questions about paragraph 9 of the statement which deals with the PIAS inspectors. In 2003 your unit carried out a compliance audit of PIAS?---Yes.

30 Broadly speaking, you included the documents here. Broadly speaking you found a number of strengths at that time including management, supervision and monitoring of the workforce. You agree?---Yes.

That was two years before Ms Hiddlestone came on board and I want to suggest to you that a fair reading of her evidence is that management systems within the PIAS inspectors when she came on board were a shambles. Do you agree?---Yes.

Your review two years before that didn't pick any of that up?---Yes.

40 Can you offer any explanation to the Commissioner why that is so?---The only explanation I could have is that the focus of the audit was on particular aspects of supervision and I can't remember exactly which ones they were but those which we examined would've been concluded as being in order.

Just in fairness to you go over to paragraph 13. You are dealing mainly with a Mr Pascale in the course of this audit review?---Yes.

You've read Ms Hiddlestone's evidence about her view as a senior and I suggest to you very competent manager about Mr Pascale's abilities namely a very poor opinion that she offered. You agree with me?---Yes.

That wasn't apparent to you at the time you did this inspection?---No, it wasn't.

10 So is that a weakness in the internal audit model or is that just inherent problems in the PIAS system in your view?---I think it's inherent problems in the PIAS system.

By that is the opinion you're offering the only real way to deal with it is the way that Ms Hiddlestone commenced and perhaps hopefully now will complete in more or less starting again?---Well, I think that that's certainly, certainly - - -

I'm sorry, I didn't - - -?---It certainly would be a major improvement on that basis.

20 With the PIAS inspectors essentially as she's done introducing the management controls as you understood she did, refinement of the workforce, in effect people have to apply for jobs in a new unit?---Yes.

30 Can I ask you about paragraph 22 of your statement. This is about (not transcribable) risk assessments and workshops. Mr Sesel, is it a fair criticism of internal audit before all the matters which have emerged in this inquiry came to light that its attitude was that fraud couldn't happen here within Sydney Water?---No, I don't think it's a fair criticism. The criticism was in the KPMG report and the criticism was that the staff in accounts payable thought that fraud and corruption couldn't happen in Sydney Water.

Couldn't happen. We've heard from Ms Valentine about steps being taken in the - - -.?---(not transcribable).

We've heard from Ms Valentine in this inquiry about steps being taken in the future within accounts payable?---Yes.

40 As a result of the evidence before this Commission can you briefly outline internal audit's role in any improvements to accounts payable procedures? ---In relation to the accounts payable procedures internal audit caused Sydney Water to ensure that there's a report, that there's a financial report that goes to all managers showing all the exercises of delegation that have taken place in their cost centre and all managers are required to now sign an annual declaration that they understand how to use that report and confirm that they are using that report. In addition to that in June 2010 we brought on an additional 22 data mining tests where we analysed the financial system for any, any apparent exceeding of delegation or any apparent order splitting and what happens is that the minute we find an apparent anomaly

we follow that up immediately so it happens in a very quick time and we go to the manager and management concerned and we say please explain and if there's any problem we escalate that to the executive.

Insofar as this topic of order splitting is concerned as well as the steps taken with accounts payable are there steps in train within Sydney Water to ensure managerial responsibility of the persons involved in any order splitting to make sure that those managers have a role in detecting it and stopping it?
---Yes.

10

What are those steps?---That's through the business intelligence reports.

Please explain?---The business intelligence reports is a monthly report that shows the manager all the exercises of delegation and all the expenditures that are being incurred by each of the managers or staff under delegation.

20

And the idea being that that's a tool that the managers can use in order to stamp out this practice to the extent it is a practice of order splitting?---It's a tool to discover it early plus in shared services they are doing the same thing so shared services instead of just processing invoices they have developed a capability to do their own online analysis at the time that will show them apparent order splits or any exceeding of delegation.

I see. So online analysis of what's going on in real time with the people working under them?---Yes, that's been done by the processes in shared services but it's also been done by internal audit and as I said before management are required to, there's a rule now they have to read the report and analyse it and sign off on all the expenditures in their area.

30

And that's something that's to be used, is there any policy of any sort of file review being introduced within Sydney Water?---Sorry, can you repeat the question?

Is there any, as a result of evidence before this inquiry is there any move to introduce any requirement for file reviews by more senior officers on a random basis of staff working under them?---Not that I know of at this stage but it is a good thing to do.

40

You'd accept that would be a sensible recommendation?---I would accept that, yes.

Can I ask you then about the fraud hotline over, you deal with this I think in paragraph 32 in the second dot point on page 11 of 16 of Exhibit P189. What steps have been taken to publicise the existence of the fraud hotline outside Sydney Water and in particular to the supplier community if I can put it that way?---The fraud line was established internally in internal audit. It's a 24 hour hotline in June, 2010. And it was advertised on Sydney Water's intranet and I think it was also included on the webpage, but I'm

not 100 per cent sure of that. In going forward, the fraud line, the fraud hotline is already in the process of being outsourced to one of the big accounting firms and we've realised that a success factor for preventing fraud is to be very vigorously promote. This is part of the process and procedures for third parties to have complaints about corruption. So we will have a very strong and ongoing promotion on our website in our documentation issuing ready reckoners to all people who do business with Sydney Water so that they know how to make a complaint, where to make it, in what form and if they sense any form of retribution, where to go and what to do.

MR PAYNE: In terms of the name, so far as the supplier, namely a fraud hotline, so far as the supplier community is concerned, do you agree that a sensible step might be to call it a corruption hotline, which is a much broader term than fraud?---Yes. Yes.

And that would be a sensible recommendation in your view?---Yes.

Just before I leave the topic of KPMG which we mentioned. Can you just identify for me this document? Mr Sesel, I just want to show you on page 2 in the executive summary under key findings, the first dot point, the cultural view that fraud could not happen here, I was asking you about, that's what you were referring to?---Yes.

Commissioner, I tender that document.

THE COMMISSIONER: Yes. The KPMG report of 13 November, 2009 is Exhibit P191.

30

#EXHIBIT P191 - KPMG REPORT OF 13 NOVEMBER 2009

MR PAYNE: Mr Sesel, could I then ask you about paragraph 39, which is under the heading of Going Forward?---What page is that, sorry, please?

I'm sorry, it's paragraph 39, page 14 of 16 of Exhibit P189.

THE COMMISSIONER: I think you've, is it of the KPMG report are you talking about?

40

MR PAYNE: I'm terribly sorry. Please hand the KPMG report back. I've asked you all the questions I will about that. I'm terribly sorry. I was going back to your statement and asking you about paragraph 39, Mr Sesel, of your statement, which is Exhibit P189. I'm terribly sorry?---Yes.

I've asked you some questions about the structure of internal audit and the resources necessary, so I won't labour that. Can I ask you about sub-

paragraph (b). In terms of your reporting function, I think you've said you report directly to the managing director of Sydney Water?---Yes.

And, and that at least is something you regard as desirable I take it?---Yes.

Why is that?---What that enables my unit to operate is with independence and that where we find any problem in the organisation of any time that puts the organisation at risk, be it ethical or just poor business, I have that ability to raise it through audit or through investigation or through any avenue.

10 And having the ability to go straight to the managing director and know that it's always acted upon and always followed through helps my unit to be effective and helps us to get our work done without being undermined.

And in terms of an independent review function, is there any possibility it would work better if internal audit reported directly to the board of Sydney Water in your view or not?---I don't believe that that would add any value. I have direct access to the chairman of the audit committee. I meet with the chairman of the audit committee at least once a year. The audit committee meets without any management with me once a year. And I have a meeting with the chairman of the board once a year without any management. And I have absolute freedom to discuss any concerns I have about anything that may be at risk or any unethical issue or behaviour by anyone in the organisation no matter how senior.

20

Can I ask you about Price Waterhouse Coopers did a review in 28 July, 2010 of certain, of the accounts payable systems. Can I just show you that document. Sorry. And I want to ask you about page 7. Tell me when you're there?---Yes.

30 So this was an external review conducted at your request on the accounts payment system within Sydney Water?---Can I correct that? This review was done at the request of the general manager of corporate services.

Yes. Who is?---It was made under the auspices of internal audit.

I see. Who was that person?---Denise Dawson.

I see. So Ms Dawson, who's ultimately just in the hierarchy, to make sure I understand, she's Ms Valentine's boss?---Yes.

40

And so accounts payable comes under her control and supervision?---Yes.

So she caused this review in light of the matters which have emerged, the subject of this inquiry had she?---Yes.

Can I just take you to page 7?---Can I correct that? My understanding was that it was following the Ed Harvey matter.

I understand. One of the matters the subject of this inquiry?---Yeah. Yep.

Can you look just at paragraph 8 on page 7. It says cumulative vendor payments greater then \$50,000 where formal contracts should be set up. And the notes say, we were unable to perform this test as the data provided did not contain the authoriser or the department authorising the payment. Do you see that?---No, I don't see it. Which - - -

Just on page 7.

10

THE COMMISSIONER: Item 8.

MR PAYNE: Item 8 in a series of boxes. Do you see that? Sorry, the numbers are on the left hand side, Mr Sesel.

THE COMMISSIONER: The numbers are on the left hand side?---Oh, sorry, I missed that. Yep.

20

MR PAYNE: And just looking across the page, it says, so just to orient you, it's cumulative vendor payments greater then \$50,000, so order splitting we're talking about. Correct?---Right, I've got it.

You see it. And it says we were unable to perform this test as the data provided did not contain the authoriser or the department authorising the payment. Do you see that?---Yes.

30

Have steps been taken to your knowledge to correct that matter so that this cumulative vendor payments greater then \$50,000 can be dealt with in the future by Sydney Water systems?---I don't know the answer to that.

Would you agree with me from an internal audit perspective at least, that that would be a very sensible matter for Sydney Water to address?---Yes, it would be.

And if recommendations were made by this Commission about that you at least on behalf of internal audit would agree that they were sensible?---Yes.

Commissioner, I tender that Price Waterhouse Coopers document.

40

THE COMMISSIONER: Yes. The Price Waterhouse Coopers review of 28 July, 2010 is Exhibit P192.

**#EXHIBIT P192 - LETTER FROM PRICEWATERHOUSE
COOPERS TO SYDNEY WATER DATED 28 JULY 2010**

MR PAYNE: Now, just excuse me one moment, Commissioner.

THE COMMISSIONER: Mr Sesel, there are two matters relating to corruption procedure that I'd just like to ask you about. One of the aspects of this public inquiry has been the bribes paid to PIAS inspectors and many of the bribes have been what, (not transcribable) I can fairly describe as relatively low. I mean as, as I think as little as \$20 on occasion, but very many at \$50 and I certainly got the impression from a number of the witnesses that they regarded payments of that order as, as trivial. Now, on one view one could understand that but it's become apparent in this inquiry that over time the \$50 leads to \$100 and can go up to as much as \$1,000 in a serious case. Even if it doesn't go up the practice of, an accepted practice of small payments being made is one that is akin to a cancer. Do you agree with that?---Yes, I do.

Well, that's a comfort. I do want to stress that in this Commission we have considerable experience of that kind of conduct, it isn't only related to the plumbing industry and it certainly isn't only related to Sydney Water. One finds it in almost every part of public life probably all over the world but because it can lead to the kind of corruption and indeed suffering that we've heard about in this Commission it's extremely important for agencies to do their best to root that out. I mean, it is not an easy task and I, I think I mentioned to Mr De Rooy that we certainly commend the, Sydney Water for the response, the quick and comprehensive response it has adopted in relation to the evidence revealed in the Commission but I just wanted to be sure that you agreed with the view that the mere fact that the amounts of the bribes were so low does not mean that they are not really important?---I do agree, Commissioner, and from my experience a lot of problems that have become big problems start off small problems, start off with the small gifts and that whole culture is a bad thing because it has the potential to compromise the quality of work which can end up costing Sydney Water a lot of money in the long run but I do also have a view, Commissioner, that one needs a very much more proactive fraud prevention programme and we have learnt from this but by the same token as painful as it has been this hearing I think is a hearing that Sydney Water needed to have.

Yes?---And I think it has produced very good outcomes.

Well, I think so too. Of course, the other thing is that it is very important, I think as Mr Payne has on more than one occasion stressed, is to attempt to educate the plumbers, that is the contractors as well as the, as Sydney Water employees. The second matter that I did want to raise with you is the, is this notion of the fraud hotline or corruption hotline and the acting on complaints. As I have mentioned to another witness, this Commission acts on any kind of complaint including oral anonymous complaints and very often the, those complaints are assessed not to be capable of investigation or not worthwhile to investigate. But we have traced very serious corruption through anonymous telephone calls which have put us on notice of, of the possibility of serious corruption and, and has, has started a very successful

investigation so I just wanted to make sure that you agree that its important to keep an open mind on this and that there should be no rigid policy or practice in relation to the detail or format of complaints that have to be made before your department acts on it?---I absolutely do agree.

Yes, thank you. Mr Payne.

10 MR PAYNE: Mr Sesel, just three final things. You're aware I take it that when Mr Harvey was employed by Sydney Water that a check that wasn't made was of his termination from RailCorp?---Yes.

What steps are in place to make sure that that can't happen again?---The human resources have reviewed their checks that they do and they have a set of personnel screening checks that make sure that they leave out none of the past employment or referees of a person who is proposing to join the organisation.

20 Thank you. The penultimate thing I want to ask you about is this document of 9/9/2009, that's a memorandum to you from the manager, procurement of implementation of accepted recommendations.

THE COMMISSIONER: No, Mr Payne, I think that's the other way around.

MR PAYNE: I'm sorry, from you to Mr Baragry, manager of procurement, I'm terribly sorry, Mr Sesel?---Yes.

30 Can you go to the back page of that please, under the heading Management Response, that's not something written by you, that's something written by Mr Baragry, isn't it?---Mr Baragry, yes.

Baragry. What's the subject matter of this memorandum?---The subject matter of this memorandum was a review of supplier, panel suppliers in Sydney Water.

And I take it from this management response that you were making a recommendation to management and it was being resisted because management didn't wish to be seen as a policing agent?---That is correct.

40 And what was the outcome of this process?---The outcome of this process was that I discussed it with the managing director and the audit committee and the managing director took steps to direct that panel procurement be reviewed and reduced and only be used where, in Sydney Water where it came be absolutely justified and as a result of that significant steps were taken in Eric Rooy's division to reduce panel procurement.

And as a result you tell the Commissioner than resistance to the implementation of procurement controls is or is no longer an issue within Sydney Water?---It's no longer an issue in Sydney Water.

Commissioner, I tender that memorandum?

THE COMMISSIONER: Yes. The memorandum from Mr Sesel to Mr Baragry of 9 September, 2009 is Exhibit P193.

10

#EXHIBIT P193 - MEMORANDUM FROM MR SESEL TO MR BARAGRY DATED 9 SEPTEMBER 2009

MR PAYNE: And finally, Mr Sesel, just to clear something up, in the copy of the Business Implementation and Confidentiality Agreement which is annexed to your statement which is Exhibit P187, if that can be shown to Mr Sesel.

20 THE COMMISSIONER: While that's being shown to Mr Sesel, I will make the schedule of Mr Sesel as at 18 March, 2010 Exhibit P194.

#EXHIBIT P194 - SCHEDULE OF MR SESEL'S COMPLIANCE WITH ICAC S22 NOTICE DATED 18 MARCH 2010

MR PAYNE: Thank you, Commissioner.

30 THE COMMISSIONER: That's the schedule of documents.

MR PAYNE: I'm sorry, Mr Sesel, I just want to clear something up with you. In those volumes you have a copy of the Business Implementation and Confidentiality Agreement?---Yes.

That's the copy that was given to you by Mr Harvey on the day that he confessed if you like to his involvement in a joint venture?---Yes.

Can you go to page 57 of that agreement.

40 THE COMMISSIONER: What volume is that in, Mr Payne?

MR PAYNE: I think its in volume 2, Commissioner, in folder 1, I'm sorry, Commissioner. Exhibits folder 1, do you have that Mr Sesel?---Not yet. Yes.

You have it. You notice that that copy does not have a signature of Mr Harvey's there?---Yes.

Can I show you now Exhibit P134, which is a copy of that same page but with Mr Harvey's signature and the date, 3 December, 2009?---Yes.

I'd ask you to assume that that's a copy of the copy on the Supreme Court of New South Wales file?---Yes.

There is no issue from your point of view, I take it, that Mr Harvey actually signed the business implementation and confidentiality agreement, is there?
---Correct.

10

He did sign it and what I've shown you, P134, is a copy of what he signed?
---Yes.

And you weren't intending in any way by putting this unsigned version forward to suggest anything to the contrary?---Correct.

Thank you. I have nothing further for Mr Sesel.

20 THE COMMISSIONER: Yes, Mr Gordon, do you have any questions you wish to ask Mr Sesel?

MR GORDON: I do, yes, Commissioner. Mr Sesel- - -

THE COMMISSIONER: You'd better explain to Mr Sesel who you represent.

30 MR GORDON: Yes, indeed. I appear for Mr Makucha. Help me with this if you'd be so kind. You made two statements both of the same date. Is that correct?---Yes.

Where were you when you made those statements?---(NO AUDIBLE REPLY)

THE COMMISSIONER: When you signed them?

MR GORDON: Yes. When they were prepared and they were signed?
---When I signed both statements I cannot recall.

40 You, forgive me. The first one that we have is the 27 August, 2001 and gives a, in paragraph 6, 2010, thank you. In paragraph 6 gives a short version of a conversation between yourself and Mr Harvey?---Yes.

The other statement of the same date gives a longer version of that conversation?---Yes.

Why did you seek to make a second statement with a longer version in it?
---I can't recall.

You can't recall. Were you advised to make a longer statement?---I can't recall.

Did somebody prepare that statement or did you prepare it yourself?
---I can't recall.

Do you not recall sitting down and composing a statement?---I can't recall.

10 Do you recall whether you dictated a statement to somebody?---I didn't dictate the statement.

Did somebody present you with a statement for you to sign?---Yes.

Who presented you with that statement?---To my best recollection, my best recollections were that it was Mallesons.

And who at Mallesons gave you that statement to sign?---I can't recall.

20 You can't recall. Was it the same person who prepared both statement?
---I can't recall.

Do you recall the time gap between the first statement that you saw and the second statement that you saw?---No.

THE COMMISSIONER: I think the answer is no, Mr Gordon?---No.

30 MR GORDON: No. Thank you. Can you recall anything about the process of making either of those two statements?---I can recall having made some notes and I can recall checking the statements and satisfying myself that they were true and correct.

Where were you when you checked your notes against the statement?
---I can't recall.

Were you alone or with somebody else?---I would have been alone.

Did you discuss the statement and/or your notes with any other person?
---To the best of my knowledge, no.

40 THE COMMISSIONER: When you say, when you answer no to that - - ?
---At the time of, at the time of signing.

You're not suggesting that you drafted this yourself, you may have or you may not have, as I understand your evidence to be?---I understand that I may have provided materials that were my notes, that were my notes, that were drafted into a statement and then I reviewed that statement, satisfied myself that it was correct and signed the statement. There was no one that I discussed it with other than a witness to me signing the statement.

And did somebody ask you to prepare notes?---To my recollections, yes.

Was that someone from Mallesons, was it?---I think so.

MR GORDON: Help me with this. Your first contact in relation to this matter was on 27 January, 2010 with Mr Harvey. Is that right?---Yes.

10 Did you know Mr Harvey prior to that?---No.

Not at all?---Not at all.

Not by name or by occupation within Sydney Water?---No.

Did you know a man by the name of Freeman?---Paul Freeman?

I'd imagine so. Is he head of the asset division?---Yes, yes.

20 Did you know Mr Harvey to be employed within his division?
---(NO AUDIBLE REPLY)

THE COMMISSIONER: At what point?

MR GORDON: During 2009/2010?---Yes.

30 You did. So you had in fact heard of Mr Harvey's name before?---I didn't know him but when, when Mr Harvey came to see me and I understood that he worked in the property division, I then knew that he worked for general manager Paul Freeman because the property division is in Paul Freeman's division.

Between approximately 1978 and 1980 or thereabouts, were you in charge of patents and other developments within Sydney Water?---No.

Or overseas?---Sorry?

Were you involved with patents at any stage in your career?---No, not that I

40 Not at all? Forgive me one moment. Do you have a curriculum vitae?
---Yes.

Is that published on the Internet?---Yes.

Does that include a reference to your involvement at some stage in your career with patents?---Not that I can recall.

Is there, in addition to there being in Sydney Water a property division, the head of which is Mr Freeman, is there an asset division? I'm sorry, the asset division, the head of which is Mr Freeman. Is that right?---Yes.

And there's a property division?---Yes.

The head of which is Mr Inberg?---Yes.

Have I got that right?---Yes.

10

Thank you. And they're two separate divisions?---Yes.

So I was wrong and led you into error, did I, when I suggested that Mr Harvey was employed within the division of Mr Freeman?---Can you repeat that question?

I may have led you into error, and I'm trying to correct it if I did. Mr Freeman, Mr Freeman's department was the asset division?---Yes.

20

Mr Inberg's was the property division?---Yes.

Well, which one of those two did Harvey work?---Harvey worked for the property division.

Ah hmm. Going, please, if I may, to Exhibit P194, in the course of your involvement in this matter, having seen Mr Harvey on 27 January 2010, forgive me, on 28 January 2010 a draft statement prepared by you, according to exhibit P194 (not transcribable) from Mallesons. Is that right?

30

Have you produced that draft statement?---When you say produced, what do you mean?

To the Commission?---I believe that it would have been.

Do you have any personal knowledge of it being produced?---No, I don't, because earlier I answered the question that before I went on leave I made a list of all my documents and I left them for Sydney Water to provide.

40

What were your leave dates, please?---I can't remember.

Were you on leave outside New South Wales or inside?---Yes, I was.

Which?---I was on leave in March 2010, I was on leave in Fiji.

And before you went on leave you had contact with Mallesons plainly? 28 January?---I can't, I can't remember. My recollections are that I was asked to prepare the documents for discovery and I prepared the documents, I

made the list and I gave the package to the legal department in Sydney Water.

When was your first contact with Mallesons please in relation to this matter?---It was approximately two days later.

Two days after your conversation with Mr Harvey?---Two days after my conversation with Mr Harvey.

10 That conversation we know or you say was on 27 January?---Yes.

The reference in your schedule P194 refers to 28 January being the very next day. Is that right?---Can you repeat the question please?

In your conversation with Mr Harvey you recall your statement as being 27 January?---Yes.

20 And in the schedule P194 the entry for 28 January, the very next day is a draft statement prepared by JS, that's you I take it?---Yes.

Solely from Mallesons. Is that right?---Yes.

Why solely?---Because my understanding was that legal privilege applied.

THE COMMISSIONER: Privilege from the Commission?---Pardon?

30 Privilege from the Commission. In other words you didn't have to tell the Commission about it?---No, my understanding was that legal privilege in terms of not releasing it to anyone else other than the Commission.

I see.

MR GORDON: Between 27 and 28 January who was it that contacted you in relation to you being in contact with Mallesons?

THE COMMISSIONER: Mr Gordon, I'm getting a little restless - - -

MR GORDON: Certainly.

40 THE COMMISSIONER: - - - because I don't see the relevance of this.

MR GORDON: I'll move on. When you made or when you had the conversation on 27 January with Mr Harvey did you have any recording device or operate any recording device of that conversation?---No.

Did you make any note of that conversation at that time?---No.

In relation to your entry on P194 of 2 February, 2010 "Note of interview with Ed Harvey" what note was that and what interview please?---Ed Harvey was being interviewed by Mallesons and while Mallesons took a break I was in the room and continued the discussion with Ed Harvey and I made notes of the discussion that took place at that time and then I shared those with Mallesons.

You were in the room during a conversation between Mr Harvey and Mallesons in respect of this matter?---Yes.

10

Was he at that stage making a statement or merely being interviewed?

MR STEVENSON: Am I allowed to object?

THE COMMISSIONER: Yes.

MR STEVENSON: As we all know there are proceedings put - - -

20 THE COMMISSIONER: I understand the point. I do understand the point. Mr Gordon, while the evidence you're seeking to elicit may be relevant to the civil proceedings between your client and Sydney Water it is not relevant to the issues before this Commission.

MR GORDON: Only, with respect, Commissioner, insofar as I may go to any inference brought to bear on Mr Harvey as to what in terms of his statement.

30 THE COMMISSIONER: Well, no, it was never put to Mr Harvey, there was no case made in that, to that effect against Harvey and Harvey gave evidence, not one question was addressed to him to that effect.

MR GORDON: No, well, at that stage, Commissioner, you may recall I wasn't really in a position to cross-examine Mr Harvey.

THE COMMISSIONER: Well, I understand that you had had limited time to prepare.

MR GORDON: One day.

40 THE COMMISSIONER: Yes. As I explained there's only one person to blame for that and if it was, I get the impression that you have no evidence that there was any pressure to bear and you really are simply exploring the question.

MR GORDON: Yes.

THE COMMISSIONER: You're perfectly entitled to do that but I will allow you to put the proposition squarely to Mr Sesel and we'll see how it

goes from there but the kind of cross-examination that would be permitted in ordinary civil proceedings between your client and Sydney Water is not appropriate here.

MR GORDON: Certainly. I'll try and deal with the two points that I wanted to make quickly.

THE COMMISSIONER: Yes.

10 MR GORDON: Mr Sesel, help me with this. You were present throughout that discussion with Mr Harvey, was he at that stage making or did he make a written statement then?---He didn't.

THE COMMISSIONER: But he was being interviewed, was he being interviewed for the purposes of making a written statement?---It was not a formal interview, he, he sought to come and have the meeting, he, he, he, he told his manager Gary Inberg that I want to talk to you and Inberg said, Will you talk to audit? And he said, Yes, I want to talk to internal audit. And he came, he came up and he had the discussion and it was not an interview it was, it was a discussion.
20

Yes, thank you.

MR GORDON: In the entry on 15 February, I think it probably should be 2010 but it's entered as 15 February, 2009 email from Ed Harvey to JS. Do you see that in the Exhibit P194?---Yes.

That should be, am I right, 15 February, 2010?---Yes, that's correct.

30 So that entry is an error. Was it recorded in the comment in interviews with Ed Harvey at Mallesons I asked him to think over the weekend and recall his recollections relating to Makucha. Was he unclear about some aspect - -
-

THE COMMISSIONER: I will not allow that.

MR GORDON: Was there a topic that you particularly wanted him to consider?

40 THE COMMISSIONER: I will not allow that, Mr Gordon.

MR GORDON: I will not press it further, Commissioner. Go to the entry for 10 March please. This analysis was done by JS, do you understand why Harvey had signed up those versions of this letter. Do you see that entry?
---Yes.

By analysis of the Stafford letters did you achieve a reason?

THE COMMISSIONER: A reason for what?

MR GORDON: A reason why Harvey had signed updated versions of this letter?

MR STEVENSON: I do object to this. I know that special rules apply here in regard to legal professional privilege but if this witness was being asked questions by Mr Gordon in the Supreme Court none of this would be allowed.

10

THE COMMISSIONER: Yes, well, I haven't allowed it, Mr Stevenson.

MR STEVENSON: I object to this question (not transcribable).

MR GORDON: I have nothing further.

THE COMMISSIONER: Yes, Mr Stevenson.

20

MR STEVENSON: Just one matter arising out of questions I think Mr Payne and the Commissioner asked you about the proposed external corruption hotline, I think you called it fraud hotline, Mr Payne suggested perhaps corruption hotline might be a better idea?---Yes.

30

What instructions do you know are to be given to whoever is to be managing that hotline so far as complainants who wish to remain anonymous on the first part and who do not wish to put a complaint in writing on the second part?---The instructions will be part of the procedures and they'll be very clear that people wishing to remain anonymous will not be required to ask their name and no steps will be taken to find out who they are.

Assurances will be given then if they ask for them?---Assurances, assurances will be given to them.

40

What about persons who are not wishing to remain anonymous but aren't prepared to put anything in writing, what instructions will be given to the hotline coordinator about - - ?---The instructions will be that they can make anonymously or otherwise verbal, verbal complaints about anything that is troubling them in relation to corruption.

Thank you.

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

THE WITNESS EXCUSED

[3.49pm]

MR PAYNE: For the benefit of those present that completes anything that may have to do with Mr Gordon and his client. The remaining witnesses - - -

THE COMMISSIONER: The rest of the - - -

MR PAYNE: The rest of the inquiry for this afternoon and tomorrow morning, there's the, there's a matter to clear about the PIAS inspectors this afternoon and tomorrow morning a matter to clear up about Mr Funovski and the Daceyville depot.

THE COMMISSIONER: Yes. Mr Gordon, may the witness be excused?

MR GORDON: No, not quite yet. I want to inquire, you asked for certain to be present tomorrow, Mr Stafford among others.

THE COMMISSIONER: Yes.

MR GORDON: I wondered whether you want Mr Makucha to be present (not transcribable)

THE COMMISSIONER: No, I, well - - -

MR MAKUCHA: Can I make - - -

MR GORDON: No, you just be quiet.

THE COMMISSIONER: Mr Payne, have you got anything to say on this?

MR PAYNE: Commissioner, we've made inquiries with Mr Gleeson and he was taking instructions from his client whether he wished to say anything tomorrow morning at 9 o'clock. Can I suggest this, that this evening I have Mr Gordon's contact details and I'll undertake to contact Mr Gordon by mobile or however I can find him and let him know whether Mr Gleeson is coming. If he is, respectfully submitted it would be appropriate for Mr Gordon to be here just for that matter for however long it takes at 9.00 tomorrow morning.

THE COMMISSIONER: Yes.

MR GORDON: What time, sorry?

MR PAYNE: We are starting at 9.00.

THE COMMISSIONER: At 9.00.

MR GORDON: 9.00.

MR PAYNE: Unless the Commissioner wanted to make a special (not transcribable)

THE COMMISSIONER: No, it's not healthy Mr Gordon, but there is it. Anyway, you'll be telephoned tonight and informed.

MR GORDON: Thank you, Commissioner.

THE COMMISSIONER: Mr Payne.

10

MR PAYNE: Commissioner, just in relation to the time, Mr Thwaite is here and his legal representative. She has been very patient. She's told me that she can't be available tomorrow. Is it possible that we sit at all past 4 o'clock?

THE COMMISSIONER: Yes, it is. But I just need to, I need to adjourn for five minutes. And then we'll sit on until, until, until whatever time is necessary.

20 MR PAYNE: Thank you, Commissioner.

SHORT ADJOURNMENT

[3.52pm]

MR PAYNE: Thank you, Commissioner, I call Mr Kim Thwaite.

THE COMMISSIONER: Mr Thwaite, won't you take a seat, please.

30 MS NASH: Commissioner, I seek leave to appear for Mr Thwaite, Nash and I do thank you for sitting on.

THE COMMISSIONER: No, no, that's fine, Ms Nash. Now, Ms Nash, do you want me to make a section 38 order?

MS NASH: Yes, thank you.

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

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT

ALL ANSWERS GIVEN BY MR THWAITE AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

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

MR THWAITE: I'll take the affirmation, please, Commissioner.

MR PAYNE: Mr Thwaite, what's your full name?---Kim Gordon Thwaite.

And what's your occupation?---I am a plumbing and drainage inspector.

10 You're currently employed by the New South Wales Department of Fair Trading as one of the plumbing and drainage inspectors?---Yes, that is correct.

Prior to that time you were employed by Sydney Water as a PIAS inspector?---And also as a technical support officer.

When did you commence your occupation with Sydney Water?---In December 2003.

20 And that was as a technical support officer was it?---No, that was as a, as a plumbing and drainage field inspector.

Also known as a P and D inspector in those days?---That's correct.

You are a licensed or you were then a licensed plumber?---That is correct.

You're still a licensed plumber today?---That is correct.

When did you become a licensed plumber?---About 1982.

30 And when you came on as a P and D inspector, for how long were you a P and D inspector before you did something else within Sydney Water?---It was within the same business area and it would have been perhaps 18 months.

And what did you, in the same business area you moved to do what?---We would answer the technical phone calls from plumbers, we would also answer inquiries from the general public regarding technical information as far as diagrams and just general assistance calls where we could.

40 And you went back to the P and D department, subsequently renamed PIAS on what date?---There were, well, there were three occasions where I worked actually in the technical support area. There was one at about 18 months, then I went back in to work in the field which would be as a field inspector in plumbing and drainage. Then I had a minor accident with an ankle where I was on light duties and on crutches so therefore I went back into this area once again. Then that would have been at about, probably about 2007 and then I went back into the field once, once my ankle repaired and then in about the start of, or about October 2008, November

2008 I then went back into a more full-time supportive role in technical support.

Mr Thwaite, can I, can I take you to a conversation on Tuesday, 21 September this year. I want to suggest to you at 7.30am that morning a Michael Cooper, acting assistant commission of the home building services within the Fair Trading Department spoke to all PIAS staff members. Do you recollect that?---I do recollect that.

10 And the topic of his address was the investigation by this Commission into certain business practices of Sydney Water?---That is correct.

And in particular into activities which had come to light in evidence by certain PIAS inspectors?---That is correct.

One of whom was a Mr Vecchio?---Yes, that is correct.

And I think you were trained by Mr Vecchio weren't you?---When you say I was trained Mr Vecchio showed me the initial ropes which would have only
20 lasted for four days.

I'm terribly sorry, I didn't catch that complete sentence.

THE COMMISSIONER: He, Mr Vecchio, showed Mr Thwaite the ropes for a period of four days, about.

MR PAYNE: Thank you, Commissioner. After this talk by Mr Cooper you approached him privately?---That is correct.

30 And you told him that you needed to talk?---That is correct.

You told him about an incident where you discovered you had been given \$1,000 cash by a plumber in relation to an inspection you'd conducted as a PIAS inspector?---That is correct.

Please tell the Commissioner what it is you recollect about that incident?
---At that time I was working out of our Beecroft office.

40 What time are we talking about, Mr Thwaite?---Maybe, about 2006, somewhere, yeah.

Yes, please continue?---And in those days the plumbers would contact the inspector who was in charge of the local government area.

Yes?---A gentleman rang me and was making inquiries about a certain property in Artarmon which they wished to be able to complete the sewer service diagrams and the plumbing on that job. I then informed the plumber he needed, I needed to recall what we called a property folder if there was

one available for the property in question. That folder contained a history of any inspections, any fees that happened to be paid for inspections, the general layout as far as the property itself goes and any up-to-date inspections that had been previously carried out prior to him contacting me. That folder had gone to archive and was held in archive which I was able to retrieve.

10 MR PAYNE: Who was the plumber, Mr Thwaite?---There I have trouble because I can't, couldn't be sure of his name. I would need to check the file to do that.

Do you remember the property that this was involved?---It was near the waste transfer station at the back of Artarmon.

Please continue. You recovered the folder from archive. What did you do then?---I, at the time of the original conversation I informed the plumber that I would need to get the folder back and to ring me in a couple of days time. This happened. He rang me back and by that time I'd had the folder. He had paid inspection fees and we made an appointment to meet on the job. He told, I asked him what his involvement in the job was and whether he was the current licensee on the job. He wasn't. I asked him to cancel the permits of application from the previous plumber. It appeared that the previous plumber hadn't been paid for the work that he had carried out on this job because the company that was doing the original construction had gone broke and the original plumber had walked away from the job because he had no chance of being paid for the work that he had done or for any future work which he may have carried out. This was my understanding. I met with the gentleman, the plumber in question, the one that had contacted me and we had a look roughly at the job. He had carried out a little bit of external drainage and rectified a section of drainage which was to satisfaction which had sunk through whatever reason, whether perhaps during later construction that it had been damaged. This had been repaired. And because I didn't have a comprehensive inspection of the rest of the job I requested that he conduct a close circuit TV inspection, which he did in my presence. There was a section of the drainage which was found to be laying flat and I requested that he cut the concrete and repair it. This he did. I also asked him to give me some plans and his permits and certificates of compliance for this work. He said to me, "Okay, that's fine." He said, "You have been very helpful." He said, I've done well out of this job. I would like to give you some money for it." I said, "That is not necessary." He said, "No, I'm doing all right." I said, "Please, I don't want to be in this situation." So he didn't have the plans as required, because in those days they'd give you a plan of the site and they would draw, the plan would've been drawn by an architect or by an engineer and they would mark up where that drainage went. He didn't have that with him at the time. So I said to him, Okay fine, I'll come back tomorrow or whenever (not transcribable) I think this was a Thursday. On the Friday I'll come back and I'll pick up this material. And I'll make sure that you put the tops on the shafts as were

required a few other little sundry items. Just finish off cosmetic stuff, just so that it was all correct. We went back, I made an appointment, he paid the fee. I went back the next day and these, everything was up and above board. We went up, got in a lift and went upstairs to check the vents and that was fine. It was then that he gave me an envelope which I considered to have contained the plans for the job and the certificates of compliance and starting docket. And also there was a letter for reflux valves too, which was a requisite of Sydney Water's at the time. So that was fine. I got in the car, I said, Right. Fine. Thanks. Never gave any thought to it. I had to get
10 to another job at Northbridge, I believe. And then I was due then to go and work further up the coast towards, heading towards Palm Beach. I got in the car, jumped in the car. I was running late, it had taken more time than I anticipated. And while I'm driving along, I thought, oh, righto, pulled up at the lights, opened this parcel, envelope and it contained \$1,000 in cash as well as the money which, as well as the certificates of compliance and the plans. I rang - - -

What size was this envelope? A4?---Maybe bigger.

20 I see. Please continue?---I don't, it may have been bigger, but (not transcribable). I rang him - - -

You counted the money, you're sure it was \$1,000?---No, I didn't. I saw it and damn near died. I didn't have the time to count it there and then. But I, I put it under the seat of the car and I tried to ring, well, I tried to ring the man, the plumber in question. He said, I said, "Are you still on that job?" I said, "What are you doing to me?" He said, "No, I'm gone. I'm going across, I'm heading down, I'm on the Harbour Bridge heading south." I said, "Well, I've got to give you this money back. It's not acceptable." He
30 said, "Well, I can't get back now I've got to go south." And I was going north. I found myself in a very, very difficult situation. I kept the money in my possession until the Monday when I went to the, to the office, as I recall I went to the office at Liverpool. When I, as in those days I used to start work at about half past 6.00 in the morning. I got there, there was no one there that I could speak to. Finally, Mr Johansen arrived and I went up to Mr Johansen, I said, "I need to talk to you." He said, "What's it about?" I said, "Somebody's given me a very large sum of money and I need some, someone to come with me while I return this sum of money." He said, "Wait until, wait until I get my day organised." He said, At about 10
40 o'clock, he said to me, "Have you got anything on?" I said, "Nothing that can't wait." And he said, Okay. He said, "About 10 o'clock we'll go together. You take your car, I'll take mine and we will return the money to this man. Can you ring him, can we return, can we organise to give him the money." We organised to go to the job at Artarmon, the one that I've explained and there in the presence of Mr Johansen the money was returned and Mr Johansen told the plumber in question that that was not on and that under no circumstances was he ever to do that again, because of the situation that he placed us in.

Mr Thwaite, this is a very serious occasion and these questions that I'm about to ask you are very serious questions. I want you to attend carefully to them and answer them truthfully to the best of your ability. This wasn't the only time that you were offered money as a PIAS inspector was it?---
No, it was not.

10 You were offered money on other occasions weren't you?---There were occasions where on completion of everything being correct, and I mean there was nowhere where I could say there was an anomaly or there appeared to be to my best judgement an anomaly or a misrepresentation in this situation and that if ever money was offered to me, it was offered to me after the fact when everything was considered, when I considered everything to have been compliant and up and above board.

So just so we're entirely clear with one another, Mr Thwaite?---Yes.

20 I'm not suggesting to you you solicited a bribe to pass work that wasn't up to standard?---No.

Just so we're clear I'm not suggesting that to you. I am suggesting to you though that there were a number of occasions after the job was completed you accepted cash payments from plumbers. Do you agree?---I would agree that I accepted money which I considered not to be of a corrupt form if I can put it that way.

30 We'll explore that in a moment but just the facts at the moment. There were, I suggest to you, many occasions that you accepted a cash payment from a plumber after the job was done. Do you agree?---That is correct.

40 And as you understand it and correct me if I'm wrong you have an understanding of Mr Vecchio's evidence before this Commission namely that he too accepted cash payments on many occasions from plumbers not to pass a job that was inadequate or not in accordance with the New South Wales Sewerage Code but he regarded it I think, a fair summary of his evidence at least at the time, as a gift although he knew it was wrong. Summarised his evidence for you, is that as you understand Mr Vecchio's evidence?---I do but I also believe that you have the opportunity to decline whether you accept whether you accept that money.

Can you estimate for the Commissioner how many times you think that you accepted a cash payment from a plumber in the circumstances that we've been talking about?---(NO AUDIBLE REPLY)

Perhaps to make it easier for you was it once a week?---No.

More like once a month was it?---No, I would say perhaps maybe at the outset six times. Maybe - - -

Over your entire career, this is a solemn occasion, Mr Thwaite?---I understand it is a solemn occasion. I was, I can say that I have always tried not to accept money from people but on, how can I put it? It would only have been in the last couple of months to be quite honest with you.

Only in the last couple of months you've stopped accepting it or started accepting it?---I have started to accept it.

10 So when you went across to the New South Wales Department of Fair Trading that's when you started accepting money from plumbers was it? ---It had nothing to do with where, with working for the Office of Fair Trading or working for Sydney Water.

20 What were the reasons that you started accepting money do you say?---The information that we have been getting was to make the job work and given the tools that we now have to work with it is very hard to complete a full puzzle if you only have parts of the picture. And I've found from time to time that I haven't been able to completely get all of the pieces to that puzzle because the computer system that we're working with seems to be constantly correcting itself and when we ring back to the office I don't seem to be able to get the information which seems to collate with the systems - - -

30 Can I just stop you there, Mr Thwaite. What's that answer got to do with your decision to start accepting cash payments from plumbers. I'm sorry, I don't follow?---Because I believe that the system as it is if we're not there within 20 minutes the plumber has the right to fill the job in. Now, if the job's right the job's right regardless of whether he fills it in or whether we look at it. He's signing on the bottom line. I feel disempowered.

And it's for that reason you tell the Commissioner that you began accepting cash payments from the plumbers offered at the end of jobs is it that disempowerment you've just described?---I think it's a lack of ownership. To me it's a personal lack of ownership.

Mr Thwaite, when you started working - - -

40 THE COMMISSIONER: Sorry. Lack of ownership of what, of the job? ---Of the job, of your ability to, to make it, to, to get the information you need to make a totally informed decision.

You're suggesting I think that this brings about a certain loss of self-respect does it?---It does, sir.

And that loss of self-respect makes it easier to accept payment?---Creates confusion, sir.

You mean if you have the self-respect you feel strong enough to reject the payments?---(NO AUDIBLE REPLY)

I mean it's a psychological thing as I understand what you say?---We had power, it sounds strange.

10 I'm sure you had power, I know, I - - ?---But, but not, not, we, we had the ability, power's probably the wrong word, we had the ability to gather the necessary facts and information to be able to make an informed assessment of the work which we were, or, or to perform the duty which we were asked to perform.

And now you don't?---There are from time to time anomalies in the information we're given.

20 I understand that but I still have some difficulty in understanding the connection between that and your willingness to accept money. I understand that you do feel a loss of empowerment and a loss of self-respect but it is still, I'm not sure if I understand you completely why that makes it easier for you to accept money?---It doesn't make it easier, I'm sorry, sir, it doesn't make it easier.

So what's the connection between that and you accepting the money?---I don't know.

Mr Payne.

30 MR PAYNE: Mr Thwaite, just in fairness to you you're on sick leave at the moment from the New South Wales Department of Fair Trading are you?
---That's correct.

Are you receiving any treatment?---Yes, I am.

I don't wish to be intrusive but are you receiving counselling?---Yes, I am.

And you're on medication I take it?---That is correct.

40 Can I just ask you about a few of the other things you said to Mr Cooper on this occasion on 21 September and I just want to get a complete picture. It's true isn't it that you accepted cash payments from a woman involved in a Sydney Water matter some years ago as well isn't it?---No, sir, that is not correct.

You began to talk to the lady, she owned the property, was very grateful, said that she'd paid Sydney Water \$3,000. Is that something you told Mr Cooper on 21 September this year?---Perhaps Mr Cooper was mistaken, sir.

Was there any occasion when you dealt with the owner of a property in your role as a PIAS inspector and accepted a cash payment from the owner of the property rather than the plumber?---No, sir.

Do I take it from the answers you gave me earlier that although accepting cash payments is more recent, a more recent phenomenon you had been offered cash payments regularly throughout your time as a PIAS inspector. Is that what you say?---On and off, sir, yes.

10 And you had until, what, some time this year, routinely rejected such payments had you?---Yes, sir, I have.

The \$1,000 incident that we spoke about, that you told us about at the outset, did you tell Mr Cooper in relation to that you thought you were being set up?---I was in a lift when he gave me the money, sir. When, when he gave me that envelope, sorry, when he gave me the money, when he gave me, I'm sorry. When the plumber, we went up to check the vents in the roof.

20 Yes?---To get to the vents you had to get into a lift.

Yes?---The lift, this building was a storage facility where people pay money to store expensive personal possessions.

Yes?---Therefore I could only assume that the lift would have had a camera in it.

30 You thought that this plumber in 2006 was trying to set you up, did you? Is that what you meant?---I didn't, he said that he had done well out of the job and that he wanted to share it with me. Now, I didn't know what, I'd already been very straightforward with him not to give me any money, very straightforward and yet for his own purposes he waited till I was in a lift and gave me that envelope.

Just so we're clear about it, you say you took the \$1,000 back with Mr Johansen the next day and in Mr Johansen's, sorry, in your presence Mr Johansen handed \$1,000 back to a plumber that the identity of whom you can no longer recall?

40 MS NASH: Not the next day, it was the next week?---No, it was on a Friday, sir, and I had a weekend. I, it was a Monday when I went back to the office at Liverpool.

MR PAYNE: I see. Not so, so I'll withdraw that, it wasn't the next day. So after the weekend?---That's correct.

You have a clear recollection of going back with Mr Johansen and watching him hand \$1,000 to a plumber?---That is correct.

In relation to the times when you did accept cash payments from plumbers, how was it given to you, the money?---The money was given to me, there was a \$100 in an envelope, there was \$20 wrapped in a starting docket, there was \$20 dropped in my pocket, there was \$50 given to me where someone said to me will you have a drink at the, after the job and I said yes. There was another situation where another plumber gave me I think another \$50 after the completion of another job.

10 And just to complete what you told Mr Cooper, that there was apparently some incident at the University of New South Wales where you were involved?---That is correct.

Did you accept a cash payment on that occasion?---That was the one, the \$20 that was wrapped in the paperwork.

I see. So at the completion of that job, the \$20 was in the paperwork, you discovered it?---That is correct.

20 And do you tell the Commissioner that all of the occasions you've identified took place in 2010, is that what you say?---Yes.

But that you had been offered money regularly in earlier years but had refused it is what you say?---That is correct.

Can I ask you about the culture of the PIAS inspectors. This practice of, of plumbers making offers of cash payments to PIAS inspectors was, was well known amongst the PIAS inspectors as far as you understood it?---I always kept, tried to keep my own counsel and my distance from my colleagues
30 because I did.

When these payments were offered to you was it ever the subject of discussion amongst your fellow inspectors?---I can't recall.

Do you know a Mr Fayers?---Yes, I do know a Mr Fayers.

Mr Fayers described his introduction if your like to the PIAS inspectors where he was given something he called the talk about PIAS inspectors and never soliciting money but if it was offered to you I think as he put it, if the
40 fruit falls from the tree there'd be no problem in accepting it. Did you ever participate in such a talk?---Mr Fayers was at a different office. We worked out of three, three if I remember different offices. I started in the Rockdale office and never actually worked in the same office as Mr Fayers until two thousand and - - -

Did you ever participate, I'm not suggesting with Mr Fayers, but were you ever present when there was any discussion amongst your fellow PIAS inspectors about this topic of cash payments being offered by plumbers?

---Not that I recall.

When you were first offered a cash payment did you raise it with anyone within the PIAS hierarchy?---Not that I recall.

When this \$1,000 was given to you surely you realised, Mr Thwaite, that if it was given to you it may be being offered to other inspectors by this plumber?---This could have been the case.

10 Did you discuss that with Mr Johansen?---No, I don't think I did.

Did you discuss it with anyone else?---I mentioned it in the office.

To other inspectors?---Well, I think that it became known.

Can I ask you then about these sewerage diagrams which as I understand it under the New South Wales Sewerage Code now have to be prepared by plumbers themselves rather than by Sydney Water or by an engineer?---Yes.

20 Its true isn't it that on occasions plumbers have asked you to prepare such a diagram and made a cash payment to you?---We, when, when Sydney Water first decided to bring out the sewer service diagram system that they have now implemented, inspectors across the board were invited to partake in schools and classes at different venues across Sydney in the aid of helping plumbers to instigate or implement this system.

And did you participate in that training?---Yes, I did.

30 And subsequent to that when the training was over you were asked to draw sewer service diagrams for plumbers, you did so and accepted cash payments, correct?---No. We were asked to assist with the rollout of these diagrams and to assist the implementation of this system and some plumbers would be able to draw them, some plumbers would get close to the mark, some would not be able to complete the drawing because of their own inability to be able to complete the drawing. Therefore we would then, as part of that continued rollout, assist to draw these drawings on behalf of these licensed plumbers. In some cases the plumber would have great difficulties so you would then draw them in, or get, we were provided with white-out, we were provided with pens, we were provided with drawing
40 blocks in A4 and A3 form and we were also provided with literature to hand out to give to the plumbers so we could take a proactive stance towards the implementation of these drawings. Now on occasions people or plumbers would feel indebted. Now, we may well draw the drawing but we would, I would insist that they filled in the particular details as for the top, the, the address, the, the, the date, the certificate of compliance and also to look at the diagram to ensure that the diagram is to the best of their ability, they could say it complied with what they had put in and was consistent with the

pipe work and the information that was available to me and they would sign for it. Now on occasion - - -

And you accepted cash payments on occasion for doing it?---On occasions, on occasions they would feel indebted to give you a drink for it.

And a drink is well understood within, amongst PIAS inspectors as meaning a small cash payment of \$20 or \$50 is it?---That is correct.

10 And so on a number of occasions for drawing these diagrams you would accept 20 or \$50 is that correct?---Well, I can think of only one occasion.

Where you accepted cash?---That's correct.

Excuse me, Mr Thwaite. I have nothing further for Mr Thwaite.

THE COMMISSIONER: Yes. Thank you. Mr Stevenson.

20 MR STEVENSON: Sir, I'm the barrister for Sydney Water?---Yes, sir.

On this occasion back in Artarmon, when the plumber handed you the envelope in the lift you suspected that there was money in it didn't you?---I panicked, sir.

Yes. That's why you were concerned that perhaps he was trying to set you up?---That is correct.

30 You mentioned the possibility of having a camera in the lift?---That is correct.

And that's why is it that you checked the envelope as soon as you could when the car pulled up at the traffic light?---Well, it is, yes.

You weren't just checking to see whether the plans or the compliance certificates (not transcribable)?---Well I didn't know, I wanted to know what was in that envelope.

40 Yes. And you told Mr Payne you didn't count the money then. Did you ever count precisely how much money was in that envelope?---I saw it was a heck of a lot. And it wasn't until I got an opportunity to get closer, like you can't, I couldn't count it at a traffic light.

No, of course. I think this was a Friday and you've had the weekend to think about - - -?---Well, no, no, no, no. No. Between me getting to that job, at the next job, which was at if I can recall, was at Northbridge, right, so I had to, I can't remember which way I went, I had an opportunity to look at it. And that's when I went hang on a minute, and that's when I rang the plumber.

Did you ever count how much was in the envelope?---Yes.

Was it - - -?---\$1,000.

It was exactly \$1,000?---Exactly \$1,000, sir.
And you've told us what you recall happened with Mr Johansen. You mentioned some payments you've received this year?---That's correct.

10 I think you said that you didn't regard those payments, you did not regard those payments as being of a corrupt nature?---That is correct.

You understood that it was the term of your employment that you should not take payments from third parties (not transcribable)?---That's correct.

You understood that Sydney Water or the Department of Fair Trading intended that your only reward for doing work was the salary you received, not beers from other parties?---Yes.

20 So I'm wondering by what process of reasoning you're able to say that the payments you received were not received by you corruptly?

THE COMMISSIONER: Well, I think that he's explained that Mr Stevenson?---If I, there was no avenue to be able to speak to our managers. I mean irrespective, I'm sorry, irrespective the policy may be written that you cannot receive money, but I cannot believe that I had faith in my managers to be able to bring this up. We had a different structure with Mr Johansen. We had Mr Pascale above Mr Johansen and then we had Ms Hiddlestone.

30 MR STEVENSON: So you're saying the structure with Mr Johansen was a better or worse structure than Ms Hiddlestone?---I'm saying that I had more faith in Mr Johansen than I have in my current or in those that preceded Mr Johansen.

Because on your recollection of what happened, you sought Mr Johansen with you return the money to the plumber and remonstrate with the plumber for having offered you the money in the first place?---This is correct.

40 Well, didn't that recollection guide your conduct when you were offered money? In other words why didn't you do what Mr Johansen did and simply say to the plumber, you can take your money back thank you?---On many occasions I have, sir.

Until this year?---I find I have trouble as I say, looking forward and trusting the people who are now my immediate managers.

I think you are labouring under a psychiatric condition at the moment?

---Excuse me. Excuse me. We have had an impost placed on the plumbers in the form of drawing diagrams. We've had a management system where our superior in the form of Ms Hiddlestone has created issues between three managers. Now I've raised this issue with Ms Hiddlestone, where it doesn't matter if three people went away for a weekend, one person would end up on the outside. Ms Hiddlestone has played that. And I'm sorry, I have a lot of trouble believing in my current management and that is why I went to Mr Cooper.

- 10 Isn't it your understanding that Ms Hiddlestone has a zero tolerance attitude to the taking of money by Department of Fair Trading employees?---Ms Hiddlestone has been our boss since Mr Pascale departed Sydney Water. Never has Ms Hiddlestone to the best of my knowledge ever actually sat down and tried to speak with the people involved in PIAS, if anything she has fragmented our business area.

She's a good deal tougher than Mr Pascale isn't she?---I beg your pardon, sir?

- 20 Good deal tougher than Mr Pascale isn't she?---I would consider Ms Hiddlestone to be tougher but I'm afraid that on occasions Ms Hiddlestone's behaviour in a public, in public forum leaves a little bit to be desired if we're going to discuss Ms, Ms Hiddlestone, sir.

One thing she's made clear that she's not interested in being mates with the boys hasn't she?---Well, then perhaps she has been, I believe her behaviour at a plumbers, master plumbers or the behaviour of her partner at a Master Plumber's Association - - -

- 30 You say her partner?---Her partner's behaviour and her behaviour at a Master Plumber's Association prize giving a number of years ago could be questionable and perhaps you might like to make some inquiries about that.

And it's this Hiddlestone regime is it that led you this year to start for the first time taking money?---No, no, I wouldn't say that at all. What I would say is that this system has created an impost upon myself with the computer. I was in the technical support area until October of 2009 which meant that the system was brought in in May and I worked through for almost 18, or for a period of time without being up to speed on this computer system.

- 40 When I was reassigned to the field from being in technical support I had difficulty with this system and asked for support and for added instruction and mentoring. It was never brought forward, sir.

Is that the reason you're telling the Commissioner that you have this year you say for the first time yielded to temptation?---There's been a lot of personal pressure on me, sir, and there's also this, as I say, has been a question for me.

Yes, thank you.

THE COMMISSIONER: Ms Nash?

MS NASH: (not transcribable).

THE COMMISSIONER: Yes, you may be excused, Mr Thwaite, thank you.

10

THE WITNESS EXCUSED

[4.49pm]

MR PAYNE: Commissioner, I'm in your hands. Mr Johansen is there, I think I'll be about ten minutes.

MR STEVENSON: He's happy to come back tomorrow I think, Commissioner.

20 MR PAYNE: He's happy to come back tomorrow.

MR STEVENSON: I would frankly like to get some instructions from him.

MR PAYNE: Commissioner, - - -

THE COMMISSIONER: We'll adjourn till 9.00am tomorrow but, Mr Stevenson, before we adjourn I would invite you to provide me with an explanation - - -

30 MR STEVENSON: Yes, Commissioner, say no more.

THE COMMISSIONER: Thank you. We'll adjourn till 9.00am.

MR STEVENSON: I provide you with a letter from the Managing Director which contains a note from him and also a summary in tabular form of the existing and proposed reforms. I don't think I need to tender it.

THE COMMISSIONER: No.

40 MR STEVENSON: I provide it to you as a letter from the Managing Director to you, Commissioner.

THE COMMISSIONER: Thank you. Thank you for that, Mr Stevenson. We'll adjourn until - - -

MS NASH: Commissioner, I take it that Mr Thwaite will not be required tomorrow - - -

THE COMMISSIONER: No, that is correct.

MS NASH: - - - so I can be excused too?

THE COMMISSIONER: Certainly.

MS NASH: Thank you.

10 **AT 4.50pm THE MATTER WAS ADJOURNED ACCORDINGLY**
[4.50pm]