



INDEPENDENT COMMISSION
AGAINST CORRUPTION

SYDNEY WATER CORPORATION

SEWER MAIN CONSTRUCTION AUDIT REPORT

Case No. 112786 WW
WAMS - Work Order No. 11697964
Job Location

Water Servicing Coordinator Sydney Wide Coord
Constructor
Job Description Audit Req/byConstructor

	Name as per ITP		
Constructor's Site Rep.	Visual	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Standards on site	Visual	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Inspection & Test Plan up to date	Visual	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REF/EMP & PSP on site	Visual	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Environmental safeguards as shown in EMP in place	Visual	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Approved products	Measure	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Trench location & dimension	Measure	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Visual & Measure	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Requested Construct
Business ar

INVESTIGATION INTO CORRUPT CONDUCT OF SYDNEY WATER EMPLOYEES AND OTHERS

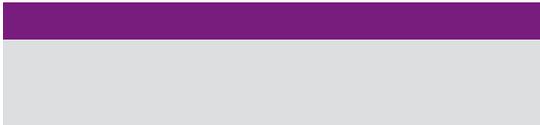
ICAC REPORT
MARCH 2011

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION

**INVESTIGATION INTO
CORRUPT CONDUCT OF
SYDNEY WATER EMPLOYEES
AND OTHERS**

**ICAC REPORT
MARCH 2011**



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Madam President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of Sydney Water employees and others.

I presided at the public inquiry held in aid of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully



The Hon David Ipp AO QC
Commissioner

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Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned allegations of corruption involving employees of Sydney Water Corporation (“Sydney Water”) and others. The alleged corruption occurred within different areas of Sydney Water and involved a number of Sydney Water employees. The allegations were indicative of widespread problems within Sydney Water, which were examined during the course of the Commission’s investigation.

The investigation first examined allegations that three inspectors within Sydney Water’s Civil Delivery section, Kenneth John Buckley, Robert Funovski and Bryan Kane, had solicited and received payments from Sydney Water accredited constructors in return for not causing delays to completion of their work or for otherwise assisting them.

Secondly, the investigation examined allegations that Sydney Water Plumbing Inspection and Assurance Service (PIAS) inspectors, Richard Fayers, Robert Rodgers, Anthony Vecchio and Kim Thwaite, received payments from licensed plumbers in return for favourably exercising their discretion as PIAS inspectors and providing other assistance.

Finally, the investigation examined allegations that Edward Harvey, a Sydney Water property asset manager, and a Sydney businessman, Paul Makucha, engaged in corrupt conduct. In particular, it was alleged Mr Harvey had, without any authority from Sydney Water, entered into a number of agreements with Mr Makucha, including a joint venture agreement, which, if valid, imposed considerable financial and other burdens on Sydney Water. The Commission also examined allegations that Mr Harvey had acted without authority in arranging payment of invoices totalling \$234,000 to Mr Makucha and his associated companies, payments of over \$59,000 to Mr Makucha’s accountants, Hall Chadwick, and authorising the release of a \$25,000 bond lodged by Mr Makucha in the Supreme Court of NSW.

It was alleged that Mr Makucha had submitted a number of invoices to Mr Harvey for payment by Sydney Water,

which he knew contained false information. It was further alleged that Mr Makucha attempted to obtain a financial advantage for himself and his related companies by arranging for Mr Harvey to enter into a joint venture agreement on behalf of Sydney Water, which potentially imposed considerable financial and other burdens on Sydney Water. The investigation also examined allegations that Mr Makucha sought to obtain a financial benefit by registering the Sydney Water trademark and logo for use on bottled water in the name of one of his companies.

Results

Findings are made in the report that nine persons engaged in corrupt conduct.

Findings are made in chapter 2 of the report that Mr Buckley engaged in corrupt conduct by soliciting and/or receiving payments from Sydney Water accredited constructors, Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O’Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue, Khare Aoun and John Gerard Ryan, in return for exercising his official functions in their favour.

Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O’Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun made full and frank admissions about their dealings with Mr Buckley. The Commission therefore decided to exercise its discretion and not make corrupt conduct findings against them.

A finding of corrupt conduct is, however, made against Mr Ryan for paying money to Mr Buckley in order to influence Mr Buckley’s exercise of his official functions.

Chapter 3 of the report contains findings that Mr Funovski engaged in corrupt conduct by soliciting and receiving a \$3,000 payment from Sydney Water accredited constructor Anthony Alafaci, in respect of work he arranged to be performed for Mr Alafaci’s company using

Sydney Water resources. The Commission decided to exercise its discretion to not make a corrupt conduct finding against Mr Alafaci because of the assistance he provided to the Commission.

Findings are made in chapter 4 of the report that Mr Kane engaged in corrupt conduct by receiving payments from Sydney Water accredited constructors, Cyril Cryan, Ray Romanous and Joseph Doogue, in return for exercising his official functions in their favour. As Messrs Cryan, Romanous and Doogue assisted the Commission by giving forthright accounts of their dealings with Mr Kane, the Commission has exercised its discretion and not made corrupt conduct findings against them.

Chapter 5 of the report contains corrupt conduct findings against PIAS inspectors, Messrs Fayers and Vecchio, for accepting payments in return for favourably exercising their official duties towards a number of licensed plumbers. The Commission also found that Mr Rodgers engaged in corrupt conduct by deliberately failing to seek Sydney Water's permission to engage in secondary employment in circumstances where he knew his secondary employment adversely impacted on the performance of his duties as a PIAS inspector.

Chapter 6 of the report contains findings that Mr Harvey engaged in corrupt conduct by:

- authorising payment by Sydney Water of invoices submitted by Mr Makucha, his company and his accountant, when he knew he had no authority from Sydney Water to do so
- falsely representing to the Supreme Court of NSW that he had authority to agree to the release of a \$25,000 bond lodged in the Court
- executing a Business Implementation and Confidentiality Agreement on behalf of Sydney Water when he knew he did not have authority from Sydney Water to do so.

Chapter 6 of the report also contains findings that Mr Makucha engaged in corrupt conduct by:

- submitting invoices to Sydney Water for payment, which he knew contained false information
- attempting to obtain a financial advantage by procuring Mr Harvey's execution of the Business Implementation and Confidentiality Agreement knowing that Mr Harvey did not have the authority to do so
- attempting to obtain a financial advantage by deliberately misleading Mr Harvey about the nature and purpose of a document he persuaded Mr Harvey to write and sign on 20 May 2009, which Mr Makucha then used to falsely represent that he had Sydney Water's consent to the registration of the Sydney Water trademark and logo with respect to bottled water.

Statements are made pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of:

- Mr Buckley for offences under section 249B of the *Crimes Act 1900* ("the Crimes Act") of soliciting and/or receiving corrupt payments from Sydney Water accredited constructors
- Mr Funovski for offences under section 249B of the *Crimes Act* of soliciting and receiving a corrupt payment from Mr Alafaci and an offence under section 87 of the ICAC Act of giving false evidence in his compulsory examination
- Mr Kane for offences under section 249B of the *Crimes Act* of receiving corrupt payments from accredited constructors
- Mr Harvey for offences under section 178BA of the *Crimes Act* of obtaining money for another by

deception and an offence of misconduct in public office

- Mr Makucha for offences under section 178BA of the Crimes Act of obtaining money or a financial advantage for himself.

Messrs Buckley, Funovski, Kane, and Harvey have been dismissed by Sydney Water. Mr Fayers has resigned. The Commission is of the opinion that Sydney Water should give consideration to the taking of disciplinary action against Mr Rodgers, and that the Department of Services, Technology & Administration, which is now responsible for PIAS inspectors and their functions, should give consideration to the taking of disciplinary action against Mr Vecchio.

Chapter 7 of the report sets out the Commission's corruption prevention response to the conduct disclosed during the investigation. It contains the following recommendations:

Recommendation 1

That Sydney Water ensures staff in identified risk areas of operational and/or fraud risk are subject to intrusive supervision.

Recommendation 2

That Sydney Water provides training to its managers in relation to:

- overseeing subordinates' interactions with external parties, including reviewing files
- detecting and acting upon warning signs that their subordinates may be behaving improperly.

Recommendation 3

That Sydney Water reviews its organisational structure to identify and remedy other situations where supervisory arrangements are split or unclear.

Recommendation 4

That Sydney Water revises its procurement processes to ensure that one individual cannot request, approve and certify delivery of a purchase.

Recommendation 5

That Sydney Water ensures that managers are accountable for their subordinates' use of delegation.

Recommendation 6

That Sydney Water develops an automated process to check invoices for order splitting.

Recommendation 7

That Sydney Water:

- reviews the information in its financial databases to ensure that it is accurate
- modifies its financial management system to allow for vendor details on invoices to be compared automatically with the corresponding details in its vendor database
- establishes processes to maintain the accuracy of the information in its vendor database.

Recommendation 8

That Sydney Water:

- develops a list of manual checks that accounts staff should perform on invoices and communicates it to them
- reviews invoices on a sample basis to ensure that these checks have been performed
- ensures that accounts staff are fully aware of the risk of fraud.

Recommendation 9

That Sydney Water applies more rigour to its complaint assessments and investigation practices to ensure decisions are appropriate and verified by an appropriate quality assurance process.

Recommendation 10

That Sydney Water develops a dedicated complaint management area and associated systems to manage complaints about employees from receipt to completion and record any action for future corporate information.

Recommendation 11

That managers and supervisors at Sydney Water, as well as staff performing roles that require interaction with the public or external contractors/plumbers, be given training on how to deal with complaints about Sydney Water employees.

Recommendation 12

That access to the Corruption Hotline be extended to the public by providing an intuitive access point on the Sydney Water website home page.

Recommendation 13

That the Sydney Water Code of Conduct be amended to include advice, warning against taking reprisal action against other employees or contractors for making a complaint.

Recommendation 14

That upon commencement of the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*, and at regular and appropriate intervals thereafter, Sydney Water contractors be advised of their rights under the Protected Disclosures Act and the process of making a protected disclosure.

Recommendation 15

That Internal Audit includes in its audit plan evaluation of the implementation and operation of divisional corruption prevention plans derived from the current risk assessment workshops.

Recommendation 16

That Sydney Water develops a strategy to capture and champion best practice that is identified in the course of its operations. This is to include:

- ensuring its strategic business plans provide for the integration of corruption prevention strategies
- utilising its business risk registers to formulate corruption prevention strategies to be centrally managed.

Recommendation 17

That Internal Audit continues its actions to strengthen communication with contractors through face-to-face presentations on ethical obligations.

Recommendation 18

That Sydney Water recasts *Working at Sydney Water* as the Code of Conduct and expressly prohibits the acceptance of money with regard to gifts and benefits.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the Sydney Water Corporation and the Minister for the Authority.

As required by section 111E(2) of the ICAC Act, Sydney Water must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.



In the event a plan of action is prepared, Sydney Water is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: The investigation

This chapter sets out background information concerning the Commission's investigation.

How the investigation came about

In July 2009, Sydney Water received a complaint that Kenneth John Buckley, a Sydney Water inspector, was soliciting bribes from Sydney Water accredited constructor Yousef Nasrallah. Sydney Water reported the matter to the Commission for further investigation.

Subsequent enquiries revealed that the alleged corruption within Sydney Water was far more widespread than initially anticipated and involved other inspectors and areas of Sydney Water.

In October 2009, the Commission received information of a possible payment allegedly made by Sydney Water accredited constructor Anthony Alafaci, director of Planet Plumbing, to a Sydney Water employee, who was later identified as Robert Funovski. As further information came to hand that suggested other Sydney Water employees had sought or received payments, the Commission ultimately broadened the scope of its investigation to include Sydney Water employees, Bryan Kane, Richard Fayers and Robert Rodgers, and Anthony Vecchio, a former Sydney Water employee.

In January 2010, the Commission received a referral from Sydney Water under section 11 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that outlined allegations relating to Sydney Water property asset manager Edward Harvey and Sydney businessman Paul Makucha. It was alleged that Mr Harvey had acted without appropriate authority in arranging a number of payments to be made to Mr Makucha. It was further alleged that Mr Makucha and Mr Harvey, purporting to act on Sydney Water's behalf, had entered into an unauthorised commercial arrangement, which, if valid, would impose significant financial and other burdens on Sydney Water.

Why the Commission investigated

One of the Commission's principal functions, as specified in section 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. *corrupt conduct, or*
- ii. *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- iii. *conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the definition of corrupt conduct under the ICAC Act.

The matters brought to the Commission's attention were serious and could constitute corrupt conduct within the meaning of the ICAC Act.

In these circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and whether there were corruption prevention issues that needed to be addressed.

Conduct of the investigation

During the course of the investigation, the Commission:

- obtained documents from various sources by issuing 76 notices under section 21 of the ICAC Act (requiring production of statements of information) and section 22 of the ICAC Act (requiring production of documents)
- lawfully executed two search warrants to obtain information relevant to the investigation
- undertook physical surveillance of persons suspected of being involved in corrupt conduct

- undertook two controlled operations under the *Law Enforcement (Controlled Operations) Act 1997* (a controlled operation allows authorised persons to engage in activities, specified in the authority to conduct the operation, that would otherwise be unlawful)
- interviewed and/or took statements from a number of persons
- obtained five warrants under the relevant legislation to enable the interception of telecommunications
- conducted a number of compulsory examinations.

The public inquiry

The Commission reviewed the information that had been gathered during the investigation and the evidence given at the compulsory examinations. After taking into account this material and each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry. In making the determination, the Commission had regard to the following considerations:

- there appeared to be compelling evidence of corrupt conduct
- there was substantial public interest in exposing the relevant matters that was not outweighed by any public interest in preserving the privacy of the persons concerned
- the allegations were serious and indicative of widespread corruption within Sydney Water
- the subject matter of the investigation related to serious allegations, including the receipt of corrupt payments or rewards and defrauding a public authority
- public exposure of inadequate systems and processes in relation to Sydney Water administration was necessary to encourage reform.

The public inquiry took place over 18 days between 6 September and 29 September 2010. The Hon David Ipp AO QC, Commissioner, presided at the inquiry and Anthony Payne SC acted as Counsel Assisting the Commission. Evidence was taken from 62 witnesses.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence and the findings and recommendations the Commission could make based on the evidence. These submissions were provided to all relevant parties. The responses received by the Commission have been taken into account in preparing this report.

A number of accredited constructors and water servicing coordinators gave evidence at the public inquiry, many of whom assisted the Commission by giving honest and forthright evidence. For that reason, findings of corrupt conduct have not been made against those who assisted the Commission.

Sydney Water Corporation

Sydney Water is a statutory state-owned corporation, constituted under the *State Owned Corporations Act 1989*. It operates under the *Sydney Water Act 1994* (“the Sydney Water Act”). Sydney Water has about 3,000 employees. It has a total operating expenditure of \$1 billion, and its annual revenue from water and wastewater service customers is over \$2 billion. Sydney Water is Australia’s largest water utility, supplying drinking water, recycled water, wastewater services and some stormwater services to over four million people in Sydney, the Illawarra and the Blue Mountains.

Under the Sydney Water Act, the principal functions of Sydney Water Corporation are to provide, construct, operate, manage and maintain systems or services for storing or supplying water, providing sewerage services, providing stormwater drainage systems, and disposing of waste water.

The role of the Civil Delivery section

The Commission’s investigation included allegations that Sydney Water Civil Delivery section inspectors, Messrs Buckley, Funovski and Kane, were individually involved in soliciting and receiving cash payments from Sydney Water accredited constructors and plumbers.

The Civil Delivery section falls within Sydney Water’s Operations and Maintenance Division. Civil Delivery Section employees perform an important role in inspecting the sewer and water works carried out on housing and commercial developments within Sydney Water’s area of responsibility.

This work is carried out by Sydney Water accredited constructors and water servicing coordinators, who are independent from Sydney Water. Sydney Water requires that sewerage or water work involving connection to the Sydney Water network should be completed in accordance with plans designed by a water servicing coordinator and then executed by a Sydney Water accredited constructor. If this is done, Sydney Water has the power to grant a compliance certificate to a developer under section 73 of the Sydney Water Act. Sydney Water maintains responsibility for inspecting the quality of the constructors’ work until the compliance certificate is issued. Another section within Sydney Water, Urban Growth, is ultimately

responsible for issuing the section 73 compliance certificate. Urban Growth falls within Sydney Water's Asset Management Division.

Sydney Water Civil Delivery section employees are required to complete at least three formal inspections prior to issuing a section 73 compliance certificate, and can also carry out random audits. Civil Delivery section employees carry out their duties largely autonomously and with little supervision. In practice, Civil Delivery section inspectors, such as Mr Buckley, have the power to exercise their discretion favourably or unfavourably in respect of an accredited constructor, including the power to issue a Corrective Action Request notice ("a CAR notice"). If they identify any errors during an inspection, they have the discretion to raise a CAR notice, which can require the constructor to undertake remedial work to rectify errors and determine the completion date of the work.

A section 73 compliance certificate cannot be issued by Urban Growth whilst there are outstanding CAR notices in the system. A CAR notice, whether justified or not, can result in significant delays to the completion of a project and unfavourable financial consequences for the project constructor and the developer. Civil Delivery section employees therefore have considerable power to delay projects.

Chapter 2: Kenneth John Buckley

This chapter examines allegations that Sydney Water Civil Delivery section employee Kenneth John Buckley (also known as John Buckley) sought and accepted payments from various Sydney Water accredited constructors in return for not causing delays to the completion of their work or otherwise assisting them to complete work early.

Mr Buckley

Mr Buckley commenced employment at Sydney Water in December 1964. He held various positions during his 45 years in the organisation. For a number of years, he worked as a Civil Delivery section employee engaged predominantly in sewerage inspections for developments in the inner west of Sydney. A principal function of Mr Buckley's role was to inspect sewerage connections at various stages throughout the development process. His role was to ensure that the work was being conducted to standards set by the Australian Sewerage Code and Sydney Water policies.

Mr Buckley gave generally inconsistent and unreliable evidence, characterised by what he claimed was a lack of memory. He eventually admitted receiving payments over many years from a number of accredited constructors, although he frequently claimed that the payments did not affect the exercise of his official functions. He also consistently downplayed the amounts of money he received from the accredited constructor.

Mr Buckley was not a credible witness. His evidence is only accepted where it involves an admission against interest or is adequately corroborated by other credible evidence or contemporaneous documents.

The evidence of the accredited constructors demonstrated that payments were made to Mr Buckley for two reasons. First, as a way to prevent potential problems and delays, and, secondly, in order to obtain Mr Buckley's approval to shortcut a process. Mr Buckley eventually agreed that he cultivated a reputation amongst the constructors for being difficult to please. Mr Buckley agreed that he accepted payments from a number of accredited constructors. He said he believed half of the payments were to "short cut a process" and the other half were "to go buy a beer". Mr

Buckley was unable to name one accredited constructor who did not offer him a payment during his time working as an inspector in the inner west area of Sydney.

Details of the accredited constructors from whom Mr Buckley sought or received payments are set out below.

Dealings with Yousef Nasrallah

Yousef Nasrallah is a Sydney Water accredited constructor and owner of Joseph's Plumbing. He said that prior to working with Mr Buckley, he had heard rumours from others that Mr Buckley delayed projects unnecessarily unless payment was made to him.

Yousef Nasrallah told the Commission he made around 30 payments to Mr Buckley over a 10-year period. He paid him on almost every occasion he worked in the inner west area of Sydney. He made the payments to Mr Buckley by wrapping money in A4 paper and passing it to him in a secretive manner. He said he paid Mr Buckley in order to avoid experiencing difficulties and delays that could be caused by Mr Buckley. He said that Mr Buckley expected a payment each time he came to the site. According to Yousef Nasrallah, Mr Buckley would "look for trouble to give you a Corrective Action (CAR notice) and the only way out is to pay the money otherwise you're stuck there forever".

Yousef Nasrallah recalled making specific payments to Mr Buckley on the following occasions:

- \$100 on two occasions on a project at 144 Bransgrove Road, Revesby, in 2005
- between \$50 and \$100 on three or four occasions on a project at 36 Victor Avenue, Panania, in December 2008.

He said he made these payments to ensure that Mr Buckley did not treat him unfavourably.

In May 2009, Yousef Nasrallah was contracted to work on a development at 42 Sherwood Avenue, Revesby. Mr Buckley was the Sydney Water inspector assigned to the development.

Yousef Nasrallah said that on the first day of construction, 10 July 2009, he gave Mr Buckley \$100, in accordance with his usual practice when dealing with Mr Buckley. On 27 July 2009, Mr Buckley and Yousef Nasrallah had a disagreement as to how the project should progress. Mr Buckley wanted the work to be done in stages. Yousef Nasrallah believed that Mr Buckley wanted him to do the work in stages so Mr Buckley could get a payment from him each time Mr Buckley attended the site for an inspection. Yousef Nasrallah said that he was warned by Mr Buckley that unless a payment of \$500 was made to him, he would delay completion of the work by issuing CAR notices and preventing Yousef Nasrallah from carrying out various parts of the project. He did not pay \$500 to Mr Buckley.

On 28 July 2009, Yousef Nasrallah secretly recorded a conversation with Mr Buckley. The Commission determined that the recording was not made in breach of the *Surveillance Devices Act 2007*, as it was made by a principal party to the private conversation in circumstances where it was reasonably necessary for that party to protect his/her lawful interests.

The following are excerpts from the conversation:

NASRALLAH: How much?

BUCKLEY: Five hundred.

NASRALLAH: Five hundred?

BUCKLEY: Yeah. Alright.

NASRALLAH: I can only give you two hundred.

BUCKLEY: Nuh.

NASRALLAH: Can't afford it.

BUCKLEY: Nuh. Alright.

NASRALLAH: I'll lose on this job.

BUCKLEY: Okay. I told you –

NASRALLAH: I lose on this job.

BUCKLEY: Alright. You've got to stop the job now. You've got to put the bypass in or –

...

BUCKLEY: You – you want to do your own thing, okay. I'm now going to follow the process. Nuh, I'm following the process now...

Mr Buckley then issued a CAR notice.

Yousef Nasrallah took the recording of the conversation to Sydney Water and the matter was referred to the Commission. On 4 August 2009, Mr Buckley conducted a further inspection of the project and found further problems with the job. He was obviously aware that a complaint had been made about him, although he does not appear to have suspected that the complaint was made by Yousef Nasrallah. In a conversation, which was lawfully recorded, Mr Buckley told Yousef Nasrallah that "we'll make it up on another job mate, but this job someone's put a complaint into somebody. I don't know where right, that's gone higher up the Water Board ... so I've gotta, been told to follow the process, follow the standards". Yousef Nasrallah believed that in saying this Mr Buckley inferred that a payment could be made on a subsequent job. The Commission considers this was a reasonable inference for him to make.

On 24 August 2009, Mr Buckley attended the site for the final inspection and according to Yousef Nasrallah told him to "keep away from me. You've accused me of taking bribes. I know it was you that complained about me to Sydney Water". On 25 August 2009, he issued another CAR notice.

The two CAR notices issued by Mr Buckley remained in the system and were not finalised until March 2010, thereby delaying the issuance of a section 73 certificate and the completion of the project.

At the public inquiry, Mr Buckley admitted to receiving approximately 40 cash payments from Yousef Nasrallah between 1999 and 2009, but could not recall the exact number of times he accepted cash payments from him. He claimed the payments were an “industry thing” but could not name any other Sydney Water inspectors who received payments from accredited constructors. He admitted that, on occasion, he had allowed Yousef Nasrallah to take shortcuts when Yousef Nasrallah had paid him money. The Commission is satisfied that the payments were sought and received by Mr Buckley in return for him favourably exercising his official functions.

Mr Buckley could not recall receiving \$100 payments from Yousef Nasrallah at the Bransgrove Road project in 2005. He also denied receiving payments for the Victor Avenue project in December 2008. The Commission rejects these denials. Yousef Nasrallah had a clear recollection of paying money to Mr Buckley in relation to both the Bransgrove Road and the Victor Avenue projects. He was a credible witness and the Commission accepts his evidence.

Mr Buckley could not recall receiving a \$100 payment from Yousef Nasrallah on 10 July 2009 in relation to the Sherwood Avenue, Revesby, project. However, Mr Buckley’s recollection of his dealings with Yousef Nasrallah on 28 July 2009 was unusually clear. Without prompting and before hearing the recording of the conversation, Mr Buckley told the Commission that Yousef Nasrallah had offered him \$400 to “pass off some shoddy work” and Mr Buckley had responded that he wanted \$500 to pass the work. He said that his demand for \$500 on 28 July 2009 was a “joke”.

After hearing the recording, he admitted that it was not a joke and that he was clearly soliciting money from Yousef Nasrallah. He said that if Yousef Nasrallah had paid the money, then he “possibly” would not have issued a CAR notice. The recording demonstrates that Mr Buckley only decided to “follow the process” and stopped progress on the job only after being told by Yousef Nasrallah that he could afford to pay Mr Buckley only \$200. The Commission is satisfied that Mr Buckley sought a payment of \$500 from Yousef Nasrallah on 28 July 2009 in return for not delaying completion of work by issuing an unjustified CAR notice. When Yousef Nasrallah refused to make the payment, Mr Buckley issued a CAR notice despite not having any proper basis to do so.

Mr Buckley admitted to receiving about 40 payments over 10 years. While the exact number of payments cannot be established, the Commission accepts Mr Buckley’s evidence that he accepted approximately 40 payments from Yousef Nasrallah in return for not delaying completion of work by issuing CAR notices. The Commission is satisfied that these included two payments of \$100 each in relation to a job at 144 Bransgrove Road, Revesby, in 2005, three

or four payments of between \$50 and \$100 in relation to a job at 36 Victor Avenue, Panania, in December 2008, and a payment of \$100 in relation to a job at 42 Sherwood Avenue, Revesby, in 2009.

Dealings with Sadek Nasrallah

Sadek Nasrallah, Yousef Nasrallah’s brother, is also a Sydney Water accredited constructor who gave evidence at the Commission’s public inquiry. He admitted to paying Mr Buckley to avoid Mr Buckley issuing CAR notices.

He recalled making the following payments to Mr Buckley:

- \$50 on a project at 99 Highview Avenue, Greenacre, in August or September 2004
- \$100 on two occasions on a project at 154 Marion Street, Bankstown, in November 2005
- \$300 on a project at 22 Ravenna Street, Strathfield, in November 2007.

Sadek Nasrallah said he made each of these payments after Mr Buckley demanded payment or threatened to issue a CAR notice. No CAR notices were issued after the payments were made. Sadek Nasrallah formed the view that to progress projects where Mr Buckley was the inspector, a payment would need to be made. He told the Commission that he inflated his prices if working in Mr Buckley’s area, to cover the extra costs of having to pay Mr Buckley. Eventually, he stopped quoting for work in Mr Buckley’s area.

Sadek Nasrallah told the Commission that Mr Buckley was “a person that stood over you, made you feel about that small, cut you down to size and then asked you for money ... he humiliated you first and then asked you for money”. He did not make a complaint to Sydney Water because he presumed that it would not be dealt with properly. He said he had a young family, a large mortgage and was not in a position to “ruffle any feathers or open any can of worms ... You just don’t know who you’re talking to so it’s better to shut your mouth, just get the job done”.

Mr Buckley denied seeking or receiving any payment from Sadek Nasrallah in relation to the project at 99 Highview Avenue, Greenacre. He also denied receiving any payments from Sadek Nasrallah whilst working on the project at 154 Marion Street, Bankstown. He also denied seeking payment in return for not issuing a CAR notice in respect of the project at 22 Ravenna Street, Strathfield. He did say, however, that on a couple of other occasions, Sadek Nasrallah may have given him \$50.

Sadek Nasrallah was a convincing witness who gave a clear and credible account of his dealings with Mr Buckley. The Commission accepts his evidence and rejects that of Mr Buckley. The Commission is therefore satisfied to the

requisite degree that between 2004 and 2007 Mr Buckley sought and received four payments totalling \$550 from Sadek Nasrallah in return for not issuing CAR notices.

Dealings with John Poyntz

John Poyntz is the director of Tywest Pty Ltd, a Sydney Water accredited constructor. Mr Poyntz told the Commission that, in September 2009, he had his first dealings with Mr Buckley on a job at the Botanica Estate at 22 Joseph Street, Lidcombe. He had been told by the water servicing coordinator on the project that Mr Buckley was renowned for wanting a “backhand”, which Mr Poyntz understood was a payment of money.

Mr Poyntz admitted to making a \$200 payment to Mr Buckley on that project. He said he offered the payment after Mr Buckley had caused delays on the project by issuing a CAR notice to the water servicing coordinator. Mr Poyntz wanted to ensure that the project progressed quickly from that point.

Mr Poyntz needed to make a connection to a Sydney Water sewer main but had not completed the necessary documentation that he needed to submit to Sydney Water to obtain the necessary approval. He therefore paid \$200 to Mr Buckley in return for Mr Buckley allowing him to make the connection without the necessary paperwork.

Mr Buckley admitted receiving \$200 from Mr Poyntz in return for allowing the connection.

Dealings with John Gerard Ryan

Mr Ryan is the director of Mystold Pty Ltd, a Sydney Water accredited constructor.

Mr Buckley told the Commission that, in September 2009, he received \$50 “or something” from Mr Ryan in relation to a project at 15 Percy Street, Auburn. He believed that towards the end of the project in September 2009, Mr Ryan had paid him the money off site when they were having a cup of coffee. He thought that Mr Ryan had told him to, “Buy yourself a drink, you’ve been a good help”.

Mr Buckley claimed that the payment did not impact on the performance of his official functions. The Commission rejects this assertion. The overwhelming evidence is that Mr Buckley sought and/or accepted payments from accredited constructors either in return for not causing delays in their work or as a reward for not doing so. There is no reason to suppose that his acceptance of money from Mr Ryan was any different to the basis on which he sought and accepted money from other accredited constructors.

At his compulsory examination, Mr Ryan firmly denied paying Mr Buckley. At the public inquiry, he did not deny that he had paid \$50 but asserted that he had no

recollection of it, stating that it is “possible that I paid him but I have no recollection of it”.

Mr Ryan’s dealings with Mr Buckley were suspicious. He contacted Mr Buckley on two occasions on 10 August 2009 by SMS and by telephone, and on both occasions asked that Mr Buckley contact him on a non-work telephone. At the public inquiry, Mr Ryan claimed that he was “uncomfortable” speaking with Mr Buckley on his work phone because he was aware that Mr Buckley was being investigated by the Commission. Mr Ryan was unable to provide any reasonable explanation as to why he had asked Mr Buckley to switch telephones if his dealings with him were above board. It is clear from this evidence that Mr Ryan deliberately sought to deal with Mr Buckley in a secretive manner, which is consistent with their dealings not being legitimate.

Other evidence supports the allegation that Mr Ryan paid Mr Buckley \$50. Bob Pascoe, the water servicing coordinator on the project, told the Commission that on 28 January 2009, the date that work on the project commenced, he expressed concern to Mr Ryan about potential problems with having Mr Buckley as the Sydney Water inspector. According to Mr Pascoe, Mr Ryan told him, “We aren’t going to have any problems with him [John Buckley] because I have looked after him”. Mr Pascoe understood from this conversation that Mr Ryan had paid money to Mr Buckley to avoid problems and to ensure work was passed.

Mr Ryan denied having this conversation with Mr Pascoe. Mr Pascoe was a credible witness and his evidence is accepted by the Commission.

At his compulsory examination and at the public inquiry, Mr Ryan maintained that he met Mr Buckley only on site and never had occasion to meet him off site. He also said that on 17 September 2009, the day of the final inspection, he did not attend the Auburn site and that he did not meet Mr Buckley at all on that day.

At the public inquiry, Mr Ryan was confronted with a recording of a lawfully intercepted telephone conversation between himself and Mr Buckley. The conversation occurred on 17 September 2009. During the conversation, he told Mr Buckley that he was likely to be late for the final inspection but “I’ll have a coffee with you afterwards down the road there”. Surveillance footage was also played showing Mr Buckley and Mr Ryan meeting on 17 September 2009 at 10.55 am at the Quantum coffee shop. Mr Ryan was observed leaning into Mr Buckley’s vehicle before walking away.

Mr Ryan sought to explain by telling the Commission that so far as he was concerned, the coffee shop was on the site. The Commission rejects this explanation. Mr Ryan was purposefully vague and inconsistent during his evidence. He was an unconvincing and unreliable witness.

The Commission is satisfied that Mr Ryan paid Mr Buckley \$50 on 17 September 2009. The Commission is also satisfied that the payment was made in order to influence Mr Buckley in carrying out his official duties.

Dealings with John Patterson

John Patterson, a Sydney Water accredited constructor, admitted to making three payments of \$50 to Mr Buckley. He said he made the payments in an effort to avoid Mr Buckley issuing him with unjustified CAR notices. Mr Patterson said that he paid the money, not because there was anything wrong with his work, but because he wanted to avoid potential unfavourable consequences of Mr Buckley creating problems for him. He could not provide further details as to when or where the particular payments were made. He did not complain to Sydney Water because he had heard rumours that others had complained about Mr Buckley to no avail.

Mr Buckley denied receiving payments from Mr Patterson. Mr Buckley, however, was an unreliable witness. Mr Patterson was a credible witness and the Commission accepts his evidence. The Commission is satisfied to the requisite degree that Mr Buckley received three payments of \$50 from Mr Patterson in return for not issuing CAR notices.

Dealings with Gerard Kennedy

Gerard Kennedy is a Sydney Water accredited constructor associated with Alt Constructions. He admitted that on 16 or 23 December 2008, whilst working on a job at 97 Queens Road, Five Dock, he made a \$300 payment to Mr Buckley.

Mr Kennedy claimed he paid Mr Buckley for two reasons. One was in return for “advice” Mr Buckley had given him about recovering money from a potentially insolvent developer. The second reason he gave was that the payment was a Christmas gift. He said that he was unable to recall the details of his conversation with Mr Buckley that led to the payment of money. He said that he did not find Mr Buckley difficult to deal with and that Mr Buckley did not ask for money.

Mr Buckley denied receiving \$300 from Mr Kennedy but thought he may have received \$100, although he wasn't sure. He could not recall the reason for the payment, but denied allowing any short cuts on the project.

The evidence as to the alleged payments by Mr Kennedy to Mr Buckley was too vague to support a finding that Mr Kennedy paid money in connection with Mr Buckley's exercise of his official public functions.

Whilst the Commission has doubts about the veracity of the accounts given by Mr Kennedy and Mr Buckley,

there is insufficient evidence to support a finding that Mr Kennedy paid Mr Buckley money in connection with Mr Buckley's exercise of his public official functions.

Dealings with Bill O'Donnell

Bill O'Donnell is associated with the company Bill O'Donnell Contractors, a Sydney Water accredited constructor since 1971.

Mr O'Donnell said he paid Mr Buckley \$100 and gave him a bottle of scotch in relation to a job at 15 Ilma Street, Condell Park, which commenced in March or April 2010. The payment was made to “keep Mr Buckley on side” and to avoid potential delay through Mr Buckley issuing a CAR notice. He said that this was the only cash payment he made to Mr Buckley and he did not make any cash payments to other Sydney Water inspectors.

Mr Buckley admitted to receiving \$100 in relation to the Ilma Street project. He said the payment was “possibly because I help him out sometimes, I turn up onsite when he needs, when he rings me I answer them [sic] and he couldn't do the job in one day ... I came back the second day and he completed [sic]”. Mr Buckley said that he had also possibly received two or three earlier payments of between \$50 and \$100, but could not provide any further details about the other payments.

The Commission is satisfied to the requisite degree that Mr Buckley received \$100 from Mr O'Donnell in March 2010 in relation to the development at 15 Ilma Street, Condell Park. The payment was made by Mr O'Donnell and accepted by Mr Buckley so that Mr Buckley would not exercise his official functions by issuing a CAR notice in order to cause delay to the completion of Mr O'Donnell's work on the project. Given that Mr Buckley was unable to specifically recollect receiving other payments from Mr O'Donnell, the Commission is not satisfied that Mr O'Donnell made other payments.

Dealings with Ray Romanous

Ray Romanous is associated with Strathfield Plumbing Services Pty Ltd, a Sydney Water accredited constructor for 18 years.

Mr Romanous said he made three payments of \$200 each to Mr Buckley. The payments were made at the final inspections in relation to jobs at 134 Rodd Street, Sefton, on 1 December 2005, 51 Thompson Road, Panania, on 20 May 2009 and 12 Bertram Street, Yagoona, on 20 or 28 October 2009.

Mr Romanous said that he made payments to “get the job over the line” and to ensure that the project was finalised. Mr Romanous said that Mr Buckley had a reputation within

the industry for causing problems and unnecessary delays if payments were not made. He said that Mr Buckley did not necessarily ask for payment but Mr Romanous realised there would be significant delays if payments were not made. He told the Commission, "I've got a family, I've got a mortgage, you know, there's money out there that we've got to invoice and if we don't [get] a final they don't get a section 73 and we're stuck, you know".

Mr Buckley admitted to receiving a number of cash payments from Mr Romanous. He claimed that he was unable to recall specific details surrounding the payments and to what projects the payments related. Although Mr Buckley was unable to recall details, his acceptance of payments from Mr Romanous is consistent with other evidence that he took money from accredited constructors in return for not delaying completion of their work by issuing CAR notices or otherwise assisting them.

The Commission is satisfied to the requisite degree that Mr Buckley received three payments of \$200 each in December 2005, May 2009 and October 2009, and that these payments were received by Mr Buckley in return for him favourably exercising his official functions and not causing unnecessary problems for Mr Romanous.

Dealings with Mark Devereux

Mark Devereux is an employee of Perfect Pipes Pty Ltd, a Sydney Water accredited constructor.

Mr Devereux told the Commission that he had heard rumours within the industry for many years that Mr Buckley would pass work only when money was paid.

He recalled making the following two payments to Mr Buckley to ensure there were no unnecessary delays caused by Mr Buckley:

- \$100 on a project at 1-7 Juno Parade, Greenacre, in May 2009
- \$150 or \$200 on a project at the junction of Adams and Emily Streets, Breakfast Point, on 27 August 2009.

Mr Devereux said that after Mr Buckley had caused delays on the Juno Parade project by issuing a CAR notice, which in his view was unjustified, he determined that the project would be progressed only if he made a payment to Mr Buckley. Mr Buckley passed the job at the final inspection. Mr Devereux said that he had made the second payment at the final inspection on the project at Breakfast Point in order to avoid "a repeat of the Juno Parade saga".

Mr Buckley admitted to receiving payments from Mr Devereux, although he attempted to portray these payments as gifts. Mr Buckley told the Commission that he had accepted money from Mr Devereux in relation to the

Juno Parade, Greenacre, job. He thought he had been paid a couple of hundred dollars. He denied the allegation that he had passed the job only after receiving money from Mr Devereux.

Mr Buckley thought that Mr Devereux gave him some money on the second job at Breakfast Point on 27 August 2009, although he did not specifically recall having received a payment.

Mr Devereux gave a convincing and articulate account of events. His dealings with Mr Buckley clearly left an indelible impression on him and he recalled the circumstances surrounding the payments to Mr Buckley with clarity. No credence can be placed upon Mr Buckley's characterisation of the payments as gifts. The Commission is satisfied to the requisite degree that in 2009 Mr Buckley received two payments from Mr Devereux in return for not exercising his official functions to cause delays to the completion of Mr Devereux's work on projects at Juno Parade, Greenacre, and the junction of Adams and Emily Streets, Breakfast Point.

Dealings with Joseph Khalil

At the public inquiry, Mr Buckley admitted to receiving cash payments from Joseph Khalil, "possibly" more than five times, but did not provide evidence as to the purpose of the payments. Mr Buckley thought he had received a \$50 payment in August 2009 from Mr Khalil but was unable to recall with any certainty details surrounding the payment.

The Commission lawfully intercepted a telephone conversation between Mr Buckley and Mr Khalil's son, Khalil Khalil, on 12 August 2009. In this conversation, Khalil Khalil told Mr Buckley that he required copies of some paperwork that his father had misplaced. At the end of the conversation, he promised that, "My Dad will fix you up. You know just give him a call so you can meet him up and he will fix you up".

Khalil Khalil gave evidence at the public inquiry. In response to a question about what he intended in using the term "fix up", Khalil Khalil said, "I cannot remember what I did mean at that time but it could, it could be an infinite number of things to tell you the truth".

Joseph Khalil gave evidence at the public inquiry. He was unrepresented and assisted by an Arabic interpreter. He said that he was unable to recall whether he had ever made payments to Mr Buckley. He also said that he had suffered a stroke in 2009 and, as a result, suffers from memory loss. He claimed that "fix up" meant simply to thank Mr Buckley but then said that he did not know what his son had intended by saying that.

Both Joseph Khalil and Khalil Khalil were unimpressive witnesses, giving evasive and ambiguous evidence. The Commission does not accept their evidence, which it

regards, generally, as untruthful. Mr Buckley's evidence was also characteristically vague. In all the circumstances, however, the Commission does not consider there is sufficient evidence to show that either Joseph Khalil or Khalil Khalil paid Mr Buckley any money in return for him assisting them with their paperwork.

Dealings with George Abboud

George Abboud is a Sydney Water accredited constructor associated with Exact Civil Pty Ltd.

At his compulsory examination, Mr Abboud denied making cash payments to Mr Buckley but admitted to giving him a bottle of scotch on one occasion. At the public inquiry, however, Mr Abboud told the Commission that he had paid Mr Buckley between \$100 and \$150 on two occasions. These were:

- a payment of \$150 to Mr Buckley in relation to a development at 45 Wellbank Street, Concord, in August 2009
- another payment between \$50 and \$150 in relation to a project at Rawson Road, Auburn (but he was unable to recall with any detail the date and time of the payment).

Mr Abboud said that he made the payments to prevent the possibility that Mr Buckley would act unfavourably towards him during the construction process.

Mr Buckley agreed that he had accepted payments from Mr Abboud on a couple of occasions, including possibly a job at 45 Wellbank Street, Concord, in August 2009. He believed he received \$100 or \$150 on that occasion. He agreed that he was accepting money from Mr Abboud in return for favourable treatment from him in his official capacity. The Commission is satisfied that Mr Buckley did accept payments from Mr Abboud in return for not exercising his official functions in such a way as to delay Mr Abboud's completion of work on the projects.

Dealings with Khaled Mahmoud

Khaled Mahmoud of Pharaohs Plumbing has been a Sydney Water accredited constructor for 10 years. He conducts around 90 per cent of his work in Mr Buckley's area.

Mr Mahmoud initially gave evidence that he had paid Mr Buckley between \$20 and \$50 on three or four occasions. He later admitted to making between four and six payments to Mr Buckley. According to Mr Mahmoud, the payments were made to ensure Mr Buckley did him "favours" or treated him favourably, including by coming to work sites at a time convenient to Mr Mahmoud. Mr Mahmoud compared the payments to tipping a waiter.

Mr Mahmoud could not provide further details about the payments and was unable to recall the projects to which they related.

Mr Buckley admitted that he accepted cash payments from Mr Mahmoud on two or three occasions. He said that he believed these payments were gifts and denied accepting payments for allowing Mr Mahmoud to take shortcuts or attending the work site at a time convenient to Mr Mahmoud.

The Commission is satisfied that Mr Mahmoud gave honest evidence and that the payments were in fact made to Mr Buckley by him to ensure that Mr Buckley exercised his discretion favourably towards him. Mr Mahmoud's evidence is consistent with Mr Buckley's longstanding practice of soliciting and accepting payments in return for the favourable exercise of his official discretion.

The Commission is satisfied to the requisite degree that Mr Buckley received four to six payments of between \$20 and \$50 from Mr Mahmoud in return for exercising his official functions favourably towards him, including by attending early on inspections and thereby enabling Mr Mahmoud to complete the project at an earlier time.

Dealings with Cyril Cryan

Cyril Cryan is a Sydney Water accredited constructor associated with Corman Pty Ltd, a company that conducts minor sewer works for Sydney Water.

At his compulsory examination, Mr Cryan denied making payments to Mr Buckley. At the public inquiry, however, he assisted the Commission by providing a written statement in which he detailed the payments he had made to Mr Buckley.

Mr Cryan said he first met Mr Buckley in 2003 or 2004. He said he first paid Mr Buckley \$50 on a job at Guildford in February 2006. He was unable to recall whether the payment was made in relation to a job at Chamberlain Street, Guildford, or 15 Bolton Street, Guildford.

On 19 April 2010, he paid Mr Buckley \$100 for a job at 4/15 Blaxcell Street, South Granville. He gave him the money to "keep John Buckley on side", as he knew that Mr Buckley could be difficult at inspections. He said Mr Buckley raised issues with aspects of his work on this project. He had not experienced such problems previously. Mr Cryan said he made the payment because he had an interest in seeing the job finished quickly.

Mr Buckley accepted that he had received cash payments from Mr Cryan but typically attempted to describe these payments as gifts, whilst Mr Cryan told the Commission that he paid Mr Buckley because he was “difficult” and to ensure that the work was completed with few difficulties. His evidence that Mr Buckley caused difficulties or delays if he was not paid is consistent with the evidence of other accredited constructors.

The Commission accepts Mr Cryan’s evidence and is satisfied that Mr Buckley accepted two payments, one of \$50 in 2006, and the other of \$100 in 2010, in return for not exercising his official functions in such a way as to cause delays to the completion of work for projects in Guildford and South Granville.

Dealings with Alan Khattar

Alan Khattar is associated with Worldmark Plumbing Pty Ltd, a Sydney Water accredited constructor.

Mr Khattar admitted to paying Mr Buckley \$100 on three or four occasions when Mr Buckley was the inspector on a job at 124 The Crescent, Homebush, between June and August 2009.

According to Mr Khattar, Mr Buckley told him that he would have to “look after” him on each occasion he attended the site. He understood this meant that he needed to pay money to Mr Buckley. In explaining his motivation for paying Mr Buckley, he said, “he would pretty much make my life hard on the site, he would just pick on stupid things”. Mr Khattar told the Commission, “It was the wrong thing but at the same time when you’re getting stood over by someone and you’ve got the job to finish as well, you’ve got to do what you’ve got to do”.

Mr Buckley admitted to receiving payments from Mr Khattar on a couple of occasions, including on the Homebush project, but denied receiving as much as \$400. He said that he believed the payment was a gift and denied causing difficulties for Mr Khattar.

Mr Khattar’s evidence is consistent with the evidence given by other accredited constructors and Mr Buckley’s general practice of soliciting and receiving money from accredited constructors in return for exercising his functions favourably. For these reasons and also having regard to Mr Buckley’s general lack of credit, the Commission prefers Mr Khattar’s evidence.

The Commission is satisfied that Mr Buckley sought and received payments totalling between \$300 and \$400 from Mr Khattar in the period between June and August 2009 in relation to the development at 124 The Crescent, Homebush. The payments were made to ensure that Mr Buckley did not cause difficulties or delays whilst working on the project.

Dealings with Joseph Doogue

Joseph Doogue is associated with Green Civil Pty Ltd, a Sydney Water accredited constructor.

Mr Doogue told the Commission that he made a \$400 cash payment to Mr Buckley before an inspection at the old Bass Hill drive-in site. This was the first job Mr Doogue had carried out with Mr Buckley. Mr Doogue intended that the payment would be a “sweetener” for Mr Buckley, as he had heard that he was difficult to work with and thought that a payment might help him avoid any potential problems with Mr Buckley.

Mr Buckley initially admitted receiving a cash payment of \$100 from Mr Doogue. He later conceded that the payment may have been as much as \$200 or \$250. He initially said that he had been given the money whilst conducting an inspection on site, part-way through the project. Mr Buckley said that he believed that the payment was a gift for showing Mr Doogue the defects on the project that had to be rectified. He then claimed that he thought that the payment may have been made at the completion of the project, although he was not certain of this. He denied accepting the payment in return for not treating Mr Doogue unfavourably.

Mr Doogue’s recollection of the payment to Mr Buckley was clear and convincing. His evidence that the payment was made before an inspection and was intended to influence Mr Buckley’s official discretion is accepted.

Mr Buckley’s explanation that the payment was a gift for showing Mr Doogue the defects on the project was unconvincing. His evidence regarding the timing of the payment and the amount of money received was also inconsistent. The Commission prefers Mr Doogue’s evidence and is satisfied that the payment of \$400 was made to Mr Buckley and accepted by him in order to ensure that Mr Buckley was not difficult and did not cause unnecessary delays to Mr Doogue’s work.

Dealings with Khare Aoun

Khare Aoun is associated with Aoun Constructions Pty Ltd, a Sydney Water accredited constructor.

Mr Aoun told the Commission that he had experienced significant difficulties working with Mr Buckley. Mr Aoun considered what he described as the “John Buckley factor” before accepting jobs in the inner west area. By this he meant he would have to pay money to Mr Buckley in order to avoid delays. In September 2009, as a result of several negative experiences, Mr Aoun decided not to tender for work in Mr Buckley’s area because of Mr Buckley.

Mr Aoun had his first interaction with Mr Buckley whilst working with his brother in the family business, Aoun

Plumbing. He once witnessed his brother giving Mr Buckley a case of beer.

Mr Aoun started his own business, Aoun Constructions, in 2004. In June 2006, he was working with Mr Buckley on a project at 20 Nicholas Avenue, Concord. Mr Aoun said that during the course of that project, Mr Buckley got “heavy” with him and issued a CAR notice. On or around 9 August 2006, Mr Aoun said that Mr Buckley demanded \$500 to finish the job. Mr Aoun made the payment to ensure the job would be finalised. Instead, Mr Buckley issued another two CAR notices, causing extensive delays to the completion of the project.

Mr Aoun originally stated that John Tannous, the developer on the Concord project, had given him the \$500 to pay Mr Buckley. Mr Tannous gave evidence that whilst he did make progress payments to Mr Aoun for the work undertaken, he did not know anything about payments made to Mr Buckley. At the public inquiry, Mr Aoun admitted that Mr Tannous could have been confused about the purpose of the payment and that he may not have mentioned that it had anything to do with Mr Buckley. Given the lack of evidence in relation to Mr Tannous, it is unnecessary for the Commission to make any finding in relation to him.

Mr Aoun also admitted to making another payment of \$300 to Mr Buckley in September 2006. This related to a job at Milton Street, Silverwater. Mr Aoun said that Mr Buckley had demanded \$300 to pass the job and had said “that is getting out of it cheaply”. Mr Aoun paid the money in order to avoid receiving a CAR notice.

He also paid Mr Buckley \$500 in relation to a job at 56-58 Powell Street, Homebush, in January 2008. Mr Aoun said that when Mr Buckley first attended the site he immediately started questioning work that had been done. Mr Aoun knew that he would need to pay Mr Buckley in order to get the work finalised. Mr Aoun recalled making the payment when Mr Buckley was sitting in his ute outside the site. He was unable to recall the conversation he had with him on this occasion.

Mr Aoun told the Commission that on each occasion he made the payments in order to avoid unfavourable treatment by Mr Buckley, who exercised significant discretion in his role as Sydney Water inspector.

Mr Buckley admitted to receiving a cash payment from Mr Aoun “a long time ago”. When questioned specifically about the Concord job, he admitted to receiving a couple of hundred dollars but denied demanding \$500 in return for allowing Mr Aoun to finish the job. He also admitted to receiving money in relation to the Silverwater project, although he denied it was \$300, and denied demanding the money in return for not issuing a CAR notice. Mr Buckley denied receiving a \$500 payment from Mr Aoun in relation to the Homebush project.

Mr Aoun gave his evidence in a clear and convincing way and the Commission accepts his evidence.

The Commission is satisfied that between 2006 and 2008 Mr Buckley solicited and received three payments totalling \$1,300 from Mr Aoun in return for not exercising his official functions to cause delay to Mr Aoun’s work. The Commission is satisfied that Mr Buckley effectively groomed Mr Aoun to make payments to him in order to ensure the projects went smoothly without unnecessary problems or delays.

Mr Aoun’s wife, Odelia Potts, also gave evidence. She had been aware, at a time prior to their marriage in 2006, that Mr Aoun was being forced to pay money to a Sydney Water employee. She later discovered that her husband was making payments to Mr Buckley. She complained about the matter to Sydney Water. Sydney Water’s failure to deal appropriately with her complaint is dealt with in chapter 7.

Corrupt conduct

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. In making findings of fact, the Commission applies the civil standard of proof of reasonable satisfaction, taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

The second step is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of section 8(1) and 8(2) of the ICAC Act. The third step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Corrupt conduct is defined in sections 8 and 9 of the ICAC Act. These sections are set out in Appendix 2.

Kenneth John Buckley

Mr Buckley’s conduct in soliciting and/or receiving payments from Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Gerard Ryan, John Patterson, Bill O’Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun, in return for exercising his official functions in their favour, as set out in this chapter, comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purposes of section 8 of the ICAC Act, Mr Buckley’s conduct constitutes or involves the dishonest or partial exercise of his official functions as a Sydney Water employee and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves

a breach of public trust on the part of Mr Buckley and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1)(a) of the ICAC Act such conduct could constitute or involve a criminal offence of corruptly soliciting or receiving a benefit contrary to section 249B(1) of the Crimes Act. Mr Buckley's conduct also falls within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Yousef Nasrallah

Had it not been for Yousef Nasrallah, Mr Buckley's conduct would not have come to light. He actively assisted the Commission in its investigation. It is in the interests of the Commission and the public in general that persons who have information about corruption, even when it involves themselves, are encouraged to provide information and assistance to the Commission. The Commission has therefore decided to exercise its discretion to not make a corrupt conduct finding against Yousef Nasrallah.

Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun

Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun assisted the Commission by each giving a full and frank account of their dealings with Mr Buckley, even though that account implicated them in wrongdoing. As previously stated, it is in the interests of both the Commission and the public that persons who have information about corruption, even when it involves themselves, are encouraged to provide evidence to the Commission. The Commission has therefore decided to exercise its discretion to not make a corrupt conduct finding against these persons.

John Gerard Ryan

Mr Ryan's conduct in paying Mr Buckley \$50 in order to influence Mr Buckley's exercise of his official functions comes within sections 8 and 9 of the ICAC Act and is corrupt conduct. For the purposes of section 8(2)(b) of the ICAC Act his conduct could adversely affect the

exercise of official functions by a public official and involves bribery. For the purposes of section 9 of the ICAC Act, it is conduct that could constitute or involve the criminal offence of corruptly offering a reward to an agent (Mr Buckley) contrary to section 249B(2) of the Crimes Act.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of section 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to the following:

- a. obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence,
- b. the taking of action against the person for a specified disciplinary offence,
- c. the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An "affected" person is defined in section 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with an investigation.

For the purpose of this report, Mr Buckley, Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue, Khare Aoun, Joseph Khalil, Khalil Khalil and John Gerard Ryan are "affected" persons.

Kenneth John Buckley

During the course of his evidence to the Commission, Mr Buckley made a number of admissions. These admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act. However, the evidence of the Sydney Water accredited constructors Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun could be available.

In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice

of the DPP with respect to the prosecution of Mr Buckley for offences of soliciting and/or receiving corrupt payments contrary to section 249B of the Crimes Act.

As a result of the investigation, Sydney Water dismissed Mr Buckley as an employee. It is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue and Khare Aoun

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Yousef Nasrallah, Sadek Nasrallah, John Poyntz, John Patterson, Bill O'Donnell, Ray Romanous, Mark Devereux, George Abboud, Khaled Mahmoud, Cyril Cryan, Alan Khattar, Joseph Doogue or Khare Aoun. Although these persons admitted paying Mr Buckley, they all gave their evidence subject to a declaration under section 38 of the ICAC Act. In these circumstances, their admissions would be not be admissible in any criminal prosecution. The Commission also takes into account the assistance these persons provided to the Commission.

John Gerard Ryan

Mr Buckley's admission that he received money from Mr Ryan was subject to a declaration pursuant to section 38 of the ICAC Act. Mr Ryan did not make any relevant admissions. The Commission does not consider there is reliable admissible evidence to commence any prosecution action. In these circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Ryan.

Joseph Khalil and Khalil Khalil

Mr Buckley, Joseph Khalil and Khalil Khalil gave their evidence subject to declarations under section 38 of the ICAC Act. The Commission does not consider there is reliable admissible evidence to commence any action. In these circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Joseph Khalil or Khalil Khalil.

Chapter 3: Robert Funovski

This chapter examines an allegation that Robert Funovski, a Sydney Water Civil Delivery employee, solicited a \$3,000 payment from Anthony Alafaci, director of Planet Plumbing Pty Ltd, a Sydney Water accredited constructor.

The Commission also examined whether in 2007 and 2008 Mr Funovski had done work for Planet Plumbing using Sydney Water resources, and whether he was paid for this work by Vincent Molluso, a former Planet Plumbing director. It was alleged that this work was done “off the books”, meaning that there were no Sydney Water records kept of the work done. In effect, it was alleged that Mr Funovski organised Sydney Water to do work for Planet Plumbing on the basis that Sydney Water would not charge for that work and that in return Planet Plumbing would reward Mr Funovski by paying him money.

Mr Funovski commenced employment with Sydney Water as a Civil Delivery section employee in 2002. He was responsible for inspecting the work of Sydney Water accredited constructors in relation to water connections to the Sydney Water system in the eastern suburbs of Sydney.

Mr Funovski and Mr Molluso

It is convenient to first examine the allegation that Mr Funovski and Mr Molluso were involved in an arrangement whereby Mr Funovski arranged for Sydney Water to do work for Planet Plumbing using Sydney Water resources free of charge, in return for which Mr Molluso paid Mr Funovski.

The evidence about this allegation came from Mr Alafaci. Mr Alafaci told the Commission that after discussions with Mr Molluso during 2007 and 2008 he became aware of a relationship between Mr Molluso and Mr Funovski. Mr Molluso was a co-director at Planet Plumbing and Mr Alafaci’s cousin. Mr Molluso left Planet Plumbing in October 2008 after which they did not maintain contact. Mr Alafaci had met Mr Funovski on a few occasions and knew that he was friends with Mr Molluso.

Mr Alafaci said Mr Molluso approached him to obtain money in order to pay Mr Funovski for services he had carried out for Planet Plumbing. Mr Alafaci gave money to Mr Molluso for this purpose. Mr Alafaci said he had given money to Mr Molluso on three to five occasions for the purpose of paying Mr Funovski for carrying out this work. He estimated that he had given Mr Molluso a total of between \$3,000 and \$4,000.

Mr Alafaci said he was aware that Mr Funovski, at Mr Molluso’s request, carried out various jobs for Planet Plumbing, including obtaining lost Sydney Water paperwork or organising after hours connections to the water mains. He said that he was not aware of all the jobs on which Mr Funovski had carried out work for Planet Plumbing, but knew that he had done some work for Planet Plumbing on two projects at Little Bay and Erskine Street, Sydney. Mr Alafaci understood Planet Plumbing saved a significant amount of time and avoided Sydney Water bureaucracy by having Mr Funovski to do the work. Mr Alafaci decided to “turn a blind eye” to the relationship.

Mr Alafaci assumed that Mr Funovski used Sydney Water resources and personnel to carry out the work, such as water connections, as he was aware that no Planet Plumbing resources had been used. Sydney Water did not charge Planet Plumbing for the work. He assumed that Mr Funovski was paid by Mr Molluso because he had given Mr Molluso money for this purpose. He had not, however, confirmed this with Mr Molluso.

Mr Funovski said he became friends with Mr Molluso and they remained in contact with one another and saw each other socially. He said that he did not know Mr Alafaci well. Mr Funovski denied having any arrangement with Mr Molluso whereby he organised for Sydney Water to do work for Planet Plumbing free of charge or retrieved Sydney Water documentation in return for receiving payment from Mr Molluso. When he gave evidence at a compulsory examination, Mr Funovski told the Commission that on a couple of occasions, during the course of their friendship, Mr Molluso had given him

small amounts of money of between \$20 and \$50. This occurred on a couple of occasions in 2008 or 2009 when Mr Molluso worked for Planet Plumbing. Mr Funovski said the payments were made in return for him “speeding up the process” and facilitating water connections for Planet Plumbing.

At the public inquiry, however, he attempted to retract this evidence and said that Mr Molluso had never paid him any money for any purpose. He said that Mr Molluso was a friend and there was no reason for him to accept money from him. After eventually admitting to receiving a \$3,000 payment from Mr Alafaci (which is dealt with in greater detail below), Mr Funovski said he had falsely claimed to have received small amounts of money from Mr Molluso in order to conceal the receipt of the \$3,000 payment.

Mr Molluso consistently denied paying money to Mr Funovski in return for Mr Funovski organising “off the books” work to be done by Sydney Water. He also denied approaching Mr Alafaci to obtain money to be paid to Mr Funovski. He told the Commission that he had both a professional and social relationship with Mr Funovski. He said that he often asked Mr Funovski for advice because he was easy to contact and it was less difficult than going through official Sydney Water channels. He was an unconvincing witness and often gave evasive answers.

The Commission accepts Mr Alafaci’s evidence that he gave money to Mr Molluso to give to Mr Funovski in return for Mr Funovski having arranged “off the books” work for Planet Plumbing. He was not, however, able to confirm that this money had been passed to Mr Funovski. Both Mr Funovski and Mr Molluso denied making or receiving the payments for this purpose. Whilst the Commission has doubts about the veracity of the evidence of Mr Funovski and Mr Molluso, there is insufficient evidence to establish that Mr Molluso used the small amounts of money he was given by Mr Alafaci (described under this heading) to pay Mr Funovski for arranging “off the books” work for Planet Plumbing.

Mr Funovski asks for money

Mr Alafaci told the Commission that shortly before 22 November 2008, Mr Funovski telephoned him and told him that he, Mr Funovski, was owed between \$5,000 and \$6,000 by Mr Molluso. According to Mr Alafaci, Mr Funovski claimed this money was for work Mr Funovski had done for Planet Plumbing. This telephone call took place not long after Mr Molluso had departed from Planet Plumbing in October 2008.

Mr Alafaci and Mr Funovski organised a meeting at the Planet Plumbing office on 22 November 2008. According to Mr Alafaci, Mr Funovski gave him a piece of paper that detailed all the jobs Mr Funovski claimed to have

conducted for Planet Plumbing on an “off the books” basis. Mr Alafaci said he had later discarded the piece of paper. He was, however, able to recall the projects that were written on the paper when he gave evidence at the public inquiry. He recalled the projects were the University of NSW (UNSW) New College, another job at Little Bay (being the redevelopment of the hospital site), a job in Erskine Street in the Sydney CBD, and a job at Crown Street in Surry Hills.

According to Mr Alafaci, Mr Funovski told him at this meeting that he had arranged, on behalf of Planet Plumbing, the unauthorised shutdown of the water system and fire hydrant connection at the New College project, a fire hydrant connection at the Little Bay project, and a water connection at the Erskine Street project. Mr Alafaci said that at that time, in November 2008, Planet Plumbing was finalising a year-long project at the UNSW New College, where it was responsible for both the sewer and water connections on the project. The sewer connection took place on 13 November 2008. There are no Sydney Water records relating to the water connection at the New College project (as is dealt with in further detail later in this chapter).

Mr Alafaci said that Mr Funovski demanded payment for doing this “off the books” work and told him that he, Mr Funovski, had not been paid by Mr Molluso although he had promised to pay him for that work. According to Mr Alafaci, Mr Funovski told him that he would make things difficult for Planet Plumbing if the money was not paid. Mr Alafaci said that no money changed hands on that day.

Mr Alafaci said that a further telephone conversation took place between them on or about 24 November 2008. During the conversation it was agreed that Mr Alafaci would pay \$3,000 in full settlement to Mr Funovski. Mr Alafaci said that he agreed to make the payment as he just wanted to “get rid of him and get him out of our hair”. Mr Alafaci told the Commission that he arranged for Mr Funovski to come to his office and collect the money on a subsequent day.

Mr Alafaci said that he arranged for a cheque to be cashed and accounted for the payment to Mr Funovski in the Planet Plumbing accounting system. These records were tendered at the public inquiry and establish that, on 25 November 2008, \$3,000 in cash was withdrawn from Planet Plumbing’s St George Bank account. The cheque was recorded in Planet Plumbing’s accounting system with the reference “SYDWA”, referring to Sydney Water. The payment was then allocated in the Planet Plumbing accounting system to three separate job numbers. Mr Alafaci accounted for \$2,000 against the University of NSW New College job, \$500 against the Crown Street job, and \$500 against a miscellaneous job number.

When he initially gave evidence to the Commission in a compulsory examination, Mr Funovski denied receiving \$3,000 from Mr Alafaci. On the second day of his evidence at the public inquiry, Mr Funovski produced a written statement in which he admitted to receiving \$3,000 from Mr Alafaci.

In the statement, he agreed that he attended the Planet Plumbing office on an occasion in November 2008. Mr Funovski claimed that Mr Alafaci was grateful for the assistance that he had given Planet Plumbing and offered him money as a “gift” for “technical support” that he had given Planet Plumbing. He did not identify specific projects on which he had given such technical assistance. He claimed that he had never received money for this purpose previously.

Mr Funovski was extremely vague when examined about the “technical support” he claimed to have provided to Planet Plumbing. In response to a question as to whether he had worked on the New College, Crown Street, Erskine Street or Little Bay projects, Mr Funovski said, “I don’t know. I disagree. I don’t know, I can’t remember”. He was unable to explain what “technical support” he had provided. He denied giving Mr Alafaci a piece of paper setting out the jobs he had worked on. He said that he had not demanded a payment from Mr Alafaci and that the payment had been made to “get me out of his hair” but he was unable to say why Mr Alafaci wanted to do so.

Mr Funovski was a witness of no credit. On his own admission, he had lied to the Commission. He gave contradictory and unpersuasive evidence. Mr Alafaci, on the other hand, gave compelling and credible evidence in a persuasive and clear manner.

The Commission is satisfied that Mr Funovski demanded and received a \$3,000 cash payment from Mr Alafaci as a reward for having used Sydney Water resources to make water connections for Planet Plumbing. This conclusion is reinforced by other evidence, set out below, that Mr Funovski organised the use of Sydney Water personnel to undertake a water connection at the UNSW in circumstances where no official record of the work done was made and therefore no charge was made by Sydney Water for that work.

The water connection at the University of NSW New College project

During the course of the public inquiry, important evidence came to light about the work carried out by Mr Funovski on behalf of Planet Plumbing. Trent Desfontaines, a Sydney Water Civil Delivery section employee, heard about the Commission’s inquiry and contacted Sydney Water’s Fraud Hotline to offer information about work he conducted at Mr Funovski’s request at the UNSW New College project.

Mr Desfontaines had worked for Sydney Water for four years at the Daceyville depot, where Mr Funovski also worked. Mr Desfontaines’ duties included repairing sewer pipes, fixing water mains, clearing blockages in pipelines and inspecting water works. Mr Funovski was authorised to allocate work to Mr Desfontaines.

Mr Desfontaines told the Commission that he and his Sydney Water colleague, Sabino Nobrega, were approached by Mr Funovski and told to make a water connection at the UNSW New College. They used Sydney Water vehicles and equipment for the work on the site and ultimately completed the water connection. In the normal course of events, Mr Desfontaines would have been given a job number and a job card to complete as a way of recording the work he carried out. He was not given a job number or a job card and was told by Mr Funovski to tell others that the work, which Mr Funovski arranged at no cost to Planet Plumbing, was a “trial shut down”. Other than for some admitted vagueness about whether the incident took place in 2008 or 2009, Mr Desfontaines’ evidence was clear and consistent. Mr Desfontaines had no motive to lie and his evidence is accepted by the Commission.

Mr Nobrega, another Sydney Water Civil Delivery section employee who has worked for Sydney Water for 38 years, told the Commission that he also attended the UNSW New College site with Mr Desfontaines and Mr Funovski, and was present throughout the relevant water connection. His evidence corroborated the evidence of Mr Desfontaines insofar as he was able to confirm that Mr Funovski was there at the time of the water connection. He was unable to recall when this incident took place.

Whilst Mr Alafaci maintained that Mr Molluso was the project manager in relation to the New College project, neither Mr Desfontaines nor Mr Nobrega identified Mr Molluso as being involved in the water connection at the UNSW.

Warren Knowles, a Sydney Water IT consultant, gave evidence that Sydney Water records show that, although Planet Plumbing requested Sydney Water to provide a cost estimate for making a water connection at the New College site, there were no records indicating that any such connection was made. This is consistent with Mr Funovski having organised the connection “off the books”.

Mr Funovski denied involvement in the connection at the UNSW New College project, and stated that he was not present during the connection. This is contrary to the evidence of Mr Desfontaines and Mr Nobrega. Both were credible witnesses who had no reason to fabricate evidence against Mr Funovski. The Commission is satisfied that they gave truthful evidence. The Commission is satisfied that Mr Funovski organised a water connection at the UNSW New College site

using Sydney Water resources and personnel, for which Sydney Water made no charge.

The UNSW New College project was one of those nominated on the piece of paper given to Mr Alafaci by Mr Funovski and for which Mr Funovski sought payment. Given that Planet Plumbing required a water connection for the project and there is no Sydney Water record of one having been made on behalf of Planet Plumbing, it is more likely than not that the work Mr Funovski arranged to be done by Mr Desfontaines and Mr Nobrega included the making of a connection required by Planet Plumbing.

Principal findings of fact

The Commission is satisfied to the requisite degree that Mr Funovski sought and received a \$3,000 payment from Mr Alafaci on or around 25 November 2008 with respect to the “off the books” Sydney Water services he had performed, or arranged to be performed, for Planet Plumbing. This included payment for arranging for a water connection for Planet Plumbing at the UNSW New College project, which was carried out by Mr Desfontaines and Mr Nobrega. Although the “off the books” work performed involved the use of Sydney Water resources and personnel, Mr Funovski ensured that no Sydney Water records were created so that Sydney Water would not charge Planet Plumbing for the work.

Corrupt conduct

The Commission is satisfied to the requisite degree that Mr Funovski’s conduct set out above comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purposes of section 8 of the ICAC Act, his conduct constitutes or involves the dishonest or partial exercise of his official functions as a Sydney Water employee and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on the part of Mr Funovski and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly receive a benefit contrary to section 249B(1) of the Crimes Act. Mr Funovski’s conduct also falls within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Mr Alafaci assisted the Commission by giving a full and frank account of his dealings with Mr Funovski, even though that account implicated himself in wrongdoing. It is in the interests of both the Commission and the public that persons who have information about corruption, even when it involves themselves, are encouraged to provide evidence to the Commission. The Commission has therefore decided to exercise its discretion to not make a corrupt conduct finding against Mr Alafaci.

There is insufficient evidence to support a finding of corrupt conduct against Mr Molluso.

Section 74A(2) statement

For the purpose of this report, Mr Funovski, Mr Molluso and Mr Alafaci are “affected” persons.

During the course of his evidence to the Commission, Mr Funovski made a number of admissions. These admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

There is other admissible evidence available, however, including the evidence of Mr Alafaci and the Planet Plumbing business records. In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Funovski for offences of soliciting and receiving corrupt payments contrary to section 249B of the Crimes Act.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Funovski for an offence under section 87 of the ICAC Act of giving false evidence at his compulsory examination when he denied having received a payment from Mr Alafaci.

As a result of the investigation, Sydney Water dismissed Mr Funovski as an employee. It is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Alafaci or Mr Molluso for any offence.

Chapter 4: Bryan Kane

This chapter examines the conduct of Sydney Water Civil Delivery section employee Bryan Kane and allegations that he received payments from accredited constructors in return for favouring them in relation to his oversight of their work.

Mr Kane was responsible for inspecting sewer connections in the Hills District of Sydney. He commenced work at Sydney Water 38 years ago, when he was 17 years old. He admitted to receiving cash payments from Sydney Water accredited constructors between 2005 and 2010 in return for “smoothing the way” for them by shortcutting processes and exercising his discretion favourably towards them.

At his compulsory examination, Mr Kane claimed that \$100 was the largest single amount of money he had received from a constructor. In the face of contrary evidence at the public inquiry, he conceded that this answer was false. His explanation for giving false evidence at the compulsory examination was that he wanted to downplay the amount of money that he had received from constructors. At the compulsory examination, Mr Kane also estimated that he had received 15 cash payments from accredited constructors during the time he had worked as an inspector. At the public inquiry, he agreed that it was possible that his estimate of 15 cash payments was a “gross underestimate”.

Mr Kane believed that the practice of accepting cash payments from constructors or plumbers was an entrenched and accepted part of the industry and that it had been going on for a long time. Mr Kane said that he did not consider the consequences of being caught.

He said that he first accepted payment from an accredited constructor in about 2005. He was unable to recall all of the accredited constructors from whom he had received a payment but recalled specifically receiving cash payments from accredited constructors Cyril Cryan, Ray Romanous and Joseph Doogue.

Dealings with Cyril Cryan

Mr Cryan gave evidence that he made two payments to Mr Kane. The first was a \$50 payment in relation to a job at Meehan Street, Parramatta, in 2008. He said he made the

payment because he wanted the job finalised so that he was not required to attend for another inspection.

The second was a \$50 payment in relation to a job at Cross Street, Baulkham Hills, in January 2010. Mr Cryan described this payment as a belated Christmas present. The payment was made at the pre-inspection stage of the project when Mr Kane still had further inspections to conduct.

Mr Kane admitted to passing the inspection at the Parramatta job after accepting a \$50 payment from Mr Cryan. Mr Cryan’s payment had the intended effect of ensuring that the job was finalised and that Mr Kane’s discretion was exercised favourably towards him.

Mr Kane also admitted to accepting \$50 from Mr Cryan at the Baulkham Hills job in January 2010. Mr Cryan had stated that the payment was a gift and that he did not make the payment to keep Mr Kane on side. The payment was made, however, at an early stage of the project and the Commission is satisfied that it was intended to influence Mr Kane to exercise his discretion favourably towards Mr Cryan when determining whether to pass inspections on the project.

Dealings with Ray Romanous

Mr Romanous told the Commission that he made two payments to Mr Kane.

The first was a \$500 payment in relation to a job at Devitt Street, Blacktown, in May or June 2010. The payment was made to “push the job along” because it was a job that had to be finished quickly. The purpose of the payment was to ensure that Mr Kane exercised his discretion in favour of Mr Romanous so that Mr Kane did not cause any delays to the completion of the project. The payment was made to Mr Kane at the final inspection.

The second was a payment of \$100 at the final inspection on a project at Isabella Street, Parramatta, in July 2010. The purpose of the payment was to enable

Mr Kane to buy himself a “drink”. Mr Romanous described an embedded culture of giving the inspector a “drink”, being a cash payment at the final inspection. This practice had been instilled in him by his father who had been working in the industry for many years.

Mr Kane admitted to accepting the \$500 payment in relation to the Devitt Street, Blacktown, job. Mr Kane said he was surprised to receive the \$500 payment and he had “no idea” why the payment was made. The payment, however, was clearly intended to influence Mr Kane in order to get the job passed, and the Commission is satisfied that Mr Kane accepted the payment on that basis.

Mr Kane admitted to receiving a payment from Mr Romanous in relation to the Isabella Street, Parramatta, job although he was unable to recall whether it was \$100. The Commission is satisfied that it was a \$100 payment, given Mr Kane’s admitted vagueness about the amount of money he received from constructors. The Commission is also satisfied that the payment was given as a reward to Mr Kane for passing the work and to ensure favourable treatment in future dealings.

Dealings with Joseph Doogue

Mr Doogue told the Commission that he made a payment to Mr Kane of \$300 in early 2010 in relation to a job at 32 Schofields Road, Schofields. He said that he had worked with Mr Kane “heaps” in the past and had never offered him money before but had done so on this occasion as he felt he had a responsibility to keep the job going. Mr Doogue explained that on this particular project he had to do a connection to a large sewer main at a point in the construction that was not strictly in accordance with Sydney Water policies. If the connection had not been made at that time, the stormwater pipe could not be installed and the road could not be constructed.

Mr Doogue said that he made the payment of \$300 to Mr Kane at the time that he was asking him to approve the proposed shortcut. According to Mr Doogue, Mr Kane accepted the money and gave the approval to do the work.

Mr Kane admitted receiving \$300 from Mr Doogue. He claimed he received the money after he had given the approval to Mr Doogue to do the work, although he agreed that his acceptance of the \$300 payment compromised his ability to perform his work impartially on behalf of Sydney Water.

Principal findings of fact

The Commission is satisfied to the requisite degree that between 2005 and 2010 Mr Kane received cash payments from Sydney Water accredited constructors in return for assisting them by shortcutting Sydney Water processes

and exercising his discretion as a Sydney Water employee towards them in a favourable manner. The payments he received included the following:

1. A payment of \$50 in 2008 from Mr Cryan in relation to a job at Meehan Street, Parramatta, in return for Mr Kane finalising the job by issuing a final inspection notice.
2. A payment of \$50 in January 2010 from Mr Cryan in relation to a job at Cross Street, Baulkham Hills, in return for Mr Kane exercising his discretion favourably towards Mr Cryan when determining whether to pass future inspections on the project.
3. A payment of \$500 in May or June 2010 from Mr Romanous in relation to a job at Devitt Street, Blacktown, for exercising his discretion in favour of Mr Romanous so that Mr Kane did not cause any delay to the finalisation of the project.
4. A payment of \$100 in July 2010 from Mr Romanous in relation to a project at Isabella Street, Parramatta, as a reward for passing the final inspection and to ensure future favourable treatment.
5. A payment of \$300 in early 2010 from Mr Doogue in relation to a job at 32 Schofields Road, Schofields, for utilising his discretion to approve a sewer connection before the connection had been completed.

Corrupt conduct

Mr Kane’s conduct as set out in the principal findings of fact comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purposes of section 8 of the ICAC Act, his conduct constitutes or involves the dishonest or partial exercise of his official functions as a Sydney Water employee and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on the part of Mr Kane and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly receiving a benefit contrary to section 249B(1) of the Crimes Act. Mr Kane’s conduct also falls within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Messrs Cryan, Romanous and Doogue assisted the Commission by giving accounts of their dealings with Mr Kane, even though those accounts implicated them in wrongdoing. It is in the interests of both the Commission and the public that persons who have information about corruption, even when it involves themselves, are encouraged to provide evidence to the Commission. The Commission has therefore decided to exercise its discretion to not make corrupt conduct findings against Messrs Cryan, Romanous and Doogue.

Section 74A(2) statement

For the purpose of this report, Mr Kane, Mr Cryan, Mr Romanous and Mr Doogue are “affected” persons.

Mr Kane’s admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. However, the evidence of Mr Cryan, Mr Romanous and Mr Doogue could be available to be used against Mr Kane.

In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Kane for offences of receiving corrupt payments contrary to section 249B of the Crimes Act.

As a result of the investigation, Sydney Water dismissed Mr Kane as an employee. It is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Messrs Cryan, Romanous or Doogue for any offence.

Chapter 5: Plumbing Inspection and Assurance Services inspectors

This chapter examines allegations that Plumbing Inspection and Assurance Services (PIAS) inspectors Richard Fayers, Robert Rodgers, Anthony Vecchio, and Kim Thwaite accepted cash payments in the course of the performance of their official duties.

PIAS inspectors are responsible for inspecting and approving plumbing and drainage works in the greater Sydney area. The NSW Code of Practice for Plumbing and Drainage 2006 (known as the NSW Plumbing Code) sets out the relevant regulatory requirements for plumbing and drainage works in NSW. PIAS inspectors conduct inspections of plumbing work to ensure compliance with the NSW Plumbing Code. At the time of the public inquiry, responsibility for PIAS inspectors and their functions was in the process of moving from Sydney Water to the Department of Services, Technology & Administration.

Richard Fayers

Mr Fayers was employed by Sydney Water as a PIAS inspector from 2002 or 2003 until his departure in 2010.

Mr Fayers described the longstanding culture of corruption within the PIAS group. His evidence was corroborated by Mr Vecchio, Mr Thwaite and a number of constructors (dealt with in further detail below). Mr Fayers is a third-generation plumber and recalled as a teenager being asked to retrieve his father's wallet from the car so his father could give money to inspectors. He told the Commission that PIAS inspectors accepted cash payments all over Sydney and used the word "endemic" to describe the practice. He recalled being given what he described as "the talk" at the morning tea table on his first day as a PIAS inspector. He went on to explain:

This is the culture, you don't speak about it, you don't talk about it, if you are asked about it, you deny it. You've never seen it, touched it, taste [sic] it, you know ... If you say anything about it your life will be made most uncomfortable in the organisation. That's if you can tolerate it.

During his time as a PIAS inspector, Mr Fayers worked in different offices including Beecroft, Liverpool, Drummoyne and Five Dock. He admitted to receiving cash payments of \$5, \$10 or \$20 up to six or seven times a week throughout his period as a PIAS inspector from different individuals. He said he accepted money in order to "grease the wheels" and exercise his discretion favourably towards a particular plumber. He assisted plumbers who paid him in a variety of ways, including by attending the site at a particular time or passing a job quickly.

Dealings with Khare Aoun

One of the Sydney Water accredited constructors and licensed plumbers from whom Mr Fayers accepted money was Khare Aoun.

Mr Aoun gave evidence that he had made a payment of \$300 to Mr Fayers at Blacktown McDonald's in relation to a job at 24 First Avenue, Blacktown, in April 2005. Mr Aoun told the Commission that he made the payment to avoid Mr Fayers issuing further CAR notices. He was unable to recall whether Mr Fayers had requested payment or if it was his idea to offer the payment.

Mr Fayers accepted that he was paid money by Mr Aoun, but denied demanding payment. He was unable to recollect the amount of money he received, stating that it could have been \$300, although he was not sure. He believed that the payment was made on the first day he arrived on site, through the window of his car and not at Blacktown McDonald's. He maintained that Mr Aoun had given the money to him because he did not have his paperwork ready, which meant that Mr Fayers had to attend the site again the next day.

The Commission is satisfied that the amount of the payment was \$300. It is uncontested that a payment was made to Mr Fayers by Mr Aoun in April 2005. It is unnecessary to determine whether the payment was made so that Mr Fayers would not issue any further CARs or to have Mr Fayers attend the work site the

next day to check Mr Aoun's paperwork. In either case, the payment related to Mr Fayer's exercise of his official functions as a PIAS inspector.

Principal finding of fact

The Commission is satisfied to the requisite degree that from about 2002 or 2003 until 2010 Mr Fayers accepted payments of between \$5 and \$20 up to six or seven times a week in return for favourably exercising his discretion as a PIAS inspector. He also received a \$300 payment from Mr Aoun in relation to a job at 24 First Avenue, Blacktown, in April 2005 in return for exercising his official functions as a PIAS inspector in Mr Aoun's favour.

Corrupt conduct

Mr Fayers' conduct of accepting payments in return for favourably exercising his discretion as a PIAS inspector is conduct that comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purposes of section 8 of the ICAC Act, such conduct constitutes or involves the dishonest or partial exercise of his official functions as a Sydney Water employee and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on the part of Mr Fayers and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly receiving a benefit contrary to section 249B(1) of the Crimes Act.

The Commission is not of the opinion that a finding of corrupt conduct should be made in respect of Mr Aoun, who assisted the Commission in its investigation.

Section 74A(2) statement

For the purpose of this report, Mr Fayers and Mr Aoun are "affected" persons.

In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Fayers. The reason for this is principally because Mr Fayers gave frank evidence and set out to assist, rather than obstruct, the Commission.

Mr Fayers resigned from Sydney Water and it is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Aoun for any offence.

Robert Rodgers

Mr Rodgers worked as a PIAS inspector between 2005 and 2010. Prior to commencing at Sydney Water, he worked as a licensed plumber between 1987 and 2000. Mr Rodgers had remained employed at Sydney Water whilst other PIAS inspectors had been transferred to the Department of Services, Technology & Administration.

Mr Rodgers claimed that when he was a plumber he never made payments to any PIAS inspectors. He said that as a PIAS inspector he never received money from plumbers in return for exercising his official duties in any particular manner. Although he conceded that years ago there were rumours of payments of "redbacks" (\$20 notes) to a long-retired inspector, he denied any knowledge of PIAS inspectors receiving payments from plumbers in return for favourably exercising their official functions. This evidence conflicts with the weight of evidence from other witnesses that such payments were common knowledge. Mr Rodgers was not an impressive witness. The Commission does not accept that he had no knowledge of this practice.

Sydney Water accredited constructor, Mr Romanous, told the Commission that he had made payments to Mr Rodgers. Mr Rodgers denied receiving those payments. Mr Romanous was unable to provide further details about the payments and said he had worked with Mr Rodgers on only a couple of occasions. Given Mr Romanous' lack of any detailed recollection of events involving Mr Rodgers, the Commission does not consider there is sufficient evidence to support a finding that Mr Rodgers accepted payments from Mr Romanous.

Mr Rodgers did admit to receiving cash payments from plumbers in the course of his employment as a PIAS inspector, in return for designing and drawing sewer service diagrams. As part of his duties, Mr Rodgers had to approve sewer service diagrams designed by licensed plumbers. In recent years, plumbers have been responsible for designing and drawing these diagrams. He said that some of the plumbers were unable to draw the diagrams. He, thereafter, drew the diagrams for a fee of \$50. He estimated that he had been the Sydney Water inspector responsible for approving his own work on about 10 occasions.

Mr Rodgers' conduct in preparing sewer service diagrams for payment amounted to secondary employment. He did not tell anyone within Sydney Water about this employment, nor did he seek approval to engage in secondary employment.

Sydney Water has a policy on secondary employment. The *Working at Sydney Water* document outlines the circumstances in which a Sydney Water employee can engage in secondary employment. It states:

Can I do other paid work?

Sydney Water will allow staff to do other paid work if:

- *it does not adversely affect your normal work and performance*
- *there is no potential conflict of interest*
- *you and your manager have considered contractual, regulatory and/or political relationships other organisations may have with Sydney Water*
- *your manager has given approval*

Mr Rogers' preparation and completion of sewer service diagrams for plumbers, in return for payment, and which he subsequently had to approve in his role as a PIAS inspector, created a situation that had a clear potential to adversely affect his "normal work and performance" and created a clear conflict of interest. Mr Rodgers agreed that it was highly undesirable to have the inspector who was responsible for checking the diagrams to also be the designer of those diagrams. He also agreed that Sydney Water would have been concerned about him drawing the diagrams and being involved in approving them.

Mr Rodgers initially claimed he did not know that he was required to seek approval to engage in secondary employment. He accepted, however, that he had been present at a Sydney Water presentation called "Fraud Awareness and Ethics" on 20 October 2009. He accepted that at this presentation it was made clear that the personal interests of Sydney Water employees should not conflict with their duties to Sydney Water.

Principal findings of fact

The Commission is satisfied that Mr Rodgers was aware of the Sydney Water policy requiring him to seek permission to engage in secondary employment and that he was aware this policy applied to him in relation to the paid work he did in preparing sewer service diagrams. The Commission is satisfied that he deliberately failed to seek secondary employment permission because he was aware that his secondary employment adversely impacted on his performance of his duties as a PIAS inspector, and constituted a clear conflict of interest with those duties, and that in those circumstances permission would not be granted. He deliberately failed to seek secondary employment permission so that he could continue to benefit financially from the work he did in preparing sewer service diagrams for plumbers.

Corrupt conduct

Mr Rodgers' deliberate failure to seek Sydney Water permission to engage in secondary employment in circumstances where he knew his secondary employment adversely impacted on his performance of his duties as a PIAS inspector is corrupt conduct. It was conduct that constituted or involved the dishonest or partial exercise of a part of his official functions and therefore comes under section 8(1)(b) of the ICAC Act.

Mr Rodgers' conduct also comes within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Section 74A(2) statement

For the purpose of this report, Mr Rodgers is an "affected person".

In all the circumstances, because of the lack of admissible evidence, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Rodgers.

The Commission is of the opinion that, pursuant to sections 74A(2)(b) and (c) of the ICAC Act, consideration

should be given by Sydney Water to the taking of disciplinary action against Mr Rodgers.

Anthony Vecchio

Mr Vecchio commenced employment with Sydney Water in 1978 as a PIAS inspector. He worked in various locations, including the Northern Districts, Ryde, Hornsby and Wollongong.

He told the Commission that the culture of accepting gifts and payments from licensed plumbers was widespread among PIAS inspectors and well entrenched when he commenced working at Sydney Water. Since 1979, on many occasions, he accepted amounts of \$5, \$10, \$50 and up to \$100 from plumbers. In return for these payments, Mr Vecchio turned up early to inspections and exercised his functions in such a way as to ensure that he conducted his inspections and granted approvals in a timely manner. Mr Vecchio said that he viewed the payments as gifts that were part of the culture.

Although Mr Vecchio claimed that he had, on occasion, refused offers of payment, he was unable to give any examples of when he had done so. He told the Commission that he had decided to stop accepting payments five or six months before the public inquiry commenced. The reason for doing so appeared to be that after transferring to the Department of Services, Technology & Administration he came to the view that the Department would view this kind of conduct far more seriously than Sydney Water. He claimed that because he was 18 months away from retirement he had experienced a sudden “change of attitude”.

There was some evidence that Mr Vecchio had drawn sewer service diagrams for plumbers in return for payment. Mr Vecchio claimed that he did not consider this constituted secondary employment and therefore he had not sought secondary employment approval from Sydney Water. This issue was not explored in any detail in the evidence, and Counsel Assisting did not make any submission that a corrupt conduct finding should be made in relation to Mr Vecchio’s conduct in drawing the diagrams or failing to seek approval for secondary employment.

Principal finding of fact

The Commission is satisfied to the requisite degree that from approximately 1979 until about early 2010 Mr Vecchio accepted payments of between \$5 and \$100 from plumbers on many occasions in return for favourably exercising his discretion as a PIAS inspector by turning up early on site and granting approvals in a timely manner.

Corrupt conduct

Mr Vecchio’s conduct of accepting payments from plumbers in return for favourably exercising his discretion as a PIAS inspector is conduct that comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purposes of section 8 of the ICAC Act, such conduct constitutes or involves the dishonest or partial exercise of his official functions as a Sydney Water employee and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on the part of Mr Vecchio and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1)(a) of the ICAC Act, such conduct could constitute or involve a criminal offence of corruptly receiving a benefit contrary to section 249B(1) of the Crimes Act.

Mr Vecchio’s conduct also falls within section 9(1)(b) and 9(1)(c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Section 74A(2) statement

For the purpose of this report, Mr Vecchio is an “affected person”.

In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Vecchio. The reason for this is principally because Mr Vecchio gave frank evidence to the Commission and set out to assist, rather than obstruct, the Commission.

The Commission is of the opinion that, pursuant to sections 74A(2)(b) and (c) of the ICAC Act, consideration should be given by the Department of Services, Technology & Administration to the taking of disciplinary action against Mr Vecchio.

Kim Thwaite

Mr Thwaite was employed as a PIAS inspector from 2003. He was transferred to the Department of Services, Technology & Administration in 2010. After hearing of the Commission’s public inquiry, he approached a superior at the Department of Services, Technology & Administration and provided him with information. This information was passed on to the

Commission and he was called to give evidence at the public inquiry.

Mr Thwaite told the Commission about an incident in 2006 when a plumber at a project in Artarmon had offered him \$1,000 in an envelope. He was not able to recall the identity of the plumber. He recalled that the plumber was appreciative of the help he had been given by Mr Thwaite. He reported the incident to his superior, Richard Johansson, and they both attended the site and returned the money.

Mr Thwaite admitted to receiving payments of between \$20 and \$100 from plumbers on other occasions, after a job had been completed. He claimed that he only started to accept these payments in the months leading up to the Commission's public inquiry. He had, however, been offered money on several occasions throughout his time at Sydney Water. He gave evidence that he had also accepted payment, known in the industry as a "drink", for assisting plumbers with the preparation of sewer service diagrams. He told the Commission that he only accepted the payment after the job was finalised. He said he only accepted the payments on six occasions during his career at Sydney Water.

Corrupt conduct

In all the circumstances, the Commission is not of the opinion that a finding of corrupt conduct should be made in respect of Mr Thwaite. The reason for this is principally because Mr Thwaite voluntarily came forward to assist the Commission's inquiry when there was no threat of him being detected or implicated in any way.

Section 74A(2) statement

For the purpose of this report, Mr Thwaite is an "affected person".

In all the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Thwaite. The reason for this is principally because Mr Thwaite gave frank evidence to the Commission and set out to assist, rather than obstruct, the Commission.

Chapter 6: Edward Harvey and Paul Makucha

This chapter examines how Sydney Water property asset manager Edward Harvey came to arrange payment of invoices totalling \$234,000 to Sydney businessman Paul Makucha, and \$59,462.50 to accountants retained by Mr Makucha, and the release by Sydney Water of a \$25,000 bond lodged in the Supreme Court of NSW. The chapter also examines the circumstances in which Mr Harvey took it upon himself to enter into a number of agreements with Mr Makucha, despite knowing that he did not have authority from Sydney Water to do so. The agreements included a proposed joint venture between Sydney Water, Mr Makucha and his wholly-owned companies Paul Makucha Holdings and Sydney Water P Pty Ltd, which, if valid, imposed considerable financial and other burdens on Sydney Water.

Background

Mr Harvey was employed as a property asset manager at Sydney Water between July 2006 and February 2010. He had previously worked for the NSW Department of Housing and at RailCorp in similar positions.

At Sydney Water, his role involved the management of around 800 leases and licences. His role did not involve negotiating or entering into agreements or joint ventures to establish commercial enterprises. Clause 3.3 of Mr Harvey's employment agreement states:

The Employee acknowledges that the Employee has no authority to bind the Corporation in contract except in accordance with delegations issued by the Corporation from time to time.

In November 2006, Mr Harvey was given responsibility for obtaining vacant possession of a property at 111 Baxter Road, Mascot ("the Baxter Road property"). Since October 1991, the property had been leased to and occupied by Mr Makucha, a Sydney businessman. Mr Makucha had erected a number of structures on the property, including shipping containers, demountable buildings, surveillance cameras and spotlights. By 2007,

Mr Makucha was living in a shipping container on the Baxter Road property.

On 11 September 2007, the Supreme Court of NSW made orders by consent, giving Sydney Water vacant possession of the Baxter Road property. Mr Makucha signed the consent order, acknowledging that he had no right or entitlement to occupy the property. On or shortly after 11 September 2007, Mr Makucha paid \$25,000 into court as security for any costs Sydney Water might incur if it had to remove Mr Makucha's property stored at Baxter Road. The order required Mr Makucha to remove all his effects, including the demountable buildings and shipping containers, by 16 November 2007.

Despite the clear terms of the consent order, Mr Harvey was not successful in obtaining vacant possession of the Baxter Road property for Sydney Water. Instead, he consented to several requests by Mr Makucha to extend the date for execution of the writ of possession. Mr Makucha gave various reasons for being unable to vacate the property, which Mr Harvey accepted. Mr Makucha was not evicted from the premises until March 2010.

Meanwhile, a relationship had developed between the two men, which saw Mr Harvey spending between 10 to 20 per cent of his working time on various proposals made by Mr Makucha. From December 2008, these proposals were mostly concerned with the creation of a joint venture between Sydney Water and interests associated with Mr Makucha to, among other things, bottle Sydney Water for global sale.

Over the course of the following year, several versions of the joint venture agreement were drafted by Mr Makucha's lawyer, Michael Stafford. Mr Makucha's ideas became increasingly outlandish and moved beyond the initial proposal to bottle and sell water carrying the "Sydney Water" name and logo. On 12 May 2009, Mr Makucha registered three joint venture companies, Sydney Water L Pty Ltd, Sydney Water M Pty Ltd, and Sydney Water P Pty Ltd.

Mr Harvey was unable to extricate himself from his relationship with Mr Makucha. Not only did he deal in matters that were beyond his knowledge, skill, ability and authority, he was also largely oblivious to the full consequences of his actions. Not only did he keep the negotiations secret, he did not take advice from anyone else within Sydney Water about the viability of the proposals. Mr Harvey agreed that he was not in a position to determine whether the proposals put forward by Mr Makucha would be beneficial to Sydney Water and that he did not understand the contents of most of the documents sent to him by Mr Makucha.

In an attempt to explain his behaviour, Mr Harvey told the Commission that at the time he had believed Mr Makucha's proposals presented a range of business opportunities for Sydney Water but in hindsight he acknowledged that some of the proposals were "far out". He admitted that his actions were "extraordinary". It does not appear that Mr Harvey was motivated by the prospect of personal reward. He told the Commission that he received only gifts of champagne and chocolates from Mr Makucha at Christmas. He also admitted, however, that he had been named as a foundation trustee in Mr Makucha's "Charitable Trust Deed". The trust deed provided for Mr Harvey to receive \$25,000 a year whilst Mr Makucha was alive, which would increase to \$75,000 a year upon his death. This deed, however, only became effective only if the joint venture went ahead and Mr Harvey knew that it could proceed only if approved by Sydney Water senior management and the Sydney Water Board. Objectively speaking, the prospects of this occurring were probably non-existent.

Issues of credit

Once Mr Harvey's conduct was detected, he cooperated with the Commission and made a voluntary statement setting out what he had done. His evidence was given in a forthright manner and contained significant admissions against interest. The Commission is satisfied that Mr Harvey sought to give truthful and frank evidence, and considers that he was a credible witness.

Mr Makucha, on the other hand, was deliberately evasive and unresponsive. On the question of knowledge of Mr Harvey's lack of authority to bind Sydney Water to any agreement, which is dealt with below, he gave emphatic but diametrically opposed evidence. Mr Makucha was not a credible witness, and unless his evidence was an admission against interest or corroborated by other reliable evidence, it is not accepted by the Commission.

Secrecy of dealings

Mr Harvey kept his dealings with Mr Makucha secret from others within Sydney Water for over two years. Mr Harvey gave evidence, which is accepted by the Commission, that Mr Makucha had often told him that he was concerned that someone would steal his ideas and therefore their dealings needed to be kept confidential until such time as appropriate Sydney Water approvals were in place. Mr Harvey believed he had some sort of confidentiality obligation to Mr Makucha that prevented him from telling anyone at Sydney Water what he was doing. He acknowledged, however, that he knew at the time that his obligations to Sydney Water overrode any obligations to Mr Makucha.

Mr Makucha, for his part, kept his dealings with Mr Harvey secret from others within Sydney Water. Although Mr Makucha addressed correspondence to the managing director of Sydney Water, he hand-delivered the correspondence to Mr Harvey. Letters to Sydney Water from his accountants were, likewise, addressed to the Sydney Water managing director but also hand-delivered by Mr Makucha to Mr Harvey.

Mr Makucha told the Commission that it was his "complete belief" that Mr Harvey would forward the letters to the managing director and that others within Sydney Water were aware of what was happening. He also agreed, however, that he had expressly requested that Mr Harvey keep their negotiations secret and he accepted that he had wanted to deal only with Mr Harvey whom he saw as being "someone who I can rely on as being a man of their word".

Throughout the negotiations, Mr Makucha talked only to Mr Harvey. When asked whether he had spoken to anyone else within Sydney Water about the joint venture, he nominated Dr Peter Zeman, a Sydney Water engineer. He ultimately admitted, however, that he spoke to Dr Zeman only about his "methodology for doing analysis of sewerage". This had nothing to do with the joint venture proposal.

The secrecy of their mutual dealings allowed Mr Makucha to create a paper trail of documents relating to the proposed joint venture, which, on their face, indicated they had been sent to the managing director of Sydney Water. In fact, they had only been delivered (by hand) to Mr Harvey. An example is a letter from Mr Makucha dated 12 March 2009, addressed to the managing director. The letter is expressed as confirming that Sydney Water had agreed to enter into legally-binding relations requiring Sydney Water to purchase "49% of the shares of the Makucha Group of companies". The paper trail enabled Mr Makucha to claim subsequently that Sydney Water was aware of the various matters set out in the correspondence and his dealings with

Mr Harvey, whereas the only person in Sydney Water who knew about them was Mr Harvey.

Mr Harvey's misplaced belief that he was duty-bound to Mr Makucha to keep their dealings secret assisted Mr Makucha in manipulating him to the extent that he transferred substantial funds from Sydney Water to Mr Makucha and signed documents, beyond his authority, purporting to bind Sydney Water to Mr Makucha.

Currently, there are Supreme Court proceedings on foot between Sydney Water and Mr Makucha and his associated companies. Sydney Water is seeking to set aside the joint venture agreement that Mr Harvey entered into on behalf of Sydney Water with Mr Makucha. Sydney Water is also seeking to recover the monies paid to Mr Makucha and his associated companies in accordance with invoices submitted by Mr Makucha and authorised by Mr Harvey. The matter is set down for hearing in March 2011.

Payments authorised by Mr Harvey

Between November 2008 and December 2009, Mr Harvey authorised the payment by Sydney Water of invoices totalling \$234,000 to Mascot Administration Services Pty Ltd, a company owned and controlled by Mr Makucha. He also authorised payments of \$59,426.50 to Hall Chadwick, accountants retained by Mr Makucha to advise about the joint venture proposal. Mr Harvey also authorised the release of a \$25,000 bond lodged by Mr Makucha with the Supreme Court as security for any costs Sydney Water might incur if it had to remove Mr Makucha's property stored at Baxter Road. Mr Harvey had no authority from Sydney Water to authorise any of these payments or to release the bond.

As a Sydney Water property asset manager, Mr Harvey had delegated authority to approve payments of up to \$100,000 in connection with certain real estate transactions. Under the delegations, Mr Harvey was required to obtain three written quotes and obtain a standard contract form for purchases over \$50,000. He could authorise payment of invoices below \$50,000 without the need to obtain more than one quote. In exercising his delegated authority to expend Sydney Water funds, Mr Harvey had a fiduciary obligation to act honestly by ensuring the expenditure was for a proper purpose related to Sydney Water's functions.

Mr Harvey admitted that he authorised the payment of the invoices knowing that with each payment he was falsely asserting to Sydney Water that Mr Makucha or his company (or Hall Chadwick) was entitled to be paid by Sydney Water for the particular invoice. At all times, Mr Harvey knew they were not so entitled because the expenditure was not related to Sydney Water's functions and he did not possess the relevant authority. According

to Mr Harvey, Mr Makucha came to refer to the Sydney Water accounts department as the "money man", a consistent source of funds.

In several instances, Mr Harvey authorised payments of over \$50,000. He did not do so in accordance with the delegation. He also acknowledged that he did not have authority to release the \$25,000 bond. He authorised payment of the invoices and release of the bond in breach of his fiduciary duty.

Mr Makucha's involvement in the payment of these invoices and the release of the \$25,000 bond was more complex. Whilst Mr Harvey told the Commission that he spoke with Mr Makucha on a number of occasions about how he could best present invoices so as not to attract scrutiny from the Sydney Water accounts department and to receive payment, he also maintained that he did not tell Mr Makucha that he was making payments without the authority of Sydney Water. Mr Makucha denied receiving funds to which he was not entitled and claimed that he believed that Mr Harvey was acting within his authority. There is, however, evidence concerning at least some of the claims for payment made by Mr Makucha that indicates they were a subterfuge to enable Mr Makucha to obtain money from Sydney Water.

The invoices authorised for payment by Mr Harvey and the circumstances in which the \$25,000 bond was released are outlined in further detail below.

Payments for "improvements" to the Baxter Road property

On 29 October 2008, Mr Harvey made a formal offer in writing to Mr Makucha of \$27,500 for "improvements" that Mr Makucha had made to the Baxter Road property. The offer was made after months of negotiation. Mr Harvey's superior, Gary Inberg, was aware of and approved the offer. The "improvements" were the fill, compaction, bitumen and chainwire fencing that Mr Makucha had placed on the property. The offer was made strictly upon the condition that Mr Makucha vacate the property, and his containers, portable buildings and other goods and effects be removed prior to payment. Mr Makucha accepted the offer.

Mr Harvey authorised the payment of invoices dated 25 November 2008, 28 January 2009, 24 February 2009, 12 March 2009 and 23 March 2009. A total of \$27,500 was paid to Mascot Administration Services Pty Ltd. In authorising and facilitating payments, Mr Harvey deliberately failed to act in accordance with instructions given to him by his supervisor, Mr Inberg, that payment from the \$27,500 could be made only once the Baxter Road property had been vacated by Mr Makucha. Mr Harvey did not consult or inform Mr Inberg or anybody else within Sydney Water of the payments made to Mr Makucha.

The invoices were each expressed to be for part-payment of \$27,500 for the various improvements that Mr Makucha had made to the Baxter Road property. At the time he sent the invoices, Mr Makucha was still occupying the property and the containers, portable buildings and other goods and effects were still on the property. He was therefore not entitled to any such payment.

According to Mr Harvey, Mr Makucha asked for money in late 2008 to assist him in relocating from the Baxter Road property. Mr Harvey saw it as a “short-term arrangement to assist a guy who was, you know, struggling at the time”. After the first payment, Mr Harvey said, “I got on the treadmill and didn’t know how to get off”. He said Mr Makucha told him that he required additional funds to progress his relocation, which had been delayed for various reasons, including Mr Makucha’s recent illness and the death of his mother. Mr Harvey said he “felt obliged to continue on” authorising the payments and was aware that he had placed himself in a compromised position.

Mr Makucha did not deny telling Mr Harvey that he required funds for various purposes but claimed that he believed Mr Harvey had the authority to authorise the payments.

The Commission is satisfied that Mr Harvey authorised payment of the invoices knowing that Mr Makucha’s company was not entitled to the funds and that he had no authority to make the payments in circumstances where Mr Makucha remained in occupation of the Baxter Road property.

There is insufficient evidence to conclude that Mr Makucha knowingly made any false statement in submitting the invoices or sought knowingly to adversely affect Mr Harvey’s honest and impartial exercise of his official functions.

Payments to Hall Chadwick accountants

On 31 March 2009, Mr Makucha and Paul Makucha Holdings Pty Ltd became clients of Gino Malacco, a partner at the accountancy firm, Hall Chadwick. Mr Malacco was engaged to provide advice for the proposed joint venture.

Mr Harvey said he agreed with Mr Makucha that Sydney Water would pay Hall Chadwick to advise Mr Makucha. He did this as a “calculated risk” to provide funds in order to progress the joint venture proposal. He was not authorised by Sydney Water to enter into that agreement. Hall Chadwick issued five invoices, addressed to Sydney Water, dated 31 March 2009, 8 April 2009, 1 May 2009, 25 May 2009 and 28 May 2009. Mr Harvey agreed that he authorised payments of these invoices knowing that he did not have Sydney Water authority to do so. A total of \$59,462.50 was paid by Sydney Water to Hall Chadwick.

Hall Chadwick was instructed by Mr Makucha to address the invoices to Sydney Water. There is no evidence that Hall Chadwick had any knowledge that Sydney Water had not agreed to this course and no adverse inference is made in respect of Mr Malacco or Hall Chadwick.

There is insufficient evidence to support a finding that Mr Makucha knew that Mr Harvey was acting without authority in regard to approving payment of the Hall Chadwick invoices.

Release of the \$25,000 bond

The consent orders of the Supreme Court of 11 September 2007 required Mr Makucha to lodge a \$25,000 bond with the Court as security for costs Sydney Water might incur if it had to remove Mr Makucha’s property from Baxter Road.

In March or April 2009, Mr Makucha was still living in a shipping container at the Baxter Road property. This was despite having already obtained Sydney Water money through Mr Harvey, which he claimed he needed in order to move and which has already been referred to above. Mr Makucha said that he needed to move into the city to be closer to his lawyers and accountants. Mr Makucha claimed that there had also been threats to his life by bikie gangs. Mr Makucha requested that Mr Harvey arrange the release of the \$25,000, which had been paid into the Supreme Court in September 2007. The bond could be released to Mr Makucha only with the consent of Sydney Water.

On 9 April 2009, Mr Harvey provided a letter to Mr Makucha, which confirmed that Sydney Water was prepared to release the \$25,000 bond to Mr Makucha. The letter was signed by Mr Harvey. Mr Makucha applied to the Supreme Court to have the \$25,000 bond released, using the letter as evidence of Sydney Water’s consent. Mr Harvey knew that the letter was to be used for that purpose. He did not discuss his decision to write the letter with anybody else within Sydney Water. Mr Harvey admitted that he knew that he did not have authority to agree to the release of the bond. On 15 April 2009, the Court made an order releasing the \$25,000 to Mr Makucha. Mr Makucha commenced residence at the Hilton Hotel.

The Commission is satisfied that in the letter of 9 April 2009, Mr Harvey knowingly made a false representation to the Supreme Court, namely that he had authority to release the bond to Mr Makucha in order to obtain a benefit for Mr Makucha.

There is insufficient evidence to conclude that Mr Makucha knew Mr Harvey had no authority to authorise that the Court release the \$25,000 bond to Mr Makucha.

Payments for buildings at the Baxter Road property

Mr Harvey authorised payment by Sydney Water of invoices dated 26 May 2009 and 26 June 2009. The invoices purported to be for the purchase by Sydney Water of certain buildings at the Baxter Road property. Mr Harvey said he arranged for payment of these invoices because Mr Makucha had told him that he required money to pay his bill at the Hilton Hotel.

Mr Harvey admitted that these invoices were a contrivance designed to provide something credible to put forward to the Sydney Water accounts department and in order to enable Mr Makucha to access funds to which he was not entitled.

The first invoice, dated 26 May 2009, sought payment of \$19,500 for what was described on the invoice as “Sale of two (2) only 13m x 7.5m air conditioned site offices and one only ablution block including toilet”. This invoice was a replacement for an earlier invoice dated 21 May 2009. That invoice specified that the buildings for which Sydney Water was being invoiced “are for the ownership of the JV [joint venture] company Sydney Water P Pty Ltd”.

As of May 2009, Mr Makucha was the sole shareholder in Sydney Water P Pty Ltd. In effect, Sydney Water was being asked to pay Mr Makucha for buildings that would remain under his control through Sydney Water P Pty Ltd. Mr Harvey told the Commission that he advised Mr Makucha to delete that reference from the invoice. Mr Makucha did so and submitted the invoice dated 26 May 2009. Mr Harvey arranged for Sydney Water to pay the 26 May 2009 invoice. The deletion of the reference to Sydney Water P Pty Ltd indicates that Mr Harvey and Mr Makucha were colluding to conceal from Sydney Water that the buildings were to remain under Mr Makucha’s control.

The second invoice, dated 26 June 2009, sought payment of \$6,000 for what was described on the invoice as “Ex Telstra high security 3.5 x 3.5m split system air conditioned building and split system air conditioned guard house building”. Mr Harvey also arranged for payment of this invoice. There was no reference to Sydney Water P Pty Ltd in this invoice.

Mr Makucha “vehemently” denied colluding with Mr Harvey to generate funds so he could pay his bill at the Hilton Hotel. He maintained that the buildings were “special” and useful to Sydney Water.

Mr Harvey’s colleague Michael Massih, a senior contracts manager at Sydney Water, gave evidence at the public inquiry. Mr Massih’s role included purchasing relocatable buildings for Sydney Water. Mr Massih told the Commission that Sydney Water procedure required that before any purchase could take place, a business case

addressing Sydney Water’s need for the proposed buildings was required to be prepared and approved by Sydney Water. The procurement guidelines also required that where a purchase was less than \$50,000, a single, written quote had to be obtained. Mr Massih said that neither a business case nor a quote was prepared to support the purchase of the buildings. He also said that Sydney Water had no need for these types of buildings.

The Commission is satisfied that Sydney Water had no requirement or need to purchase the buildings specified in the two invoices, and that Mr Harvey was aware of this. The Commission rejects Mr Makucha’s evidence that the buildings were useful to Sydney Water. The fact that he initially intended the buildings to remain under his control through Sydney Water P Pty Ltd, rather than be transferred to Sydney Water, indicates that Mr Makucha had no intention of transferring the buildings to Sydney Water.

Furthermore, by this time, both Mr Harvey and Mr Makucha believed that the prospects of the joint venture being agreed to by Sydney Water were extremely remote.

The Commission is satisfied that the invoices were a ruse Mr Makucha concocted in concert with Mr Harvey in order for Mr Makucha to obtain money from Sydney Water.

Payments for “outdoor advertising” services

According to Mr Harvey, Mr Makucha had an urgent need for continuing funds to cover his living expenses. Mr Harvey devised the idea of using “outdoor advertising” advice as a way to facilitate payments by Sydney Water to Mr Makucha. Mr Harvey authorised payment by Sydney Water to Mr Makucha of invoices issued by Mr Makucha dated 23 July 2009, 3 August 2009, 1 September 2009, 1 October 2009, 1 November 2009 and two invoices dated 3 December 2009. A total of \$126,000 was paid to Mr Makucha.

Each of the seven invoices sought payment of \$18,000 for what was described as “6 months of consultancy services, designs for outdoor advertising, feasibility studies and construction and long term rental agreements for outdoor advertising”.

Mr Harvey knew that he had no authority from Sydney Water to authorise payment of the invoices. He knew that Sydney Water required a written contract and three quotes for professional services costing over \$50,000. He ignored this requirement. He also arranged to split the invoices so that each of them, at \$18,000, was under the amount he thought might attract scrutiny from the Sydney Water accounts department. Each invoice claimed for six months of outdoor advertising consultancy services. The total period for which payment was claimed was 42 months.

All the invoices, however, were for work alleged to have been performed or to be performed over the same period of six months. The invoices issued after the first invoice, in effect, claimed for the same work described in the first invoice. The duplication in the invoices is consistent with them being used as a fraudulent mechanism to obtain money for Mr Makucha.

Mr Makucha claimed that the invoices were for advertising services he had provided to Sydney Water. The evidence, however, established that only limited material was provided by Mr Makucha, and that material was of no real value.

Mr Harvey said that the only advertising material or other relevant material he received was a bundle of sketches from Mr Makucha that related to outdoor advertising and a 1993 advertising catalogue.

John Dollison, an outdoor advertising expert with over 28 years experience in the advertising industry, told the Commission that the bundle of sketches did not have any value in the Australian outdoor advertising market in 2008 or 2009. He said the advertising catalogue was normal marketing material handed out in the advertising industry free-of-charge and was of no monetary value. The Commission accepts his evidence.

Mr Makucha initially told the Commission that he had produced 44 “business modules” in a flow chart. The document to which he referred was eventually identified. It contained nothing relevant to any of the invoices submitted by Mr Makucha and would not have been of any use to Sydney Water. Mr Makucha also claimed that he had produced some colour and black and white documents but failed to produce evidence of those documents. He was unable to identify any other material or evidence that indicated he had done any of the work for which he had charged in the invoices.

Eventually, Mr Makucha told the Commission that he had not intended giving Sydney Water any outdoor advertising material until a confidentiality agreement was signed. A “Business Implementation and Confidentiality Agreement” (as discussed further later in this chapter) was eventually signed by Mr Harvey on 3 December 2009, the same date as the last two invoices submitted by Mr Makucha. There was no evidence that any additional advertising material or services were provided after that date.

Mr Makucha claimed to have carried out feasibility studies for Sydney Water by identifying two sites in Sydney as appropriate for outdoor advertising. He said that he conducted “a feasibility study in my mind” and it was not recorded in writing. Mr Makucha accepted that he had not undertaken any construction on behalf of Sydney Water. He claimed that he had carried out work in relation to long-term rental agreements, and referred to a document dated

14 December 2009. The document was a flow chart of a proposed company structure for the joint venture proposal. Mr Makucha was not able to explain why this document was relevant to long-term rental agreements. Furthermore, the document is dated 14 December 2009, which is after the final two “outdoor advertising” invoices that were submitted on 3 December 2009.

The Commission is satisfied that Mr Makucha did not provide any services to justify the amounts he claimed in the seven invoices he provided to Mr Harvey, and that he never had any intention of providing such services. The invoices were a subterfuge arranged by Mr Makucha and Mr Harvey to enable Mr Harvey to authorise payments to be made to Makucha by Sydney Water to cover Mr Makucha’s living expenses.

The 16 November 2009 invoice

By November 2009, the joint venture proposal was becoming increasingly convoluted. Mr Harvey had seen several drafts of the proposed agreement. He admitted that, by this time, his relationship with Mr Makucha was “really worrying” him.

At a meeting that month, Mr Makucha told Mr Harvey that he had an urgent need for funds in order to pay creditors. He persuaded Mr Harvey that if his corporate group was put into liquidation it would affect a \$10 million “tax benefit” that Mr Makucha claimed would be available to Sydney Water as part of the proposed joint venture. Mr Makucha advised Mr Harvey that the \$10 million benefit from the tax losses incurred by his companies could be accessed by Sydney Water once the joint venture was underway. Mr Makucha submitted an invoice for \$55,000 on 16 November 2009, which sought payment:

for 6 months of consultancy services, designs for outdoor advertising, feasibility studies and construction and long term rental agreements for outdoor advertising. Also the various approvals. The sum of \$50,000 for Makucha Group records from 1985.

The services claimed for in this invoice differed from those in the seven invoices previously discussed to the extent that it claimed \$50,000 for the Makucha Group records from 1985 and “the various approvals”. There was no evidence of any “approvals” provided by Mr Makucha. Mr Makucha said that the Makucha Group records were “sold” to Sydney Water to enable it to obtain the \$10 million tax benefit.

Mr Harvey admitted that he was aware that the acquisition of the “Makucha Group records” was not a genuine purchase. It was, in fact, a mechanism to obtain money from Sydney Water to assist Mr Makucha to avoid bankruptcy proceedings. The Makucha Group records were a suitcase of documents provided to Mr Harvey in March 2009.

The tax benefit was illusory and non-existent. Mr Makucha was given advice to this effect by his accountant, Mr Malacco. Mr Harvey appears not to have understood the basis of the alleged tax benefit or anything about it. He simply believed Mr Makucha's assertions concerning it. Mr Harvey, however, to his knowledge, was not authorised to make payment on Sydney Water's behalf of this invoice. First, because he was approving an amount more than \$50,000, and secondly because he knew that the purchase of the "Makucha Group records" was simply a ploy to obtain funds for Mr Makucha's own purposes.

Mr Malacco told the Commission that current taxation legislation did not permit Sydney Water to access the tax loss incurred by Mr Makucha's companies, and that he had explained this to Mr Makucha. He told Mr Makucha that only Mr Makucha or his wholly-owned companies could benefit from the losses. He said he explained these matters to Mr Makucha as soon as he became aware of Mr Makucha's proposal, which the evidence indicates was in about March 2009. Mr Makucha, however, claimed that Mr Malacco had told him that Sydney Water needed his company records in order to access the tax benefit. The Commission accepts Mr Malacco's evidence on this issue and rejects Mr Makucha's evidence. Mr Malacco was an experienced accountant and credible witness.

Mr Makucha agreed that he asked for \$55,000 because there were bankruptcy proceedings on foot. He agreed that Mr Harvey agreed to purchase the Makucha Group records because Mr Harvey thought that the proposed \$10 million tax benefit would be extremely valuable to Sydney Water.

The Commission is satisfied that, by November 2009, Mr Makucha was fully aware that there was no "tax benefit" available to Sydney Water from any association with his companies and that he was lying to Mr Harvey when he asserted that there was. Mr Makucha knew that the records he provided to Mr Harvey were worthless to Sydney Water.

The Commission is satisfied that the invoice was a device created by Mr Makucha to obtain further money from Sydney Water to pay his creditors.

Invoice for "exclusivity fee"

According to Mr Harvey, Mr Makucha provided him with an invoice on or around 4 January 2010 for \$100,000. The invoice provided for payment of an "exclusivity fee as confirmed in [sic] Confidentiality and Business Implementation Agreement". Mr Harvey told the Commission that Mr Makucha had told him that he required funds because there were "creditors hanging around".

On 18 January 2010, Mr Harvey submitted the invoice to the Sydney Water accounts department with a

handwritten amendment reducing the amount payable to \$50,000. Mr Harvey had reduced the amount to \$50,000, and told Mr Makucha that he wanted to "split the payment for cash flow purposes". Mr Harvey admitted that he knew he required proof of a written contract for payments over \$50,000, and that this did not exist.

On 21 January 2010, Mr Harvey received an email from Christine Valentine of Sydney Water's accounts payable department outlining her concerns about the invoice. Ms Valentine had reviewed the payments and sought to clarify a number of issues.

As a result, on 27 January 2010, Mr Harvey told Mr Inberg about his dealings with Mr Makucha.

Sydney Water did not make any payments on this invoice.

The November agreements

On 17 November 2009, Mr Harvey signed three agreements on behalf of Sydney Water, knowing that he did not have authority to bind Sydney Water to the agreements.

The first agreement, known as the "Karcher Agreement", authorised Mr Makucha and his nominees to attend a pilot water-bottling plant in Karcher, Germany, for the purpose of "acquiring trial water bottling plants" that shall be "contained in two twenty feet shipping containers one of which will constitute the plastic bottle manufacturing section, while the other shall constitute the water filling section".

The second agreement, known as the "Sitka Blue Lake Agreement", authorised Mr Makucha and his nominees to "attend a meeting with relevant municipal, government and/or local council representatives in Sitka, Alaska, to negotiate a long term water supply contract in respect of large volumes of water to be transported to Sydney in large specially designed ships".

The third agreement, known as the "BNP Paribas Agreement", required Sydney Water to meet Mr Makucha's costs of attending a meeting with the offices of BNP Paribas in London, England, to negotiate terms for their services and instructions for providing valuations of intellectual property and good will.

Mr Harvey did not sign a fourth agreement, known as "The Commonwealth Government Agreement", which proposed to allow Mr Makucha to meet the Treasury officers of the Commonwealth of Australia in order to permit bonds to be issued tax free.

The joint venture proposal

In December 2008, Mr Makucha first discussed the possibility of a joint venture proposal with Mr Harvey. The initial proposal was to bottle water and sell it with the brand name “Sydney Water”. As negotiations progressed, the proposals put forward by Mr Makucha covered other areas and became increasingly complex and bizarre.

Mr Harvey admitted that he had no experience in dealings of this kind. He was involved in discussions that were entirely beyond his area of expertise. He was also unaware and took no steps to find out whether Sydney Water could even participate in such a joint venture in accordance with its powers under the Sydney Water Act.

Mr Harvey admitted he was aware that any joint venture would require approval by Sydney Water management and the Sydney Water Board. He said that he was aware that he did not have the delegated authority to sign any agreement.

A letter dated 12 March 2009 from Mr Makucha to Mr Harvey shows that the proposals being put forward by Mr Makucha were bizarre and varied. The proposals included selling “Sydney Water” bottled water globally, using a nuclear-powered ship as a moveable desalination plant, using water to increase land value and to turn desert into arable land, and to develop new forms of water, including luxury water and anti-drug abuse water.

In a letter to Mr Harvey dated 31 March 2009, Mr Makucha confirmed discussions to use land at Kurnell for an “osmosis plant” and to store warehouses with 200 million bottles of water that would be of “essential strategic value to Australia in the event of a terrorist attack, water contamination, war etc”. The land could also be used to accommodate a “helicopter landing and wind sock”. He went on to propose a custom built Korean or Japanese water tanker that would be a “world water commodity trader”.

By June 2009, Mr Harvey had become increasingly concerned by the length of time it was taking to formulate the nature and scope of the joint venture proposal and the failure to create an executive summary to be put before the Sydney Water Board for consideration.

Between August 2009 and December 2009, Mr Makucha provided Mr Harvey with some 27 or 28 drafts of agreements, which became known as the “Business Implementation and Confidentiality Agreement”, concerning the proposed joint venture.

Michael Stafford, Mr Makucha’s lawyer, had prepared these drafts. He also prepared the version that Mr Makucha signed in Mr Stafford’s presence on 3 December 2009. Mr Makucha then took this document to Sydney Water where

he got Mr Harvey to sign it on behalf of Sydney Water in his presence.

The Business Implementation and Confidentiality Agreement

Mr Harvey signed the Business Implementation and Confidentiality Agreement (“the Agreement”) below an execution clause that stated:

Signed by SYDNEY WATER CORPORATION by its authorised representative who has delegated authority to sign for and on behalf of Sydney Water Corporation (SWC) and to bind SWC and under instrument of delegation (Book Number_).

At the time, Mr Harvey knew that he did not have any delegated authority to sign the Agreement on behalf of Sydney Water. Mr Harvey told the Commission that he believed the 3 December 2009 document was another draft and whilst he had not signed the other drafts, he signed this one at Mr Makucha’s insistence. He claimed he did not know what he was doing when he signed the Agreement. The footer on the front page of the signed version of the Agreement is marked “final”. The Commission, however, is satisfied that although he may not have appreciated the full import of the document he was signing or its ramifications for Sydney Water, Mr Harvey was aware that by signing the document he was purporting to bind Sydney Water to its terms.

Mr Makucha was aware that he was asking Mr Harvey to sign an agreement that had broad financial and other consequences for Sydney Water.

The Agreement provided for the payment of potentially very large sums of money by Sydney Water to Mr Makucha and his interests. It purported to commit Sydney Water to paying large sums to obtain certain intellectual property, as set out later in this chapter. The agreement also contained a number of provisions that were commercially questionable. A company called Sydney Water M Pty Ltd was defined as the Parent Company. Clause 7.2(g) provided that another Makucha controlled company, Paul Makucha Holdings Pty Ltd, and Sydney Water would sign a Parent Company Shareholders Agreement within 14 days, and at that time, Sydney Water would pay Paul Makucha Holdings Pty Ltd between \$100,000 and \$1 million for the issue of 100 shares to Sydney Water in the Parent Company, which would give Sydney Water a 50 per cent equity interest in the Parent Company.

The Agreement contained other unusual proposals, including provision for the creation of Sydney Water Banking Pty Ltd to finance the home unit market. Other additional projects included the analysis of narcotics from sewerage, diabetes analysis, the operation of desalination

plants in ships operated by nuclear power or liquid gas, water trading, and the purchase and resale of drinking water around the world using ships specially designed according to the specifications of Mr Makucha.

Other clauses dealt with issues as varied as paying Mr Makucha's health insurance premiums and arranging his transport and admission to the Mayo Clinic or St Vincent's Hospital if seriously injured or sick (clauses 8.20 and 8.21). Clause 16.9 of the Agreement nominated Mr Harvey as a trustee who would receive \$25,000 a year, which would increase to \$75,000 a year upon Mr Makucha's death.

Mr Makucha initially told the Commission that the Agreement did not oblige Sydney Water to pay any money. That evidence was contrary to the clear terms of the Agreement. Indeed, Mr Makucha had claimed in the Supreme Court of NSW that, under the Agreement, Sydney Water was obliged to pay his legal costs arising from the action Sydney Water had taken to have the Agreement set aside. He told the Commission that this provision alone could involve Sydney Water paying hundreds of thousands or even millions of dollars. Clearly, if valid, the Agreement would result in Mr Makucha or his companies obtaining significant financial benefits.

The issue arises as to whether Mr Makucha knew that Mr Harvey had no authority to sign the Agreement.

Mr Harvey told the Commission that throughout 2009 he told Mr Makucha that any joint venture agreement would need the approval of Sydney Water management and the Sydney Water Board, and that he did not have delegated authority to sign any agreement.

On 17 June 2009, Mr Harvey had a meeting with Mr Makucha at the Sydney Water offices at which he told Mr Makucha that the Sydney Water Board would need to give final approval to the joint venture and that he required an executive summary to move the matter forward. Mr Makucha made a handwritten note of the meeting, which included the words: "Final approval by Board to ... Bottling Plant".

Mr Harvey prepared a letter dated 4 September 2009, which was addressed to Mr Makucha at Hall Chadwick, Mr Makucha's accountants. The letter provided that, "It is the intention of Sydney Water to enter into a legally binding agreement in respect of the project once necessary senior management and board approval are obtained".

This phrase, however, was deleted from the letter dated 10 September 2009 that was sent. Mr Harvey told the Commission that it was deleted at Mr Makucha's request because he didn't want it to make the accountants "edgy". He said he made a similar deletion to another letter dated 7 October 2009, also at Mr Makucha's request, so as "not to confuse the lawyers".

Mr Harvey's evidence is corroborated by that of Mr Malacco, Mr Makucha's accountant. He told the Commission that Mr Harvey had told him in Mr Makucha's presence that he did not have the authority to bind Sydney Water to any agreement and that the approval of the Sydney Water Board would be required. He testified that in a further discussion on 10 September 2009, at which Mr Makucha was present, Mr Harvey had said that in order to progress the joint venture it would be necessary to develop a business case to be put before the Sydney Water Board.

Mr Makucha admitted he insisted on the deletion of the words concerning the need for senior management and board approval from the letter dated 7 October 2009. He said he wanted it deleted so that neither Mr Harvey nor Sydney Water could later claim that Mr Harvey did not have the authority to sign the Agreement. He denied that inclusion of the words in the first draft indicated that Mr Harvey did not, in fact, have the necessary authority to enter into any agreement.

Mr Makucha conceded that he knew that the Sydney Water Board would have to approve any agreement because of the large sums of money involved. He claimed, however, that he believed Mr Harvey had authority to negotiate. He also claimed that the Agreement signed by Mr Harvey on 3 December 2009 was only a confidentiality agreement. That this is not the case is plain from the contents of the document itself.

Mr Stafford said that he gave unequivocal legal advice to Mr Makucha that Mr Harvey should produce the relevant instrument of delegation to show he had authority from Sydney Water to sign any agreement. Mr Stafford's contemporaneous file note of a meeting on 17 August 2009 confirms he gave that advice. Mr Stafford regarded it as so unlikely that Mr Harvey would have authority to sign any agreement of the kind drafted, that he insisted on the instrument of delegation being produced to him. He believed that if the relevant instrument was not produced then the Agreement could be a nullity.

Mr Stafford never saw an instrument of delegation and he eventually stopped asking for it because, on each occasion he asked for the instrument, Mr Makucha accused him of trying to sabotage the joint venture and launched into a "diatribe". The inference to be drawn from Mr Makucha's persistent refusal to provide an instrument of delegation, in the face of requests from his lawyer, is that he knew, from his conversations with Mr Harvey, that no such instrument of delegation existed and that Mr Harvey was not authorised to commit Sydney Water to the joint venture.

Mr Stafford eventually drafted the attestation clause in the Agreement so that it referred to the person signing on behalf of Sydney Water as being an authorised representative and having delegated authority. He said he did so to bring to the attention of whoever at Sydney

Water signed the Agreement the need to have the appropriate delegation. He did not tell Mr Makucha that he had made those changes.

The Commission is satisfied that Mr Harvey signed the Agreement on behalf of Sydney Water knowing that he did not have the authority to do so. The Commission is also satisfied that Mr Makucha was aware that Mr Harvey did not have the authority to sign the Agreement on behalf of Sydney Water. Mr Makucha, nevertheless, arranged for Mr Harvey to execute the Agreement purportedly on behalf of Sydney Water in order to be able to claim that Sydney Water was bound by it. He hoped, thereby, to obtain the financial advantages that would accrue to him under the Agreement.

Intellectual property

During the course of the joint venture negotiations, Mr Harvey became aware that Mr Makucha intended to deal with Sydney Water's intellectual property. On 17 March 2009, Mr Makucha hand-delivered a letter to Mr Harvey in which he stated that he was planning to use the Sydney Water name and logo on bottled water. Mr Makucha's initial proposal was that Sydney Water should extend trademark protection of its existing mark and logo and license the extended trademark to a new joint venture company established to bottle water. He repeated his proposal in various pieces of correspondence to Mr Harvey and various trademark lawyers until, in mid-May 2009, he discovered through various trademark searches that Sydney Water had not registered their trademark and logo in respect of class 32, being bottled water.

IP Australia is the federal body that administers Australia's intellectual property rights system, including patents and trademarks. Registration of trademarks is conducted in accordance with classes of goods and services. Class 32 deals with "beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages" and therefore includes bottled water.

Mr Makucha described this discovery as his "Archimedes revelation". He said "if I'd been in a bathtub, I would've jumped out". He believed that this meant that Sydney Water did not have trademark protection in respect of bottled water. After much prevarication, he was unable to name one lawyer who had given him that advice. His firm belief that he could use Sydney Water's well-known name and logo for the bottled water venture appeared to be based on something he had read in a law textbook. Rather than seeking to obtain the consent from Sydney Water to use its logo, Mr Makucha now decided to register Sydney Water's logo and trademark in respect of bottled water under a company controlled by him.

In May 2009, Mr Makucha registered three new joint venture companies Sydney Water P Pty Ltd, Sydney Water M Pty Ltd and Sydney Water L Pty Ltd. In a letter dated 12 May 2009, Mr Makucha advised Mr Harvey of this development. Mr Harvey was aware that Mr Makucha was the sole director and shareholder of the companies.

Mr Harvey said that he was surprised to receive this letter but had no real understanding of what it meant for Sydney Water and its rights.

Mr Harvey told the Commission that, on 14 May 2009, Mr Makucha dictated a letter addressed "To Whom It May Concern", which Mr Harvey then signed. The letter stated that, "Sydney Water Corporation wishes to amend existing Trade Marks to include the water that is provided and owned by Sydney Water Corporation (statutory owned corporation)". The letter appointed Mr Makucha to instruct lawyers to register all classes of water with amendments to existing Sydney Water trademarks.

Mr Harvey had no authority to act on behalf of Sydney Water to make that appointment. In his position at Sydney Water, Mr Harvey had no role, function or responsibility involving the Sydney Water brand, trademark, logo or intellectual property. Mr Harvey knew that Sydney Water used its logo to market various services. He told the Commission that "alarm bells were ringing" as a result of the proposals made by Mr Makucha, although he admitted that he had no real understanding of what this meant for Sydney Water.

On 20 May 2009, Mr Makucha asked Mr Harvey to prepare a letter to enable him to get a fee proposal from Griffith Hack, patent attorneys he proposed to instruct at Sydney Water's expense. Mr Harvey prepared a handwritten document, believing that the purpose of the document was solely to get a fee proposal from Griffith Hack.

Mr Makucha dictated the note. The first page of the note requested a fee proposal and the second page of the note stated that, "SWC confirms that the intellectual property in relation to these trade marks for the use of Sydney Water for bottled/package water sales is the IP of Paul Makucha and he will assign at fair market value of the IP to the joint venture company which is to be owned by Paul Makucha and the Sydney Water Corporation". Mr Harvey admitted that he did not have authority to act on behalf of Sydney Water to agree to what Mr Makucha had dictated.

By this time, it was obvious that Mr Makucha was proposing that he and his wholly-owned company, Sydney Water P Pty Ltd, would become the owner of the Sydney Water trademark and logo in relation to bottled water. Mr Makucha believed that this would be very valuable to him.

At the public inquiry, Mr Makucha admitted that he understood that he needed Sydney Water's consent for a trademark registration if there was an objection to his application. In June 2009, Mr Makucha was advised by his then patent attorney Griffith Hack that the logo and trademark Sydney Water P, which he was then exploring the possibility of registering, would be objected to by Sydney Water as those marks were identical and arguably registered in respect of similar goods and services.

On 26 August 2009, Mr Makucha instructed Mr Stafford to file the application for registration with IP Australia. He provided an edited version of Mr Harvey's handwritten document dated 20 May 2009, which, according to Mr Harvey, was intended simply to obtain a fee estimate from Griffith Hack and not to be used as evidence of Sydney Water's consent to Sydney Water P Pty Ltd becoming the owner of the Sydney Water trademark and logo in respect of bottled water. Mr Makucha instructed Mr Stafford to use this document as evidence of Sydney Water's consent, despite knowing that it did not constitute Sydney Water's consent.

Mr Harvey said that he was not told by Mr Makucha that he had made this application to IP Australia. Nor was he aware that Mr Makucha had used the handwritten note of 20 May as evidence of Sydney Water's consent to the registration of Sydney Water's own logo and trademark in the name of Mr Makucha's company.

Mr Makucha denied that he did not explain his true intentions to Mr Harvey. He also claimed that he took the view that Mr Harvey had his own legal advice. He said that he believed that Mr Malacco had advised Mr Harvey about the intellectual property issues, something that Mr Malacco denied. However, Mr Makucha's own diary note of 22 June 2009 stated that, "Ed Harvey said no he would not execute the IP".

Mr Makucha told the Commission that he was entitled to gratitude from Sydney Water because he had made a generous offer to share 50 per cent of the Sydney Water logo and mark in respect of bottled water with Sydney Water. The Commission is satisfied that this proposition is unfounded and in fact Mr Makucha's "offer" would involve Sydney Water making payments of several million dollars to Mr Makucha and his associated companies to use its own name and its associated logo.

Mr Harvey told the Commission that he did not tell anyone within Sydney Water about Mr Makucha's actions because of Mr Makucha's insistence on secrecy and because he knew that people in Sydney Water would not be pleased about it. He believed that Mr Inberg would have been "furious" if he had told him that he had allowed three companies to be incorporated with the words "Sydney Water" in the title but that Sydney Water did not own any of the shares in the companies.

The Commission is satisfied that Mr Makucha knew that Mr Harvey did not have the authority of Sydney Water to agree to the registration of any Sydney Water logo or trademark in the name of Mr Makucha's company. In order to represent that he had the necessary consent, Mr Makucha misled Mr Harvey about the nature and purpose of the document that he got Mr Harvey to write and sign on 20 May 2009. Mr Makucha then used part of that document to represent falsely to Mr Stafford and IP Australia that he had Sydney Water consent to the registration of the Sydney Water trademark and logo with respect to bottled water.

The applications lodged with IP Australia by Eakin McCaffery Cox remain pending and are now the subject of ongoing proceedings in the Supreme Court. Sydney Water has also made an application to the Australian Securities and Investments Commission for the deregistration of Sydney Water P Pty Ltd, Sydney Water L Pty Ltd, and Sydney Water M Pty Ltd.

Principal findings of fact

Based on the evidence set out in this report, the Commission is satisfied that the following principal facts have been established to the requisite standard of proof:

1. Mr Harvey authorised payment by Sydney Water of invoices submitted by Mr Makucha's company, Mascot Administration Services Pty Ltd, dated 25 November 2008, 28 January 2009, 24 February 2009, 12 March 2009 and 23 March 2009, totalling \$27,500, despite knowing that the company was not entitled to any of that money and that he did not have authority from Sydney Water to authorise payment.
2. Mr Harvey authorised the payment by Sydney Water of five invoices submitted by Hall Chadwick, accountants retained by Mr Makucha, dated 31 March 2009, 8 April 2009, 1 May 2009, 25 May 2009 and 28 May 2009, totalling \$59,462.50 despite knowing that he had no authority from Sydney Water to authorise payment.
3. In writing the letter dated 9 April 2009, which falsely represented that Sydney Water was prepared to release the \$25,000 bond it had paid into the Supreme Court of NSW, Mr Harvey falsely represented to the Court that he had authority to agree to the release of the bond.
4. The invoices dated 26 May 2009 and 26 June 2009, totalling \$25,500, which Mr Makucha submitted to Mr Harvey for payment by Sydney Water, were a ruse concocted between Mr Makucha and Mr Harvey so that Mr Makucha could obtain money from Sydney Water for his personal use. To the knowledge of both Mr Harvey and Mr Makucha, the invoices falsely

represented that they were for the sale of buildings to Sydney Water.

5. Mr Harvey authorised payment of the invoices referred to in the findings of fact 4 knowing that Mr Makucha was not entitled to any payment and knowing that he had no authority from Sydney Water to approve payment.
6. The seven invoices dated 23 July 2009, 3 August 2009, 1 September 2009, 1 October 2009, 1 November 2009, 3 December 2009 and 3 December 2009, totalling \$126,000, which Mr Makucha submitted to Mr Harvey for payment by Sydney Water and which were paid by Sydney Water, were a ruse agreed between Mr Makucha and Mr Harvey so that Mr Harvey could obtain money from Sydney Water for his personal use. Although the invoices were expressed to be for the provision of advertising services, to the knowledge of both Mr Harvey and Mr Makucha, no services of any value were provided by Mr Makucha to Sydney Water and he never had any intention of doing so.
7. Mr Harvey authorised payment of the invoices referred to in finding of fact 6, knowing that Mr Makucha was not entitled to any payment and knowing that he had no authority from Sydney Water to approve payment.
8. Mr Makucha submitted an invoice dated 16 November 2009 in the amount of \$55,000 for payment by Sydney Water. The invoice included an amount of \$5,000 for the provision of advertising services, which was part of the ruse agreed between Mr Makucha and Mr Harvey referred to in finding of fact 6. The balance of \$50,000 was for the sale of records that Mr Harvey and Mr Makucha knew were of no value to Sydney Water and was simply a device to obtain money from Sydney Water for Mr Makucha's personal use.
9. Mr Harvey authorised payment of the invoice referred to in finding of fact 8, knowing that Mr Makucha was not entitled to any payment and knowing that he had no authority from Sydney Water to approve payment.
10. Mr Makucha attempted to obtain a financial advantage for himself and his related companies by deception by arranging for Mr Harvey to execute the Business Implementation and Confidentiality Agreement on 3 December 2009 on behalf of Sydney Water in circumstances where he knew that Mr Harvey had no authority to bind Sydney Water. Mr Harvey executed the agreement on behalf of Sydney Water, knowing that he did not have the authority to do so.
11. Mr Makucha attempted to obtain a financial advantage for himself and his related companies by deliberately misleading Mr Harvey about the nature and purpose

of the document he persuaded Mr Harvey to write and sign on 20 May 2009. Mr Makucha intended to use and did use this document to represent falsely to IP Australia that he had Sydney Water's consent to the registration of the Sydney Water trademark and logo in respect of bottled water.

Corrupt conduct

Mr Harvey's conduct of authorising payment by Sydney Water of invoices when he knew he had no Sydney Water authority to do so, as set out in findings of fact 1, 2, 5, 7 and 9, is corrupt conduct. This is because his conduct could involve the dishonest or partial exercise of his official functions and therefore comes under section 8(1)(b) of the ICAC Act and could also adversely affect the exercise of official functions by those in the Sydney Water accounts department responsible for paying the invoices (as they would not have processed payment but for Mr Harvey's authorisation) and involve misconduct on the part of Mr Harvey and therefore also comes under section 8(2) of the ICAC Act. For the purposes of section 9(1)(a) of the ICAC Act, his conduct could involve a criminal offence under section 178BA of the Crimes Act (obtaining money for Mr Makucha by deception, the deception being that he had authority to authorise payments) and the common law offence of misconduct in public office.

Mr Harvey's conduct of falsely representing to the Supreme Court of NSW that he had authority to agree to the release of the \$25,000 bond, as set out in finding of fact 3, is corrupt conduct. This is because his conduct would adversely affect the exercise of official functions by the judicial officer who had to order the release of the bond (as the officer would not have done so without the letter of consent signed by Mr Harvey) and could involve misconduct on the part of Mr Harvey. For the purposes of section 9(1)(a) of the ICAC Act, his conduct could involve a criminal offence under section 178BA of the Crimes Act.

Mr Harvey's conduct in executing the Business Implementation and Confidentiality Agreement on behalf of Sydney Water when he knew he did not have Sydney Water authority to do so, as set out in finding of fact 10, is corrupt conduct. Such conduct could constitute or invoke the dishonest or partial exercise of his official functions for the purposes of section 8(1)(b) of the ICAC Act and a breach of public trust for the purposes of section 8(1)(c) of the ICAC Act. Such conduct could also constitute the common law offence of misconduct in public office for the purpose of section 9(1)(a) of the ICAC Act.

Mr Makucha's conduct in submitting invoices to Sydney Water for payment, which he knew contained false information, as set out in findings of fact 4, 6 and 8, is corrupt conduct. This is because such conduct could adversely affect the exercise of official functions by

a public official and involve fraud for the purposes of section 8(2)(e) of the ICAC Act. Such conduct could also constitute a criminal offence of obtaining a benefit by deception under section 178BA of the Crimes Act for the purposes of section 9(1)(a) of the ICAC Act.

Mr Makucha's conduct in attempting to obtain a financial advantage by procuring Mr Harvey's execution of the Business Implementation and Confidentiality Agreement on behalf of Sydney Water when he knew that Mr Harvey did not have the authority to do so, as set out in finding of fact 10, is corrupt conduct. Such conduct could adversely affect the exercise of official functions by a public official and involve fraud for the purposes of section 8(2)(e) of the ICAC Act. Such conduct could also constitute a criminal offence of obtaining a benefit by deception under section 178BA of the Crimes Act for the purposes of section 9(1)(a) of the ICAC Act.

Mr Makucha's conduct set out in finding of fact 11 is corrupt conduct. Such conduct could adversely affect the exercise of official functions by a public official and involve fraud for the purposes of section 8(2)(e) of the ICAC Act. Such conduct could also constitute a criminal offence under section 178BA of the Crimes Act for the purposes of section 9(1)(a) of the ICAC Act.

Section 74A(2) statement

For the purpose of this chapter, Mr Harvey and Mr Makucha are "affected" persons.

During the course of his evidence to the Commission, Mr Harvey made a number of admissions. These admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

However, in the course of the investigation the Commission obtained other evidence that would be admissible in the prosecution of Mr Harvey, including the evidence of other witnesses and Sydney Water documents.

The Commission is of the opinion that there is sufficient admissible evidence to justify seeking the advice of the DPP with respect to the prosecution of Mr Harvey for offences under section 178BA of the Crimes Act of obtaining money for another by deception and an offence of misconduct in public office in relation to findings of fact 1, 2, 3, 5, 7, 9 and 10.

As a result of the investigation, Mr Harvey was dismissed from his position at Sydney Water. It is therefore not necessary to make any statement in relation to any of the matters referred to in section 74A(2)(b) or (c) of the ICAC Act.

Mr Makucha's evidence was also made under a declaration pursuant to section 38 of the ICAC Act.

In the course of the investigation, however, the Commission obtained other evidence that would be admissible in the prosecution of Mr Makucha, including the potential evidence of Mr Harvey.

The Commission is of the opinion that there is sufficient admissible evidence to justify seeking the advice of the DPP with respect to the prosecution of Mr Makucha for offences under section 178BA of the Crimes Act of obtaining money or a financial advantage for himself in relation to findings of fact 4, 6, 8, 10 and 11.

Chapter 7: Corruption prevention

The public inquiry revealed a number of prevailing flaws in the rules, relationships, systems and processes at Sydney Water. These flaws contributed to the corrupt conduct previously identified in this report.

In its closing submissions to the Commission, Sydney Water stated, “corrupt practices have been outed and SWC is taking further steps, learning from these experiences, to develop more robust governance and fraud prevention in these areas”. Sydney Water has informed the Commission of the further steps it has taken or intends to take. The Commission accepts that these steps represent a considerable improvement. Nevertheless, the Commission has identified the following additional problems with Sydney Water’s administrative procedures:

1. there is evidence of laissez-faire supervision of staff in high risk activities such as inspections and approvals; moreover, in at least one case, the structure confuses the chain of command
2. the system of financial controls allows the process of delegation to be misused, order splitting to be undetected, and routine approval of defective invoices to occur
3. the Internal Audit section does not maintain a record of complaints. This impedes audit and risk planning and prevents effective corruption risk management across the divisions.

These are dealt with in detail below.

Staff supervision

Examples of the laissez-faire supervision are apparent from the earlier part of the report dealing with Messrs Buckley, Funovski and Kane, Civil Delivery section employees generally, the PIAS inspectors (in particular Messrs Fayers, Rodgers and Vecchio) and Mr Harvey.

Messrs Buckley, Funovski and Kane were long-term Sydney Water employees who exercised significant

discretion in their roles, which they performed mostly alone. The same applies to the PIAS inspectors. It was manifest from the evidence that there was no meaningful supervision of the work done by these inspectors. Those responsible for their management, when queried about the supervision they exercised, merely explained the trust that they placed in those men to do their jobs properly. This approach to management also existed in Sydney Water’s Asset Management Division, and applied to the supervision of Mr Harvey.

The Commission is of the opinion that Sydney Water should ensure that supervisors oversee its staff more closely, including conducting random checks with external stakeholders and accompanying staff members to some jobs. Sydney Water should ensure that supervisors receive appropriate training in order to equip them to manage their staff in an effective manner.

Recommendation 1

That Sydney Water ensures staff in identified areas of operational and/or fraud risk are subject to intrusive supervision.

Recommendation 2

That Sydney Water provides training to its managers in relation to:

- overseeing subordinates’ interactions with external parties, including reviewing files
- detecting and acting upon warning signs that their subordinates may be behaving improperly.

During his recruitment to Sydney Water, Mr Harvey indicated that his previous employment with RailCorp was a “temporary contract position” and was not a “long-term position”. Mr Harvey provided his RailCorp manager as a referee and therefore gave Sydney Water the means to readily ascertain the circumstances of his employment there.

The recruitment agency hired by Sydney Water unsuccessfully attempted to contact the RailCorp manager. Sydney Water failed to act on this information in the recruitment file and no further attempts were made to contact RailCorp. Sydney Water acknowledges that, had it known that Mr Harvey was not extended beyond his probation at RailCorp due to poor performance, this would have been a significant aspect in the decision to hire him, or at the very least, dictated the need for vigilance in his supervision.

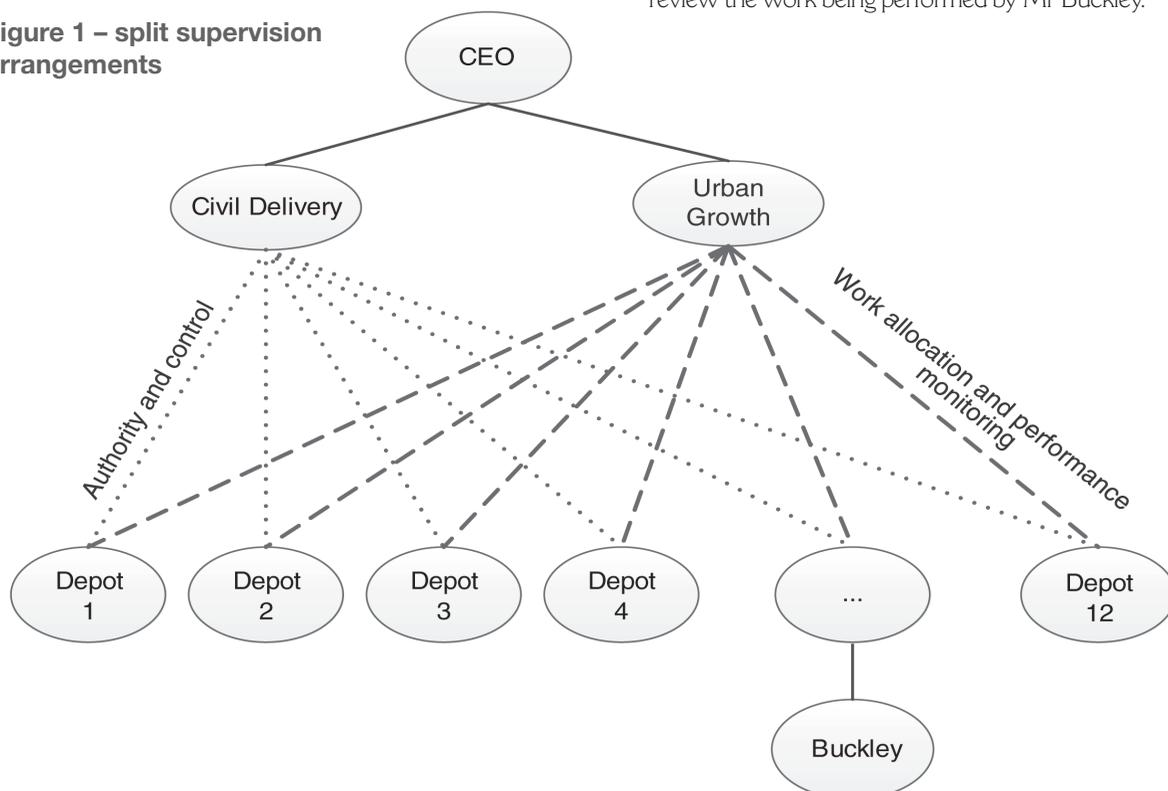
The Commission is of the opinion that Sydney Water must ensure that its employment screening procedures are robust and reliably implemented. The Commission notes that Sydney Water is taking steps to implement this recommendation by reviewing the employment screening checks that it performs. The Commission therefore makes no formal recommendations but will review the implementation.

Effects of organisational structure on the supervision of Civil Delivery employees

As presented in Figure 1, staff such as Messrs Buckley, Funovski and Kane are based within Sydney Water’s Civil Delivery section and have responsibility for inspecting sewer and water works conducted by Sydney Water accredited constructors. Another section within Sydney Water, Urban Growth, is responsible for ensuring the quality of the inspection processes.

However, whilst Urban Growth was responsible for allocating and monitoring a large amount of Mr Buckley’s work, it did not have any control or authority over him. Mr Buckley’s supervisors and managers within Civil Delivery had little or no knowledge of what Mr Buckley was doing as they were not involved in the inspection process. In some cases, these supervisors lacked the technical knowledge and experience to review the work being performed by Mr Buckley.

Figure 1 – split supervision arrangements



It is the Commission's opinion that Sydney Water should revise the organisational structure surrounding the inspection processes to ensure that work performed by the Civil Delivery section inspectors is properly supervised.

The Commission notes that Sydney Water has begun implementing changes to its organisational structure. The General Manager of Sydney Water's Maintenance Division told the Commission of a new structure within the Division in which a dedicated team of inspectors will be closely managed in the performance of their inspection work. Such split supervisory arrangements, however, are a risk wherever they occur and the Commission is of the opinion that Sydney Water should review its organisational structure to identify and remedy any similar situations.

Recommendation 3

That Sydney Water reviews its organisational structure to identify and remedy other situations where supervisory arrangements are split or unclear.

Financial controls

An organisation's financial controls are central to strong governance. This inquiry revealed that Sydney Water's financial controls had a number of weaknesses that allowed Mr Makucha to obtain money from Sydney Water. The controls did not reveal Mr Harvey's misuse of his financial delegations, order splitting to hide large transactions within his delegation or his submission of questionable invoices for payment.

Undetected misuse of financial delegation

Financial delegations are essential to the efficient functioning of an organisation and allow managers to make quick decisions to approve payments to a certain limit, without having to wait for approval. Use of delegations is controlled in two ways:

- individuals are prevented from being able to request, approve and certify delivery of the same procurement, preventing end-to-end control of any given procurement process
- an individual's usage of his or her delegations is routinely checked to ensure that they are not being misused.

Sydney Water's systems allowed Mr Harvey to request, approve and certify delivery of services purportedly provided by Mr Makucha. Mr Harvey was not required to involve any other Sydney Water person, including his supervisor, in these transactions. The Commission is of the view that staff should not have end-to-end control of a procurement process in any but exceptional circumstances.

Recommendation 4

That Sydney Water revises its procurement processes to ensure that one individual cannot request, approve and certify delivery of a purchase.

Even when procurement processes are split across multiple persons, unchecked delegation use poses a considerable risk. In total, Mr Harvey corruptly approved payment of 20 invoices. Each of these 20 invoices was within his delegation and this repeated misuse of his delegation was only possible because no one reviewed his delegation usage.

The accounts payable section at Sydney Water has indicated that the responsibility for ensuring that an invoice represented a proper transaction lay with Mr Harvey rather than accounts payable, as he was the person who approved the invoice. Accounts payable only works with invoices and is not in a position to know whether the use of delegation was appropriate. Operational staff are in a better position than accounts staff to ensure that delegation is being used properly because they have superior knowledge of the relevant organisational activities.

Mr Harvey's manager, however, lacked the necessary financial reports and clear management accountabilities needed to enable effective oversight of delegation usage. The inability to easily access information on Mr Harvey's delegated approvals and the laissez-faire management approach meant that Mr Harvey's work was not properly overseen.

The Commission notes that Sydney Water has taken steps towards addressing this management information gap and will monitor the changes. However, without active management checking of delegation usage, information alone will not improve control.

Recommendation 5

That Sydney Water ensures that managers are accountable for their subordinates' use of delegation.

Failure to detect order splitting

Mr Harvey was able to circumvent the safeguard of delegation limits by splitting a large order into smaller components that fell within his largely unmonitored delegations. Order splitting effectively removes the cap on potential losses inherent in the delegation limit. With a heavy reliance on manual checks, rather than a more sophisticated automatic analysis of payment patterns, Sydney Water was not able to detect this behaviour.

Mr Harvey approved payment of eight invoices from Mr Makucha. Seven invoices were for the amount of \$18,000, which allowed Mr Harvey to approve payment

without obtaining quotes from other suppliers. Mr Harvey knew that his actions constituted order splitting. He gave evidence that he had arranged for Mr Makucha to keep his invoices below \$50,000 because Sydney Water had greater procedural demands for invoices over \$50,000.

The total value of the invoices was \$181,000, a figure that was above Mr Harvey's delegation and the approval of which required three written quotes.

Sydney Water ultimately detected Mr Harvey's order splitting by an ad hoc, manual process. An accounts payable officer noticed that Mr Harvey had altered the value of an invoice by hand from \$100,000 to \$50,000. This led to an examination of Sydney Water's financial management system for similar invoices. This reliance on manual controls was also noted by KPMG in a November 2009 KPMG review ("the KPMG review") of Sydney Water's accounts payable and contractor payment functions.

Given that the detection of order splitting involves comparing multiple invoices, the use of manual controls is overly time-consuming, especially for a high-volume accounts section such as Sydney Water's. The Commission recommends Sydney Water develops an automated process to check for order splitting.

Recommendation 6

That Sydney Water develops an automated process to check invoices for order splitting.

The Commission acknowledges that Sydney Water has taken steps towards implementing this recommendation by enhancing the business intelligence capacity of its financial management system and introducing Suspicious Transaction Analysis software. The Commission, however, is concerned about the thoroughness of the implementation of these measures. While Sydney Water contracted PricewaterhouseCoopers (PwC) to conduct a Suspicious Transaction Analysis in July 2010, the data provided to PwC was not adequate to perform a key test to detect order splitting.

Acceptance of defective invoices

Historically, many of the invoices submitted to Sydney Water have been low quality, reflecting the diversity of capacity among small contractors to invoice correctly. Mr Makucha submitted questionable invoices that were processed undetected. Fifteen invoices submitted by Mr Makucha:

- i. did not have an Australian Business Number (ABN) recorded
- ii. did not have the phrase "tax invoice" written upon them

- iii. directed payment to the bank account of "Mascot Administration Services Pty Ltd" despite the letterhead indicating that it came from "Paul Makucha".

Sydney Water did undertake a program to educate contractors with a view to improving the quality of invoices that they submitted but ultimately Sydney Water relied on an inadequate financial management system. This analysis is supported by the KPMG review of Sydney Water's accounts payable and contractor payment functions that noted a high reliance on manual and field controls.

While education of suppliers about invoice quality is an important step, the detection of flaws and return of the invoice to the supplier should strengthen the process. The Commission believes that Sydney Water's financial management system should conduct automatic checks on invoices to detect basic errors such as missing or non-matching ABNs. Such checks, however, rely on the information in this system being accurate (for example, that the ABN recorded against a supplier is the supplier's actual ABN). The KPMG review noted weaknesses regarding the updating of vendor information. Sydney Water should also ensure that the information contained in its financial management system is accurate.

Recommendation 7

That Sydney Water:

- reviews the information in its financial databases to ensure that it is accurate
- modifies its financial management system to allow for vendor details on invoices to be compared automatically with the corresponding details in its vendor database
- establishes processes to maintain the accuracy of the information in its vendor database.

The Commission acknowledges that Sydney Water has taken steps to implement this recommendation by reviewing the ABN information of every vendor in its vendor database and modifying its financial management system to automatically compare the ABN on an invoice with the ABN held in the supplier database. Sydney Water should extend this to other vendor information.

Sydney Water will also need to perform some manual checking. For instance, whether an invoice has "tax invoice" written upon it cannot be checked by Sydney Water's financial management system. Sydney Water should ensure that its accounts staff know which manual checks they are required to perform and Sydney Water should review invoices on a sample basis to monitor how reliably these checks are being performed. Sydney Water should ensure

that its accounts staff are fully aware of the risk of fraud and the steps they are required to take prior to approval.

Recommendation 8

That Sydney Water:

- **develops a list of manual checks that accounts staff should perform on invoices and communicates it to them**
- **reviews invoices on a sample basis to ensure that these checks have been performed**
- **ensures that accounts staff are fully aware of the risk of fraud.**

Internal Audit

Internal Audit is responsible for receiving and evaluating complaints and allegations relating to Sydney Water employees. The complaint system is central to the functioning of audit as a source of information for the development of both audit plans and risk management activities, as well as for the investigation and removal of specific individuals. Complaints are assessed within Internal Audit and then allocated for investigation, if required.

Sydney Water's ability to exert and control authority was obstructed by a deficient complaint system and inadequate risk management processes. Audit plans are influenced by the examination of existing records. In the absence of a robust process of complaint capture, Sydney Water Internal Audit was hampered in its development and prioritisation of audit plans.

Weaknesses in the risk management process are illustrated with other incidents such as misjudgment of the effectiveness of control in PIAS, failure to talk directly to smaller contractors, failure to implement recommended reforms to inspection control and failure to transfer innovations in corruption management within PIAS to similar work in other divisions.

Complaint management

In October 2008, the wife of a Sydney Water accredited constructor contacted Sydney Water by email to enquire about the process for making a complaint. A manager within Internal Audit responded to the email but nothing further was done until February 2009, when the wife forwarded a second email containing a detailed complaint about Mr Buckley. She said that her husband was being bullied by Mr Buckley and that he had paid a number of bribes in order to avoid the issuance of CAR notices by Mr Buckley.

This complaint identified the name of the plumbing company involved and stated that a payment of \$500

had been sought by Mr Buckley during a recent job. The Internal Audit manager acknowledged the seriousness of the complaint by return email and stated he would get KPMG to investigate the allegations. This did not occur. This same manager told the Commission that when the plumber's wife was not prepared to provide further information, he formed the view that no further investigation could take place. It was acknowledged he had not examined the Sydney Water systems to try to find out further details and it was conceded that, in hindsight, there would have been sufficient information to commence an investigation as he could have obtained system access as well as knowledge of key corporate systems.

Sydney Water advises that Internal Audit now has access to all major financial systems and understands their operation. Sydney Water also states that it plans to provide access for Internal Audit to the e-development and Works and Asset Management systems so that discreet enquiries can be conducted, without alerting staff, in order to verify allegations of inappropriate conduct.

Recommendation 9

That Sydney Water applies more rigour to its complaint assessments and investigation practices to ensure decisions are appropriate and verified by an appropriate quality assurance process.

When Internal Audit staff were asked if they made any enquiries as to whether there had been previous complaints about Mr Buckley, the Commission was told there was no system in place within Sydney Water to do so. Accordingly, there was no record of prior complaints made about Mr Buckley. Sydney Water has now introduced a database to record complaints that will be reviewed externally and utilised to inform risk assessments and management action.

There was also a lack of understanding among Sydney Water managers and staff as to how best to respond to complaints involving allegations of possible corruption. A senior manager from Urban Growth was unclear about what was required of him when he received complaints about Mr Buckley and he agreed he failed to make any written record. He agreed that, in hindsight, an official written record of any complaints and investigation of Mr Buckley should have been made. Responsible Sydney Water staff also acknowledged that their external quality council meetings conducted with industry stakeholders such as pipe constructors and testers four times per year had failed as a mechanism for identifying and resolving corruption concerns.

A number of Sydney Water employees working at Urban Growth were placed in a front line role dealing with plumbing contractors and thus were likely to be potential recipients of complaints about Sydney Water staff. In fact,

several complaints were provided to Urban Growth about Mr Buckley over a number of years, with only one being forwarded to Internal Audit for their information. It was a commonly held view at Urban Growth that complaints were hearsay if they were not made in writing, and therefore should not be acted upon. This misunderstanding by key personnel contributed to a growing number of missed opportunities to uncover Mr Buckley's behaviour.

Recommendation 10

That Sydney Water develops a dedicated complaint management area and associated systems to manage complaints about employees from receipt to completion and record any action for future corporate information.

Recommendation 11

That managers and supervisors at Sydney Water, as well as staff performing roles that require interaction with the public or external contractors/plumbers, be given training on how to deal with complaints about Sydney Water employees.

Sydney Water has advised that it commenced a "fraud hotline" in 2010 for staff to report concerns, which can be made anonymously. Sydney Water has already accepted the advice of the Commission and modified the name of the hotline to now be the "Corruption Hotline" (given its wider meaning). There is, however, no comparable opportunity for people external to Sydney Water to make complaints on the Sydney Water website by an obvious hotline link.

Recommendation 12

That access to the Corruption Hotline be extended to the public by providing an intuitive access point on the Sydney Water website home page.

External complainants such as contractors are unlikely to come forward under the current arrangements. Sydney Water chairs or participates in a number of forums, such as those for water servicing coordinators, where participants raised concerns about the consequences of making allegations against Sydney Water employees to members of Urban Growth. The perceptions in the industry that livelihoods were at risk if they made a complaint to Sydney Water were reflected in decisions by some accredited constructors that it was simply easier to pay an inspector a few hundred dollars and add it to the cost of the job.

Recommendation 13

That the Sydney Water Code of Conduct be amended to include advice, warning against taking reprisal action against other employees or contractors for making a complaint.

When the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010* is commenced, contractors to public authorities will be able to make protected disclosures in a similar manner to public officials.

Recommendation 14

That upon commencement of the *Protected Disclosures Amendment (Public Interest Disclosures) Act 2010*, and at regular and appropriate intervals thereafter, Sydney Water contractors be advised of their rights under the Protected Disclosures Act and the process of making a protected disclosure.

Risk management

Internal Audit in Sydney Water, as is common in modern audit, has also been responsible for internal risk management, including fraud and corruption control. Its functions extend beyond simple audit to facilitating change, training and advising managers, and dealing with high-risk stakeholders such as contractors. In effect, internal audit is a key pillar in the corporate governance of Sydney Water.

At least as far back as 1991, Sydney Water was aware of the corruption risks associated with inspectors. The "Fraud Control checklist – House Service Inspections" document recommended:

- a) rotation of inspectors,
- b) rigorous review of complaints received regarding unprofessional or corrupt conduct of inspectors,
- c) compliance by inspectors with the 'selective inspection' procedures
- d) review of such compliance by independent officers,
- e) the obtaining and review of management information so as to highlight unusual trends in services provided by inspectors,
- f) making customers aware of reporting arrangements for suspected corrupt conduct or unethical practices, and
- g) regular supervisory review of selection procedures used by the inspectors to prioritise their inspections.

These recommendations had not been implemented effectively in PIAS when Internal Audit conducted a review of PIAS in 2003. Yet the review found that

management supervision and workforce monitoring were strengths of the area. It did, nevertheless, recommend that PIAS undertakes a business risk assessment to identify and mitigate risks.

However, when a new manager took over at PIAS in 2005 she found that the management of the PIAS workforce was a particular weakness. This was contrary to the earlier Internal Audit report. With neither the 1991 recommendations implemented nor management of the quality indicated in the Internal Audit report, the manager undertook a series of reforms in 2005 and 2006. Conducted in conjunction with Internal Audit, the reforms were designed to disrupt a number of clear corruption opportunities.

The changes at PIAS were designed to make the formation of relationships between inspectors and plumbers difficult to form, maintain and exploit. These reforms included centralising the booking system for inspectors rather than allowing a plumber to make arrangements with an individual inspector, rotating inspectors across different geographical areas to limit the length of time specific inspectors and plumbers interacted, and reissuing inspectors with phones that had silent numbers to limit the ability of a plumber to seek out a specific inspector. The PIAS manager told the Commission that her reforms met with resistance amongst the PIAS inspectors and that there was a lack of rigour in the supervision of the inspectors. The Commission found that a culture of plumbers providing payments to PIAS inspectors continued after the 2005 and 2006 reforms.

In March 2010, the responsibility for inspections performed by PIAS was transferred to the Department of Services, Technology & Administration. The Department has informed the Commission of further corruption prevention reforms it has implemented, including greater internal awareness of corruption risks and expectations for ethical conduct, as well as more intrusive supervision supported by new systems and processes.

Had the 1991 recommendations or the PIAS reforms been unilaterally applied to the inspection roles in Civil Delivery, Messrs Buckley, Funovski, and Kane's activities could potentially have been disrupted. As the lead body in internal risk management across Sydney Water, it is expected that Internal Audit plays a central role in the transfer of reforms, such as those in PIAS, to other divisions within Sydney Water facing the same corruption risks.

Civil Delivery is now implementing reforms across its depots consistent with the changes recommended in 1991 and those implemented in PIAS. These changes include a centralised booking system, vehicle logs, corruption awareness training, and more effort in training staff in the use of CAR notices. The Commission therefore does not make recommendations in this area. Rather, the concern is

the lack of implementation of the 1991 recommendations and the lack of transference of corruption prevention knowledge across the different divisions of Sydney Water.

The Commission understands that Sydney Water has commenced a comprehensive risk assessment program across its operations and that corruption prevention plans are now being tracked and reported quarterly to the Sydney Water Executive and the Audit Committee. Sydney Water has also engaged a full-time expert in fraud risk to conduct workshops to identify fraud risks and controls. In May 2010, Sydney Water also made a decision to move the responsibility for the fraud risk assessment process from Internal Audit to Corporate Risk Management. Internal Audit's responsibility is now focused on the review of the operation of the workshops.

Recommendation 15

That Internal Audit includes in its audit plan evaluation of the implementation and operation of divisional corruption prevention plans derived from the current risk assessment workshops.

Recommendation 16

That Sydney Water develops a strategy to capture and champion best practice that is identified in the course of its operations. This is to include:

- **ensuring its strategic business plans provide for the integration of corruption prevention strategies**
- **utilising its business risk registers to formulate corruption prevention strategies to be centrally managed.**

Finally, communication to employees and contractors of their obligations is a risk management tool that sets behavioural standards and against which digression is evaluated. Internal Audit has historically made presentations to large suppliers reinforcing the message that the giving of gifts and money is unacceptable. These presentations, however, did not extend to the smaller contractors more likely to be involved in the type of corruption typified by Messrs Buckley, Funovski and Kane. Sydney Water has advised the Commission that in November 2009 it commenced presentations to suppliers and contractors on ethical behaviour and reporting corrupt conduct. In May 2010, similar presentations were given to water service coordinators and they will continue in the future, including the use of case studies.

On the other side, clear communication with Sydney Water's own employees is equally important. The Sydney Water Code of Conduct is produced as a pamphlet titled *Working at Sydney Water*. The document contains advice

under the heading “conflicts of interest”. It states, “Never accept gifts or money if it could reflect badly on you or Sydney Water”. The Commission is of the opinion there should be no occasion where money should be accepted by a public sector employee for doing their job.

Recommendation 17

That Internal Audit continues its actions to strengthen communication with contractors through face-to-face presentations on ethical obligations.

Recommendation 18

That Sydney Water recasts *Working at Sydney Water* as the Code of Conduct and expressly prohibits the acceptance of money with regard to gifts and benefits.

These recommendations are made pursuant to section 13(3)(b) of the ICAC Act and, as required by section 111E of the ICAC Act, will be furnished to the Sydney Water Corporation and the Minister for the Authority.

As required by section 111E(2) of the ICAC Act, Sydney Water must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations, whether it proposes to implement any plan of action in response to the recommendations and, if so, of the plan of action.

In the event a plan of action is prepared, Sydney Water is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the response to its recommendations, any plan of action and progress reports on its implementation on the Commission’s website, www.icac.nsw.gov.au, for public viewing.

Appendix 1: The role of the Commission

The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Sections 8 and 9 of the ICAC Act

Sections 8 and 9 of the ICAC Act provide as follows:

8 General nature of corrupt conduct

(1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
- (b) bribery,
- (c) blackmail,
- (d) obtaining or offering secret commissions,
- (e) fraud,

- (f) theft,
- (g) perverting the course of justice,
- (h) embezzlement,
- (i) election bribery,
- (j) election funding offences,
- (k) election fraud,
- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,
- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to

corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
- (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9 Limitation on nature of corrupt conduct

- (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
- (a) a criminal offence, or
 - (b) a disciplinary offence, or
 - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
 - (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.
- (2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.
- (3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

- (4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.
- (5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.



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