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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION AVOCA

Reference: Operation E09/1825

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 1 JUNE 2010

AT 10.13AM

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

THE COMMISSIONER: Ms Davenport.

MS DAVENPORT: Yes, Commissioner, I recall Mr Blackadder.

THE COMMISSIONER: Right. Mr Blackadder. Mr Blackadder, you're still under your oath - - -?---Thank you, Commissioner.

10 - - - to give evidence truthfully and the order that I made under section 38 yesterday continues to apply to you?---Thank you, Commissioner.

<STEPHEN BLACKADDER, on former oath [10.14am]

THE COMMISSIONER: And do you wish to question Mr Blackadder?

MS DAVID: I do.

20 THE COMMISSIONER: Yes.

MS DAVID: Thank you, Commissioner. Thank you, Mr Blackadder. Just questions, yesterday you were, you told us that you took some notes, you didn't keep any copies of those notes though did you?---No. That was, that's correct. That's correct.

In relation, in relation to that first conversation?---Yes, the first conversation.

30 And when, so you, you took notes of the conversation and when did you dispose of those notes?---They were associated with some documents that I was dealing with with the Great Lakes Strategic Plan. And they were disposed of at the end of that week. I disposed of them, unfortunately without realising that I had them recorded on the back of those papers. So they, they went when I threw out papers associated with the work that I was doing that week.

Okay. So they were just handwritten notes?---Handwritten notes.

40 And did you, at that time did you put any, did you do any, did you type any notes at all about this matter?---No. I went back to my office as, as I explained yesterday. I was at the Great Lakes council area until the Wednesday and I came back Wednesday night. The very first thing in the morning at 6 o'clock I drove to Singleton Council. I was on an assignment. I came back late Friday night and the very first opportunity I had to record something was on the Saturday in my office. And I went to my office and I recorded the conversation.

Okay. And you - - -?---On my computer.

On the computer. Did you have your computer with you when you were away?---Yes, I did.

You had a laptop?---Yes, I did.

But you didn't do, put them on that computer during that period?---No, I did not.

10 So you could've accessed email on that, whilst you were away. Is that correct?---Yes, no, I could access emails.

And you obviously have a telephone?---Yes.

Yes. Now you, when you took those notes they were not a complete copy or a complete record of everything that was said in that telephone conversation were they?---No. They were the substantive parts. I recall that when I went back, when I went to my motel room, I had noted the time. I recorded the substance of that conversation, was that Mr Gamage wanted
20 me to be his agent. And to be his agent to get the job to be paid an amount of \$15,000. So I recorded the, the substance of that conversation.

So for example, you left out some of what you referred to yesterday as small talk?---Yes.

Okay. And did you think it was important given the nature of the allegation to record the complete conversation?---No. The, the small talk was, was quite small and quite brief. In fact it was just to introduce himself and we confirmed that I'd sent him the information package. That I asked him
30 about whether he wanted me to talk to him about the scope of the role and its challenges. And, and then at that point he then started to proceed with the, the offer.

And how long did that conversation take?---It may have taken about four or five minutes.

Four or five minutes. But you've really only recorded a very brief part of a four or five minute conversation. Would you agree?---Mmm.

40 Okay. So you accept then that what you'd written in these notes is not complete?---Not complete in as much as the, the small talk associated with the position, yes.

But you said yesterday you appreciate that an allegation of, well of bribery is a very serious allegation isn't it?---It's probably one of the most serious allegations that any public official can deal with.

Right. And yet you take rough notes that are not complete?---Yes, correct.

As I said, I took the substance of the conversation which related to the bribe offer.

Well, but surely you would understand the importance of taking full and exact and precise notes of what was stated, from start to finish?---No.

THE COMMISSIONER: (not transcribable) are you putting that this should've been done?

10 MS DAVID: When he - - -

THE COMMISSIONER: Are you saying, are you putting to Mr Blackadder that he should've done this from the inception of the conversation or that he should've done it after the conversation was over?

MS DAVID: Well, at the earliest opportunity.

THE COMMISSIONER: Well, that is after the conversation was over.

20 MS DAVID: Well, at the time he was driving is my understanding or the evidence was yesterday.

THE COMMISSIONER: Yes. He was driving his car.

MS DAVID: Yes.

THE COMMISSIONER: At what stage do you, I'm just asking, what is the question?

30 MS DAVID: My question is - - -

THE COMMISSIONER: At what point are you saying to him that he should have commenced taking notes?

MS DAVID: I'm suggesting, I'm suggesting to him that when he went back and started writing his notes - - -

THE COMMISSIONER: After the conversation was finished.

40 MS DAVID: - - - in the room after the conversation which he stated was the first opportunity he had to do it - - -

THE COMMISSIONER: Yeah.

MS DAVID: - - - he should have taken detailed, written the full extent of the conversation.

THE COMMISSIONER: He should have written down, you mean?

MS DAVID: Yes.

THE COMMISSIONER: Yes, yes.

MS DAVID: Yes?---Commissioner, my, my understanding is from my past training and having dealt with corruption training in the past, code of conduct training, also I should acknowledge that the Commission provides excellent guidance to public authorities on, on how to handle corrupt
10 conduct, how to handle bribery and my practice and my, how I put that into practice in this case was to immediately take the notes of the substance of that conversation which I did and the, and the conversation is as recorded. I also mentioned yesterday that there was small talk associated with the position. I did not record that small talk.

Okay. Now, you talk about guidance about you have a serious allegation here yet it's 11 days before any communication actually gets to ICAC. You
- - -

20 MS DAVENPORT: Well, Commissioner, with respect - - -?---That's incorrect.

- - - that's not correct, it was five days, 31 October.

MS DAVID: Right?---Commissioner, if I can answer that, the first opportunity that I had to record this, to type it up on my letterhead, to forward it to ICAC, to copy it to Woollahra Council was on Saturday, 31 October. The 26th I was in Great Lakes, very busy doing community consultation every day and every night. On Thursday I travelled at 5.30am
30 to Singleton Council on assignment where I worked there both day and night and concluded that on, on Friday evening when I returned to Sydney. So I have a busy consultancy. I'm proud of what I do and I respect the fact that perhaps I could have sent that in earlier but that was the very first opportunity I had to access my letterhead and to record a statement and send it.

Okay. But at the time you have your laptop with you yet you don't even put it on your laptop, you don't, you don't even type the notes on your laptop, do you, did you?---Correct, no, I did not.
40

And you didn't think to send an email to ICAC about this very serious matter?---I thought to send it to ICAC but no, I wanted to put it on my letterhead and, and forward it to them.

Okay. So you didn't have any letterhead with you, is that correct?---No, no.

Now, you were - - -?---It's in my office.

Sorry?---It's in my office.

Okay. So you prepared the note on 31 October but you didn't send it on that, that's a Saturday, isn't it?---(NO AUDIBLE REPLY)

What arrangements did you make to send it to ICAC?---I, I think I posted it in the Post Office box at Concord.

10 Okay. And do you know what day that was?---I can't recall.

Okay. So would it surprise you to know that, that ICAC have a received stamp on your letter dated 6 November?---That may be the case, I may have posted that in one of the business days after the Saturday.

Okay. So would you agree - - -?---I don't, and, Commissioner, I don't have recollection when I did post it.

20 So you did post it though?---Yes, I personally delivered it to the Concord Post Office.

Did you speak to anybody else about, did you make any, did you speak to anybody else about this allegation in the interim period between writing, posting the letter and the allegation against, sorry, and the conversation on 26 October?---I certainly, certainly would have spoken to my wife. I don't have precise recollection as to who else I might have spoken to. I may, I may have spoken to others.

30 But you, you don't know whether you spoke to anyone else?---I can't sit here and honestly say yes, I spoke to such and such. I may have spoken to someone.

All right. Now - - -?---Well, Commissioner, can I, can I clarify that? Having thought, I, I think I certainly spoke to the General Manager of Woollahra Council, Gary James, and informed him.

When, when did you do that?---I can't give you a precise date but I certainly did speak to Mr James.

40 And was that before or after you wrote the letter?---I think I'd written the letter and when I had the letter in front of me I rang him to indicate that I was putting this in the mail to send a copy to him.

And so do you recall what date that was?---I do not.

Okay. So now, you've said in your evidence that it wasn't until you got back that you didn't, that you prepared the letter on the 31st and that was the first occasion you did that, is that correct?---That's correct.

So I'll ask that the witness could have a look at Exhibit 4 please, Commissioner. If you could just turn over to the second page and the second last paragraph.

THE COMMISSIONER: Can you bring that up on the screen please?

MS DAVID: Do you agree that it says, "Upon terminating the phone call I took some notes and prepared this letter in draft form"?---I think that was in relation to the notes, what the substance of the conversation was.

10

So you prepared this letter in draft form. That's not what you said earlier, is it?---I didn't complete the full letter. What I prepared was the notes of the conversation and what I would be including in the letter to ICAC.

Okay, so you did that in handwriting, did you?---Mmm.

So you didn't type that?---Correct.

20

So you had your computer with you. You could've easily typed it into the computer, couldn't you?---Yes, I could easily have done that.

But you didn't do that?---Did not do that.

Okay. Now, and again, you, in such a serious matter you would be well aware how important it is to be absolutely accurate, don't you?---Yes indeed.

30

And also you have indicated that you have some familiarity with the guidelines. Wouldn't you think that it's important to, to, that it was a priority getting that complaint in to ICAC, wasn't it? Wouldn't it have been a priority to you?---Yes, the, the ICAC guidelines say immediately.

Yeah. Well, that's a week later or five days later that you even bother to get the letter out, then you post it. It doesn't even arrive at ICAC till 11 days later.

MS DAVENPORT: Well, I object.

40

THE COMMISSIONER: He's explained this, Ms David. We (not transcribable) in fact Mr Blackadder stands or falls on what he said but he's explained that.

MS DAVID: Now, you are, after the 26th, between the 26th and the time that you lodged the letter with ICAC, you had no contact with Mr Gamage, did you?---No, I only had the two conversations on the 25th and the 26th.

That's right?---And the next one was 7 November.

Did you think it was a bit unusual that the man who'd you, on your evidence, says offered you a bribe, just doesn't make any further contact with you?

MS DAVENPORT : Well, Commissioner, I object. What relevance is it whether he thinks it's unusual or not? It's what happened.

10 MS DAVID: You are aware of integrity testing, aren't you, Mr Blackadder? Do you know what an integrity test is?---I'm, I'm not familiar with that term.

That you're aware that sometimes that investigations or public authorities can test the integrity of officers to see whether or not they might be partial to bribes?---I see, yes, yes, I, I understand - - -

So you're aware of that?---Yes.

20 Did it cross your mind ever that it may have been an integrity test from Mr Gamage?---No, not at all.

Now you said in your evidence yesterday that Mr Gamage said, "You're a private consultant, you've refused a bribe." Did you remember you said that in relation to your conversation that you, that occurred on 16 December?

THE COMMISSIONER: Is that in the transcript?

30 MS DAVID: It is, you Honour. Yes. About page 8, I'm sorry, I'll just find the, do you agree that you said that?---Yes.

Yes?---No, no, I didn't say that. I think Mr Gamage said that.

I'm sorry, no, I'm saying did you agree that you said that that's what Mr Gamage said yesterday, that you - - -?---Well, that was the transcript of the telephone, I was sitting here when I heard, heard him say that.

Well, you, but he used the word bribe?---Yes.

40 So, so that's your evidence that in the course of a conversation he used the word bribe?

MS DAVENPORT: Which conversation?---Well, which conversation?

MS DAVID: Well, the, on 16 December?---I would have to refresh my memory from the transcript. But my, my understanding was I asked him about the bribe, he confirmed that.

Do you, but you, yesterday you used would you agree that you used the word, you said that he said, "You're a private consultant, you've refused a bribe"?--I didn't say that at all.

THE COMMISSIONER: (not transcribable)

MS DAVID: Paragraph sorry, 44, sorry - - -

THE COMMISSIONER: Paragraph 44 of what?

10

MS DAVID: No, on page 8, sorry I have got the wrong part. I've written the reference incorrectly. Sorry, Commissioner. Page 14 - - -

THE COMMISSIONER: Page 14 of?

MS DAVID: The transcript, sorry, of the, of the ICAC transcript, the proceeding transcript.

THE COMMISSIONER: The transcript of this hearing?

20

MS DAVID: Yes, of the hearing transcript.

MS DAVENPORT: I don't have a copy of it, Commissioner.

MS DAVID: At, at line 25.

THE COMMISSIONER: Can I see that? Is there one for me?

MS DAVENPORT: Well, I object to the form of the question, your Honour. He's, Mr Blackadder in that answer is in fact talking about what Mr Gamage said to him, not what he said to, to Gamage. He was concerned, I indicated there was a great concern to me because, you know, he had offered this bribe, so he's talking about the conversation that is recorded as part of the, the transcript of 16 December.

30

THE COMMISSIONER: What is the question Ms David?

MS DAVID: The question is, is it your evidence that at some, in that conversation - - -

40

THE COMMISSIONER: Which conversation?

MS DAVID: - - - on the 16th - - -

THE COMMISSIONER: Yes.

MS DAVID: - - - Mr Gamage used the word bribe?

MS DAVENPORT: No. He's saying that he said what he was saying.

MS DAVID: I know what he's saying. I know that

THE COMMISSIONER: Well, it's not his evidence.

MS DAVENPORT: It's not his evidence.

MS DAVID: It is what he said, you Honour.

10 MS DAVENPORT: He was concerned, he, Mr Blackadder was concerned that he had offered this bribe. It doesn't say that Mr Gamage said anything about the word bribe.

THE COMMISSIONER: Yes.

MS DAVID: That's what he's, but he's asked to rely the conversation and he said, I was concerned that he had offered this bribe. I was concerned. He, Mr Blackadder was concerned?---That's correct, you Honour.

20 And that he, do you recall - - -

THE COMMISSIONER: And he said, and he said, that's Mr Gamage said, "Well, it really shouldn't be a problem because you're a private consultant, you refused the bribe, so there shouldn't be a problem. That's what, that's your evidence.

MS DAVID: That's your evidence about what Mr Gamage said to you? ---Yes, that's correct.

30 About a bribe? You used the word bribe?---Yeah, yes, I used the word bribe and he used the word bribe, as I recall.

And could it be the case, well, what I'm suggesting to you see that at no time, sorry, I'll withdraw that. So at some stage Mr Gamage has used the word bribe to you hasn't he? This is your evidence?---Correct.

Because what I'm suggesting to you that he did in fact use that word "bribe" but not on that occasion, not on the occasion of 16 December?---I thought we just heard that, heard the transcript?

40

No, that was, that was the transcript of what you said yesterday. That was not the transcript of the telephone conversation. That's what you said yesterday Mr Gamage said?---Commissioner - - -

THE COMMISSIONER: I think that in fairness let's just go through the history of these phone calls. I think the, you've been asked about the phone call that took place when Mr Gamage phoned to say he'd received an

approach from ICAC. Can you recall that?---Yes, that was the afternoon conversation, I think around about 2 o'clock on the 16th.

Yes. And then you called him back later that evening?---Correct.

And - - -?---That was the taped conversation.

That was about 6.00pm?---At 6.30 I think it was, Commissioner.

10 And that's the taped conversation?---That's correct.

And, and it's the taped conversation that's being discussed on page 14, line 20 to 30 of the transcript about which you were asked when your evidence was this, Well, Mr Gamage again indicated that he'd been approached by ICAC and I indicated that that was a great concern to me because, you know, he had offered this bribe and involved myself and then I was most concerned about it and he said, Well, it shouldn't be a problem because you're a private consultant and you refused the bribe so there shouldn't be a problem, and I said, Well, no, that's not the case. I mean, there's been an offer made, there's been an attempt at a bribe and that really concerned me." 20 So he was quite indifferent to it and he indicated that it really didn't concern him?---Yes.

You gave that evidence?---I stand by that evidence, Commissioner.

All right.

MS DAVID: So if you could please, if the witness could be shown Exhibit 12. 30

THE COMMISSIONER: Can we bring that up on the screen, please.

MS DAVENPORT: It's the entirety of the transcript, I think, Commissioner (not transcribable)?---Commissioner, can I - - -

THE COMMISSIONER: It's the transcript of the - - -

MS DAVENPORT: Of the telephone conversation.

40 THE COMMISSIONER: - - - telephone call, yes. Well, you haven't been asked a question yet, Mr Blackadder.

MS DAVID: No. If you could have a, if you could tell me where in that transcript Mr Gamage says, "Um, well, you refused. Um, it really shouldn't be a problem because you're a private consultant, you refused the bribe."

MS DAVENPORT: Well, your Honour, Commissioner, it's conceded that the word "bribe" is not used but he certainly does say, "It shouldn't be a

problem because you, I offered, you refused,” he just doesn’t use the word “bribe”. Now, if my friend wants to make something of that but the, the transcript speaks for itself.

THE COMMISSIONER: What page is this?

MS DAVENPORT: Commissioner, it’s, he repeats it a couple of times but there is, can you find it - - -

10 THE COMMISSIONER: Well, Mr Blackadder says at page 3, line 25 - - -? ---And, Commissioner, line 20, “What, if you ask me why you offered the 15,000, what am I going to do, what am I going to say, so I offered and, and you said no.”

MS DAVENPORT: So the substance of what Mr Blackadder said, it’s, the only word that is missing is that Mr Gamage did not repeat the word bribe.

MS DAVID: Well, if I could, but with respect - - -

20 THE COMMISSIONER: Well, no, I think that, yes, well - - -

MS DAVID: - - - if counsel assisting could perhaps stop putting words into the witness’s mouth.

THE COMMISSIONER: Just proceed with the questioning, Ms David.

MS DAVID: So you concede, Mr Blackadder, that you did not use, that Mr Gamage did not use the word “bribe” in that conversation, did he?---My recollection - - -

30 Well, did he, just, sorry, go on?---Yeah. I would have to check the transcript to establish that that word was not used but I can say that the substance of the conversation left me in no doubt that he was talking about an offer of money that was made to me which I regarded as a bribe.

40 He didn’t use the word “bribe”, did he?---I would have to check the transcript of the conversation. If that’s the case I accept that he did not say the, use the word “bribe” but he responded to my questioning which left me in no, which left me in no clear doubt that he was offering money for my services.

Okay. So now, but I am suggesting to you that in fact he did use the word “bribe” to you on one occasion. So you’ve agreed that he did use the word “bribe” I think earlier in your evidence, didn’t you?

THE COMMISSIONER: Well, it’s getting very confusing. I mean, there’s been a lot of confusion about this. You really have to identify the conversation where you say Mr Gamage used the word “bribe”.

MS DAVID: All right. Well, I'm just asking your Honour as a first, sorry, Mr Commissioner, as a first step, that he accepts that at some stage he stated earlier - - -

THE COMMISSIONER: In some conversation or other which you're not identifying - - -

MS DAVID: Yes, that's correct.

10

THE COMMISSIONER: - - - he used the word "bribe".

MS DAVID: That that word "bribe" was used by Mr Gamage. Do you agree with that?---I've had I think about five, six or seven conversations with Mr Gamage. The first was on the 25th, the second was on the 26th. I think there were three, three or four. There was one on the 7th. Sorry, two on the 7th and there were three on the, on the 16th.

20

THE COMMISSIONER: In any of those conversations did Mr Gamage use the word "bribe"?---I can't recall specifically, Commissioner.

MS DAVID: Because I'm suggesting to you, Mr Blackadder, that in fact he did use the word "bribe" to you on one occasion. Could that be correct?---It could be correct.

30

Okay. Because what I'm suggesting to you that in fact in the first, or sorry, in the conversation that you had on the 26th, the one where, the one in the evening or the one that you've written down, yeah, you say you wrote in your notes, that during that conversation that he in fact, that in fact you suggest to him to, suggested to him that the successful applicant should pay 10 per cent of the full package which would be \$150,000 to \$180,000 and that he then said to you jokingly, that's a big bribe?---That's totally incorrect.

And that in fact during the course of that conversation you had discussions about agency fees?---Commissioner, the, the conversation was that Mr Gamage wanted me to be his agent.

40

And that there are, in fact that you had quite a lengthy discussion with him on that occasion, that you talked about your work at the Council, sorry, your work as a consultant, your consultancy work?---The conversation was not lengthy at all. In fact, when he offered or asked me to be his agent and to be paid \$15,000, I immediately thought that he wanted some assistance in order to find a job and I talked to him about my work as a consultant, that unsuccessful candidates or even successful, even successful candidates I provide them feedback and, and advice as to how they performed, how they could improve their performance, how they could get a job, how they could

better craft their application, their response to key selection criteria. I do that as a service. That's what I discussed with him.

Yes, so that, that all took place in the course of that conversation, didn't it?
---Yes, there was a very short, relatively short conversation.

10 Okay. Now, because you are in the business, I mean you're Blackadder and Associates, that is the nature of your business, isn't it, to, you know, to provide training, professional development, is that correct?---Yes, to, to councils.

Yes. And to, to you, you tailor individual packages, don't you?---To councils, yes.

It doesn't say that on your Website though, does it? It just says you tailor individual packages? Tailored to the individual?---Well, well, I'm not sure what you mean by individual packages?

20 All right. Now, all right, just, just, you advertise on your Website that you provide, the services that you provide include leadership training, staff development, executive staff mentoring and coaching, executive staff performance agreement arrangements, councillor development and you say that you tailor individual programs to suit needs, don't you?---Correct, for councils.

Okay. You work with individual managers to ensure their performance reviews are effective, don't you?---I, I do.

30 And you are paid for that work, aren't you?---Yes, by councils.

That's right. But you provide, but doesn't say that on the Website though, does it, you offer services to, you don't qualify it with councils, do you?
---No, if you look at every single client that I've worked for it's been with, with councils, not with individuals. I, I have not been engaged by an individual to provide them personal advice - - -
No?--- - - - and support.

But it doesn't say that on the Website, does it?---I accept that.

40 Now, just when you, you, you, you've got, you pride yourself on your Website with your connections, don't you, and your network with council?
---Yes, I've got a long history of association with local government.

Yeah, and it's really the situation that you can, you've got, if I could say a foot in the door of many councils? I don't mean that inappropriately but - -
-?---No, No, I - - -

- - - you have networks?--- Yes.

You have contacts?---Yes, I think I have a, a very good network and I apply that network for the benefit of the councils concerned.

And would you agree that you can make things happen?---I, I can help councils to make things happen, yes.

10 All right, you can make things happen for people, can't you?---For people? For, for individuals I can, I think I can provide them with mentoring, coaching. I'm doing so with a number of, of individuals with councils at the moment. I provide help and guidance. I provide training to councils. I provide training in code of conduct. I provide training in bribery procedures, so I guess I'm, I, I'm making things happen for those councils, yes.

20 But you also you are in the business of hand picking people for jobs, would you agree?---Yes, I, I do have a fairly wide network and, and it's probably only recent that I've developed a, a, a, a bit of my business in recruitment. In the last 12 months I've successfully recruited five general managers and, and a number of directors.

That's right, and for example, with Mr Stephen Dunshea, the Director of Corporate Services at Woollahra, you've phoned him. He got the job? ---Yes, he, he was part of my network, having met Stephen Dunshea at Wagga Wagga City Council and I phoned him along with probably 10 others to seek out their interest in the job.

30 And Stephen Dunshea now advertises in fact, has a little statement on your Website, speaking, speaking highly of you, is that right?---Yes, yes he does.

On your private Website?---Yes.

And you, so it is the case, isn't it, that you're what one might call a bit of an operator and you make things happen?---Well, that's for others to judge.

Well, you would agree you make things happen, don't you?---Well, I, I, what I say on my business card is advice and support.

40 Well - - -?---I give advice and I give support to councils.

THE COMMISSIONER: (Not transcribable) Ms David, just can we move on?

MS DAVID: Yes, Commissioner. Now, you also, you initiated contact with Burwood, didn't you, Burwood Council, in relation to your current position. You initiated contact with Council?---Yes, I think I mentioned that yesterday.

That's correct, you did mention that yesterday, and then you, you made contact with the Mayor. You obviously have good contact with the Mayor?
---Had not met the Mayor before.

But you initiated contact with him?---All I did was to draft a submission to recruit a new General Manager for Burwood Council. I had it delivered to the Council. I rang the Mayor's office to find out whether the Mayor had received it. I was put through to the Mayor and I spoke to the Mayor for the very first time in my life on that occasion and, and he indicated that he'd
10 received that submission and someone would get back to me.

And then someone did get back to you and that was the, I think you indicated the solicitor for, for council, representing counsel for ICAC?---
Correct. Correct.

Yes. And, and you were then appointed the General Manager in that temporary capacity?---Yes. Acting General Manager for a four month period.

20 And was there other people involved in that sort of (not transcribable) process?---I'm not privy to that.

MS DAVENPORT: I object.

THE COMMISSIONER: Where are we going here Ms David?

MS DAVID: So - - -

30 THE COMMISSIONER: I mean we're talking about a conversation between him and Mr Gamage. What has this got to do with it?

MS DAVID: So, well my, because, you would agree that you, what I'm suggesting to you that, that you do make things happen don't you? You initiate things, you're proactive?

THE COMMISSIONER: He's agreed.

MS DAVID: You agree?

40 THE COMMISSIONER: Yes.

MS DAVID: Yes, thank you?---Well, yes, I, well if that's what you're seeking a yes or no answer, yes, I'd like to think that in my professional capacity and my consulting business, I like to make things happen, yes.

And because that's what, you, that's, that's what you say isn't it about your, your business? You make things happen?---No, I don't say that. I don't say that. I say, I give advice and support.

So I'm suggesting to you that you have the capacity to make things happen and that's exactly what you said to Mr Gamage. You said that you can make things happen?---Well, I deny that. That was not said at any time. And that you are in fact, you, but you agree that you're in the business of selling the services that you advertise on the internet aren't you? That's your business? That's what you get paid for?---To, to council's, not to individuals.

10 Yes. You don't do it for charity do you?---To council's not to individuals.

It doesn't say that in the website does it?---Well - - -

THE COMMISSIONER: We've been through this about five times? (not transcribable)?---I can, if I can take you through all of the clients that I've, that I've had and I do not work for individuals.

MS DAVID: Nothing further. Thank you.

20 MS DAVENPORT: Just two things, Commissioner. Mr Blackadder, in terms of the notes that you say you took on the, after the conversation of the 26th, did you still have those notes when you typed up the letter to ICAC on the 31st?---I don't think I did.

All right. In terms of the conversation you had with Mr Gamage on 26 October, that is the, approximately, that was the conversation in which the, you've given evidence that he suggested offering you \$15,000?---To be his agent.

30 It was, it was suggested to you that that was a lengthy conversation, about three minutes. Would that be your estimate of - - -?---Oh, it was, it was around about three to four or five minutes.

Okay?---I was driving down the driveway of the motel, I received the call, had the conversation and, and I immediately terminated the conversation when the offer was made.

Commissioner, I'll be tendering the call charge records of Mr Gamage and Mr Blackadder, but perhaps at this point I could just tender the one page in
40 relation to the, 26 October in relation to that particular phone call.

THE COMMISSIONER: So the document is, is a call charge record - - -

MS DAVENPORT: Of Mr Don Gamage, in particular in relation this mobile number 0-4-2-7-2-7-1-9-0-5 and it - - -

THE COMMISSIONER: On which date?

MS DAVENPORT: For the date of 26 October, 2009.

THE COMMISSIONER: That's Exhibit 30, the call charge record of Mr Gamage for 26 October, 2009.

#EXHIBIT 30 - CALL CHARGE RECORD FOR MR GAMAGE FOR 26/10/2009

10

MS DAVENPORT: As I said, I will be tendering the complete record, but I'll do that later this morning.

THE COMMISSIONER: All right. Now, Mr Blackadder may now be finally discharged?

MS DAVID: Yes, Commissioner.

20

THE COMMISSIONER: Yes, thank you Mr Blackadder?---Thank you, Commissioner.

THE WITNESS EXCUSED

[10.54am]

MS DAVENPORT: Commissioner, I can Don Perera.

30

MR HARRIS: Commissioner, just while Mr Perera is coming, I indicate he will make an affirmation and may I foreshadow that he'd be seeking a section 38 declaration, if the Commissioner pleases.

THE COMMISSIONER: Yes.

MR HARRIS: Thank you.

40

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

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR PERERA AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF

**HIS EVIDENCE ARE TO BE REGARDED AS HAVING BEEN
GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY,
THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN
RESPECT OF ANY PARTICULAR ANSWER GIVEN OR
DOCUMENT OR THING PRODUCED.**

Could you have Mr Perera affirmed.

MS DAVENPORT: Yes, Commissioner. Could you please tell the Commission your full name?---It's Don Lucksiri Perera.

And Mr Perera you were born in Sri Lanka. Is that correct?---That's right. Yep.

10 And in 1976, did you gain a scholarship to attend the Lenin Polytechnical Institute in Kharkov?---Actually it was my first year I spent in Leningrad. That's present St Petersburg.

Yes?---That's, yeah, I underwent very intensive course in Russian.

Right?---Then from the next year I was sent to Kharkov where I started my -
--

20 And while you were in Kharkov at that institute you completed a Masters of Chemical Engineering. Is that correct?---Yes, that's right.

And during your time in Kharkov did you first meet the man called Kumaragamage, who now calls himself Don Gamage?---That's right.

Were you the only two Sri Lankan students who were studying in Kharkov at that time?---Oh, at the time when I met him, yeah, there were only two of us. But later on there were more Sri Lankan's, yeah.

30 Right. And you were studying at different institutes. Is that correct? ---That's right.

Right. And you, did you complete your Masters degree in 1983?---Yes.

And did you return to Sri Lanka?---That's right.

When you returned to Sri Lanka did you maintain contact with Don Gamage?---Yeah. Not on a regular basis, but, but on and off, yes.

40 At some, at one stage did you attend Don Gamage's office in Colombo where he appeared, he was working for the Road Development Authority as an engineer?---Yeah, that's right.

Okay. And at some stage after that did you become, did he tell you that he was going to go to Australia?---Yes.

And did you, yourself in 1996 apply to come to Australia?---Yes.

At that stage had you lost contact with Mr Gamage?---Well in between I think I had met him once and that's, just before he migrated to Australia, he - well, actually told me that, "Why don't you apply too?" But I had other, other personal matters to attend to.

Right. So in late 2000 were you notified that your application had been successful?---That's right.

10 And at that stage did you make efforts to get in contact with Mr Gamage, who you knew to be in Australia?---That's right.

And did you contact him and did he offer to let him, let you stay with him when you came to Australia?---That's right.

Did he tell you that at that time he was in fact running a motel?---Yes.

And you in fact came to Australia in February, 2001?---Yes.

20 And did you go to live at, initially at Mr Gamage's home in Liverpool? ---That's right.

And his wife and his son were also occupying the house?---(NO AUDIBLE REPLY)

At that stage did you become aware that Mr Gamage was the manager, proprietor of the Liverpool Motel in Liverpool?---Yes.

30 And did you at some stage move from Mr Gamage's home to a, a boarding house that was being operated by Mr Gamage in the Liverpool area? ---That's right.

And that, that was initially a house that was next door to Mr Gamage's residential home?---That's right.

At some stage later did you move from that house and we're still in 2001, I take it, to another boarding house that was being operated by Mr Gamage in Rose Street, Liverpool?---That's correct.

40 There are some, four other people living in that house?---Yes.

Now in terms of your work, I think you eventually, you initially worked, not as a chemical engineer, but in 2002, late 2002, you got a job as a chemical engineer. Is that correct? Or, sorry, quality assurance officer?---That's right.

Right. And I think you went back to Sri Lanka because of family problems?---Yeah, my father passed away and then I had, yeah, it was very,

a depressing period, because I couldn't find kind of appropriate work that was relying my real qualifications and experience.

All right. You returned to Australia in late 2003. Is that correct?---That's right.

10 And you went back to living at the boarding house at Rose Street in Liverpool. Now, was it the situation that from, during that period of time you were living in a, this boarding house that appeared to be operated by Mr Gamage?---Yes.

As far as, was he still working at the motel at that stage?---Yes, I think so. He was still operating the motel.

And in fact in terms of that you paid him rent. Is that right?---Yes.

20 But you became aware at some stage that that rent wasn't being passed on to the owner?---No, I think because Don, I think those boarding houses were subleased by him - - -

Yes?--- - - - so Don took the rent and probably part of it must have gone to the, the real owner, yeah.

Well, in a statement you made you said we were paying rent to Don but later found out that Don was not paying any money to the owner?---That's right, because we had other problems with regard to the utilities, yes, but - - -

30 So he didn't own those properties, he was merely running them on behalf of the true owner?---Yeah, yeah.

Thank you. And at some stage did Don approach you, Mr Gamage approach you and ask you to be a referee?---Yes.

At this stage had, as far as you knew, from the time you'd arrived in Australia had he been working as an engineer at all?---No.

40 All right. And did he tell you that he wanted to get back into engineering and that he needed references in order to try and get back into that area? ---That's right.

And did he explain to you what he needed you to do?---Yeah, just act as a referee and when required to, to answer, answer, give verbal references.

Now, at that stage you had never worked with Mr Gamage, you had no idea of his capacity as an engineer?---Well, I, I, having based my assumptions on his work experience in Sri Lanka and here, because he told me that he had worked in, in a certain council and also for the RTA, then in Fiji so I

assumed that, and also with the right kind of academic qualification so I assumed that he had capacity to work as a (not transcribable).

So you accepted what he told you?---Yeah.

But you had no independent knowledge of his capacity as an engineer?
---No.

10 Thank you. Did you ever give Mr Gamage a written reference?---No.

Did you have an email address?---I do my, I have my own email address but I have never given any references or anything in relation to his employment here.

All right. Now, in terms of your qualifications, I think you have a Master of - - -?---Science.

- - - Science in relation to chemical engineering. Is that correct?---Yes.

20 Do you have a doctorate at all?---No.

Do you have any qualifications from London University?---No.

So you have your, your one degree which is from Kharkov. Is that correct?
---Yes.

Now, in terms of the verbal references, did they occur over a period of time?
---Mmm.

30 From time to time you would be rung. Is that correct?---That's right.

And before you were rung would Mr Gamage tell you that he was applying for a job and he was putting you up as a referee?---Yes.

And would he tell you what it was necessary for you to say?---Yeah, it was basically because I told him since I am not a civil engineer so I cannot answer any technical questions but the general questions that are usually asked a referee like the management skills, the leadership skills, the time management et cetera then - - -

40 So he gave you an outline of what you should say. Is that correct?---Yes.

And did he, would he give you, for example, the name of the company that you were, you were supposed to say that you were associated with?---Yes.

Is that right?---Yeah.

And in fact they were not companies that you were associated with at all, were they?---No.

Now, in terms of those companies that you were to say you were associated with, I think you said in your statement that you remembered three, one being Advantage Australasia. Is that correct?---Yeah.

Another one being Global Management and Engineering Solutions, is that right?---That's correct, yeah.

10

And Fremantle Project Managers?---Yes.

Did you ever work or were associated with any of those companies?---No.

All right. Now, at some time after July 2007 did Mr Gamage in fact give you a SIM card to use in your mobile phone?---Yes.

And did he tell you that he needed you to use that SIM card in association with providing references for him?---(NO AUDIBLE REPLY)

20

Now, on the last occasion that you were asked to provide a reference for Mr Gamage did he in fact ask you to use a different name?---Yes.

What was that name?---I think it's Nalin Harsha.

And did he tell you why he needed you to use a different name?---Yeah, because he said that Nalin Harsha was, is, is claiming to be holding a substantial position but his English command of the language was not on par with that position so I would rather kind of talk on, on, on, his, his behalf.

30

Yeah. And using the name Nalin Harsha were you to say that you were involved in Fremantle Project Managers?---(NO AUDIBLE REPLY)

And in fact when you were contacted do you recall that you were contacted by Coonamble Council?---I cannot remember exactly the, the name of the council but I can remember having, being contacted by a certain council, yes.

40

All right. And did you in fact say that you were Nalin Harsha?---Yes.

And did you give, and did you say that you had in fact supervised Mr Gamage in his work at Fremantle Project Managers?---Yes, I was his immediate superior, yeah.

And had he told you to say all those things?---Yes.

And did you give him in essence a glowing reference. Is that right?---Yes, that's correct.

Despite the fact that you'd never worked with him?---That's right.

And had no knowledge of his work performance?---That's right.

Did he ever tell you that he had been sacked from councils?---Never.

10 Why did you give false references for Mr Gamage?---Yes, it was very unfortunate, counsel, that I did it, I, first of all I assumed that he had the capacity and the qualifications so he could do, do the job and the, the next thing was that I did it in the spirit of friendship that I was, I, actually every time I did this it nagged my conscience but I kind of consoled myself by thinking that after all my lies were white lies with no criminal or harmful intent, I was just helping a friend to get a job which he was entirely capable of, of completing, of doing so - - -

20 Did you ever ask him why he didn't get people who had worked with him to give him references?---Well (not transcribable)

So firstly did you ever ask him that?---No, to tell you the truth I didn't because what he said was in, in, in, when, especially the jobs that he was applying for were of substantial rankings and he probably indicated to me that there's jealousy and, you know, that sort of thing is quite common in that sort of, you know, when it comes to references so he would like to get a reference from me, a real good reference, a glowing reference from - - -

30 Even though it was false?---Yes.

Yes, I have no further questions.

THE COMMISSIONER: Yes, thank you. Are there any questions of Mr Perera? Mr Harris?

MS DAVID: No, your Honour.

THE COMMISSIONER: And Mr Harris?

40 MR HARRIS: No, thank you, Commissioner.

THE COMMISSIONER: No. You may be discharged?---Thank you.

THE WITNESS EXCUSED

[11.09am]

THE COMMISSIONER: Ms Davenport.

MS DAVENPORT: Yes, I call Graham Smith, Commissioner, Ray, sorry, Ray Smith.

THE COMMISSIONER: Mr Smith, you may be seated.

MR SMITH: Thank you.

THE COMMISSIONER: You're not legally represented are you, Mr Smith?

10

MR SMITH: No.

THE COMMISSIONER: No. As a witness appearing before the Commission you're required to answer all relevant questions and produce any document which you are required to produce and you must do this even though your answer or production may incriminate you or tend to incriminate you. However, if you object to answering any question or produce any document or thing your answer or thing produced cannot be used against you in any civil or criminal proceedings or in any disciplinary proceedings. However, this protection does not prevent you from being prosecuted for giving false or misleading evidence or for other offences under the Independent Commission Against Corruption Act. This protection may be obtained by you objecting to any particular question or production and you may apply to me as the Commissioner to make a declaration that all answers which you may give and anything which you produce will be regarded as having been given or produced on objection. If you do this there is no need for you to take objection in respect of each particular answer, document or thing. Such a declaration may be convenient for you and saves time and protects you against the possibility that you may forget to object to a question which you really should object to in your own interests. Do you understand all that?

20

30

MR SMITH: Yes, I do.

THE COMMISSIONER: And do you wish me to make such a declaration?

MR SMITH: Yes please.

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

40

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

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

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

MR SMITH: I'm happy to give it under oath.

THE COMMISSIONER: Yes, will you swear Mr Smith.

THE COMMISSIONER: Ms Davenport?

MS DAVENPORT: Could you please tell the Commission your full name?
---Raymond John Smith.

10 And Mr Smith, are you still the General Manager of the Cobar Shire
Council?---No, I'm now the General Manager at Bland Shire Council, a
position I took up on 17 May.

All right, in November of 2006 were you the General Manager of Cobar
Shire Council?---Yes, I was.

Thank you. And in relation to the matters before the Commission, I think
you made a statement dated 22 February, 2010?---That's correct.

20 And that related to the employment of Mr Don Gamage as the Director of
Engineering Services in relation to Cobar Council?---Yes.

In that statement, did you say that in November, 2006, the position of
Director of Engineering Services was advertised?---Yes.

And in fact there were a number of applicants who applied for that position,
is that correct?---There was.

30 But there was only one application which, on its face, appeared to meet the
essential criteria?---That's correct.

And that was the, the application of Mr Gamage, is that correct?---That is
correct.

When you received that application, did you accept the information
contained in it as genuine e?---I did, yes.

Yes. And in fact Mr Gamage was interviewed and offered the position?
---That's correct.

40 He commenced with the Council on 2 January, 2007?---Yes.

And very shortly after he commenced did he become involved in some
internal disputes in the Council?---He did, yes.

As a result, did some of the Council workers make inquiries on Google in
relation to Mr Gamage's background?---That's correct.

And was that brought to your attention that his employment history was not consistent with the history that he had included in his resume?---Yes.

I think you then made your own inquiries to a number of the persons who'd been nominated in the resume?---That's correct.

And that included the Cook Shire Council?---Yes.

10 And you were informed that in fact he, there was no record of him ever working there?---His application indicated he'd been Shire Engineer there for three years and yes, that's correct, they'd never heard of him.

I tender a copy of that statement, Commissioner.

THE COMMISSIONER: Yes.

MS DAVENPORT: Commissioner, the documentation in relation to Mr Gamage's application to Cobar Shire Council is already - - -

20 THE COMMISSIONER: An exhibit.

MS DAVENPORT: - - - an exhibit but it is also annexed to Mr Smith's statement.

THE COMMISSIONER: Well, that will be part of, regarded as part of his statement as a matter of convenience.

MS DAVENPORT: Thank you, Commissioner.

30 THE COMMISSIONER: Exhibit 31 is Mr Smith's statement.

#EXHIBIT 31 - STATEMENT OF RAY SMITH DATED 22/02/2010

MS DAVENPORT: Now, Mr Smith, you I think also had been given some information that in fact Mr Gamage had been employed by Torres Shire Council?---That's correct.

40 And you contacted them and found that in fact he had been dismissed from that Council?---That was the advice I was given, yes.

All right. Now, having received that information, you were concerned no doubt about Mr Gamage's employment with the Council, is that correct?---I was. This had come after a number of disruptive actions by Mr Gamage and my main concern was the operation of Council.

All right. Now, during, if I could take you back please to the selection process?---Yes.

And I want to ask you about firstly the policy of Council in relation to looking at applicants, what vetting process, for example, the Council goes through in order to determine things like the validity of references, work histories and referees. Is there any policy that Council has?---There's no, no set policy and there's no standard procedure to confirm qualifications.

10 Now, the Council does have a recruitment policy, is that correct?---Yes, we do.

And you're familiar with that?---I am, yes.

Have a look at that document please. Is that a copy of that recruitment policy?---Yes.

20 And I think you've just said that there is no procedure whereby there are any checks made on persons who have made application to check that their work history is correct, is that - - -?---No, that's correct.

All right. I tender that, Commissioner.

THE COMMISSIONER: Yes, and the document is?

MS DAVENPORT: It's called the Cobar Shire Council Recruitment Policy.

30 THE COMMISSIONER: Exhibit 32 is the Cobar Shire Council Recruitment Policy.

#EXHIBIT 32 - COBAR SHIRE COUNCIL RECRUITMENT POLICY

MS DAVENPORT: Mfr Smith, you've worked for other councils apart from Cobar, is that correct?---I have, yes.

40 And in positions similar to the General Manager position you held at Cobar?---I was General Manager at Grafton City Council for 11 years.

All right. In your experience in those positions, have you ever experienced any other instances of resume fraud, apart from Mr Gamage?---Personally I haven't, no.

Have any other councils that you've worked for had procedures whereby there was a process for checking the validity of people's resumes?---To the best of my knowledge, no.

All right. Have you ever had any training or have been informed about any risk associated with false qualifications or work histories or referees?---No formal training, no.

10 All right. Under what circumstances would you or would you direct other persons on your behalf to verify qualifications, work history or referees?---I think it would only be if I had a personal concern over the validity of an application. In my experience I've taken them on face value and on this occasion again I assumed that the contents of the application was genuine.

For example, and perhaps the witness could be shown Exhibit 15, Commissioner.

THE COMMISSIONER: Can you put that on the screen please.

20 MS DAVENPORT: It's the page with the referees. If I could ask you please to look at page, if you look at the resume of Mr Gamage and if you could look at page 11 of that resume, 11 of 13, there's listed there, there are listed there two referees, Mr Don, Dr Don Perera and Mr Asela Manam. Were both of those persons contacted to your knowledge?---No, only the first referee, Mr Perera.

30 All right. And in terms of Mr Perera, there is a phone number nominated and an email address nominated in the reference. In terms of Mr Perera or he's said to be Dr Perera, is there any process whereby his association, for example, with the Global Management of Engineering Solutions would be checked?---No, it's not normal procedure. Again, it's usually taken on face value.

So it's, if I was to suggest to you that for example Mr Perera has never worked for Global Management and Engineering Solutions, and in fact has never worked for, with Mr Gamage at all, would you agree that, that process is - - -?---Is flawed.

Is flawed, yes?---Yes.

40 Thank you. Now in terms of the process of dismissing Mr Gamage, after you became aware of the, the background or the problems with the resume, at least in respect of two of his nominated places of employment, I think your process was to in fact contact the New South Wales Local Government and Shires Association as to whether or not you could terminate Mr Gamage's employment. Is that right?---Yeah. I sought their advice. Mr Gamage's appointment was on a six month trial basis and this all occurred within that first six months. And I sought their advice as to the most appropriate process of terminating Mr Gamage.

And in think on 7 May, you sent them a letter setting out the, the problems that you had with Mr Kumaragamage and seeking their advice. Is that correct?---Yes, that's correct.

Would you have a look at this document, please. Is that a copy of the letter that you sent to the Shires, Government and Shires Association?---Yes, that is.

Yes, I tender that, Commissioner.

10

THE COMMISSIONER: What's the date of the letter?

MS DAVENPORT: I'm sorry, it's already part of a statement, Commissioner, but perhaps it could be, it's dated 7 May, 2007.

THE COMMISSIONER: So Exhibit 33 is a letter from Mr Smith - - -

20

MS DAVENPORT: To the local, the Industrial, the Manager of Industrial Relations at the Local Government and Shires Association of New South Wales.

THE COMMISSIONER: It's the Manager, Industrial Relations - - -

MS DAVENPORT: Local Government and Shires Association of New South Wales.

THE COMMISSIONER: So Exhibit 33 is the letter from Mr Smith to the Manager, Industrial Relations of the Local - - -

30

MS DAVENPORT: Government - - -

THE COMMISSIONER: - - - Government - - -

MS DAVENPORT: And Shires - - -

THE COMMISSIONER: - - - and Shires Association of New South Wales dated 7 May, 2009.

40

MS DAVENPORT: 7.

THE COMMISSIONER: Sorry, 2007.

MS DAVENPORT: Yes, Commissioner.

**#EXHIBIT 33 - LETTER FROM MR SMITH TO MANAGER
INDUSTRIAL RELATIONS LOCAL GOVERNMENT AND SHIRES
ASSOCIATION OF NSW DATED 7/05/2007**

THE COMMISSIONER: Yes, thank you.

MS DAVENPORT: Now, why did you feel that it was necessary to seek advice from that Association?---Well they, they provide legal advice plus industrial relations advice to all member councils. And they're a professional source of information advice for councils and general managers. And obviously I wanted to be correct in the procedures that I was following in regard to the termination.

- 10 You told the Commission, for example, that he was still within the six month trial period?---That's correct.

And that was part of his contract. Is that correct?---That's correct.

But you didn't feel still confident that you were able to terminate on the basis of his - - -?---I, I was quietly confident, but it's always good to get that second advice to confirm that the actions I was about to take could be justified.

- 20 Now in terms of, of the process of employing Mr Gamage, you had an interview process with him?---We did, yep.

And you were part of the panel?---I was, yes.

And was there any, were there any in-depth questions asked of him about these various places (not transcribable)?---We had approximately ten questions based on drawing out his experience and knowledge of civil engineering. And in particular road construction and road maintenance.

- 30 There is no central base that you can go to to find out the work history of persons who have worked in the public sector in New South Wales is there?---No. Not to my knowledge.

Do you think that that would assist in terms of finding out, for example, what you ultimately did find out, that Mr Gamage had been in fact sacked from a number of - - -?---In hindsight, a database like that would be most helpful.

- 40 All right. In terms of working for rural councils and in particular reasonably isolated areas like Cobar, are there particular challenges in recruiting staff to those areas?---Extreme challenges. It's, after Mr Gamage left we were without a qualified engineer for almost two years, despite an expensive recruitment process.

And that's simply because people who have, who are appropriately qualified are reluctant to make that move. Is that correct?---And better options, yes.

Does, does that in your view mean that, that rural councils perhaps are more open to fraud such as this in terms of persons who are perhaps not properly qualified or don't have a work history that would make them suitable applicants to target rural councils?---I would agree with that. The council was under pressure from the community to have a qualified engineer on staff. And of course some of that pressure then transfers to the General Manager to try and make an appointment. Obviously, as a General Manager, my first priority is to ensure that the operations of council are, are conducted effectively and efficiently. And in the absence of having a
10 qualified engineer, that was certainly placing pressure on other staff at Cobar Council. So, yes to have a minimum number of applicants and they have only one central criteria, is not uncommon for rural and remote councils.

Right. Would you be, have you made any efforts to find out just what, what the percentage or the, it's a bit like unreported crime, but what the estimated percentage of resume fraud is?---No, I haven't.

Right. I want to take you back to Mr Gamage's termination. You, he was
20 within that six months period?---Yes.

If he had been there for longer than six months, would you have still terminated him?---I think I would have given the unrest amongst the council staff. I had a number of very good staff, who were basically threatening to leave because of the actions of Mr Gamage.

Right?---And yes, I certainly would've got further advice as to what the implications were.

30 If I suggest to you that, that it's estimated that something like between twenty and thirty per cent of resumes are fraudulent in, to some extent, would you, would you think that it would be good to have councils and other organisations and agencies educated about the possibility of resume fraud?---Most certainly.

Had it never occurred to you until this happened that, that - - -?---I had never experienced that sort of fraud in 17 years as a General Manager.

40 The next thing I want to ask you about is this, having made the determination to terminate Mr Gamage's employment and in fact doing it, did it occur to you that it should've, that his fraudulent behaviour should've been reported to the Independent Commission Against Corruption?---No. It, it didn't cross my mind even in discussions with the Industrial Relations Manager at the Shires Association, there was no suggestion that this matter was reportable to ICAC. And again, I emphasise that my first priority was to ensure there was no further disruption to council's operations.

And did it occur to you that resume fraud could be considered corrupt conduct?---Not, not at that point in time, no. In hindsight, yes. But at that point in time, look, I'm aware that people will embellish job applications and you take them on face value and that's why we do have a procedure in place where you appoint people on a trial basis to ascertain their knowledge and experience firsthand.

Wouldn't it be better though to have those checks put in place before they were employed?---Yes, I would agree with that.

10

Because there is, there's certainly a cost to the council isn't there in terms of employing people who have to later be terminated?---Oh, there certainly is. But again, I go back to the cost of recruitment over a two year period which was nearly 40 to \$50,000 to the ratepayers of Cobar, trying to attract a qualified engineer.

Certainly, but appointing somebody who's not suitable doesn't solve that problem does it?---Oh, no, no it doesn't. No.

20

And if that, if those certain checks were put in place, for example, if you had contacted one of the, Cook Shire Council, who was nominated by Mr Gamage as his employer, presumably he would never have been employed? ---No.

And, because once you found out that one part of it was incorrect - - -?---I would then have made the assumption that other parts were incorrect.

Or you might have then sought to confirm some of the other nominated places?---Oh, certainly, yes, yeah.

30

All right. So would you agree that councils should put in place some process to check people's resumes, at least even if they just check one of the places?---Yes.

For example, in terms of Mr Gamage's resume, you only checked one place that he said he'd worked and they said he didn't work there and you were given information about a place where he had worked that hadn't been included on the resume?---Yeah, that's correct.

40

But you didn't take it any further to see whether there were other - - -?---No. - - - inconsistencies.

THE COMMISSIONER: Did you phone Mr Perera?---Yes, I did.

And did you, what did you ask him?---I asked him the similar questions that Mr Gamage had been asked at interview to again try and draw out Mr Perera's knowledge of his expertise in road construction.

Did you ask him about his company?---No, I didn't, no. Again, I took it on face value.

But how did you know what it was?---Only, only that it was an engineering company.

Well, how did you know what it did?---I had no idea what it did but (not transcribable).

10

Didn't it bother you that you didn't know and have any idea?---No, because the standard procedure is that you ring the referee and ask the questions of the person.

But you've got to marry, I mean, the referee, the value of the referee, the referee's opinion must surely depend on the expertise and experience and position of the referee?---Yes, I would agree and again in hindsight it's a process that I should have undertaken but again there was the pressure to try and appoint a qualified engineer.

20

But one of the things that would stand out is what sort of a company is this GMS. That's something you could checked quite easily, isn't it?---It is, yes, in hindsight, most definitely.

I mean, you just have to look in the telephone directory or on the Internet? ---Yes, yeah, and that wasn't, that procedure wasn't followed.

30

Now, Mr Smith, you've been in this occupation for many years, what, what suggestions can you make to, to improve the procedure to, to ensure that this wouldn't happen again?---I was often of the belief that you weren't in a position to contact other councils or other employment, where people had been employed, that you could only contact referees nominated by the applicant because of privacy legislation. Now, I might be incorrect there but that was, that's certainly - - -

That you couldn't do what?---That, he mentioned Cook Shire Council but he didn't list anyone there as a referee and I was always under the impression that you could only contact the referees nominated by the applicant.

40

So what do you think should be done to help improve the situation?---Well, I think in local government there should be a standard that if you nominate a former council as being an employer of yours that the person you're applying to has the right to contact previous employers regardless.

Or really has the duty?---A duty, yes. And if that, if that had been standard within local government in New South Wales that would have been included in the council's policy.

Well, this is a pretty serious matter. I mean, it doesn't, even if you confine it to engineers you get the wrong kind of person you could have the most catastrophic accidents caused by an incompetent engineer, couldn't you?
---Most certainly.

10 And if you apply it throughout the board, I mean, everyone's read about medical practitioners who are not properly qualified who've been appointed by institutions - - -?---Yes.

- - - with disastrous results so, I mean, you, you accept that, that the wrong appointment like this can in fact be catastrophic?---It certainly can, yes.

And at the least very expensive - - -?---Yes.

- - - because, I'm not just talking about the cost of termination and reemployment but damage done by incompetent persons?---Yeah, the collapse of a bridge.

20 Yes?---Yeah, a lot more costly.

And, I mean, we're not talking about the employment of a clerk here, we're talking about the employment of a professional person?---That's right.

30 So what measures did you take, what measures, leaving you aside of it, what, what measures are ordinarily taken to check the qualifications of people who are thought to be professionals?---Well, they may vary from council to council, I'm not sure but at Cobar Council, again the pressure was there to have a qualified engineer, the application indicated that he was a qualified engineer, albeit from a foreign country but most of our applicants have been from foreign countries. As was indicated earlier to attract an Australian qualified civil engineer to a rural remote area is basically impossible.

40 And do you have any solution to this?---There's definitely a shortage of qualified engineers in Australia and we've just taken on a traineeship in, in the hope that we can train someone right through to becoming a qualified engineer and actually staying at Cobar but my experience is once they become trained and qualified there's more money on offer and better opportunities outside of rural remote New South Wales and in Cobar we also compete with three major mining companies who offer probably two or three times the amount that Council can offer for an engineer. So there's, there's that competition as well as the shortage of qualified engineers.

Yes, I can see that it's a real problem?---Mmm.

MS DAVENPORT: But the solution is not to allow people to submit fraudulent resumes, is it?---Oh, certainly not, no.

And indeed no doubt the, the cost of hiring Mr Kumaragamage has been substantial?---Yes.

And far in excess of any benefit that he gave back to the community?
---Certainly, yes.

10 In terms of the termination of his employment, after his employment was terminated, did he in fact write a letter to you in which he threatened to sue the Council?---He did, yes.

Would you have a look please at this letter. Is that the letter that Mr Gamage sent to you?---It is, yes.

Yes, I tender that, Commissioner.

THE COMMISSIONER: It's a letter - - -

20 MS DAVENPORT: It's dated 30 May, 2007 from Mr Gamage to Mr Smith.

THE COMMISSIONER: Exhibit 34 is a letter from Mr Gamage dated 30 May, 2007 to Mr Smith.

#EXHIBIT 34 – [EXHIBIT WITHDRAWN]

30 MS DAVENPORT: And perhaps, Commissioner, I'll show Mr Smith this document and perhaps it can become part of the same exhibit, it is Mr Smith's response to that letter.

THE COMMISSIONER: And Mr Smith's response to that letter will be - -
-

MS DAVENPORT: Dated 31 May, 2007.

THE COMMISSIONER: Dated 31 May, 2007 will be part of Exhibit 34.

40 MS DAVENPORT: Thank you, Commissioner. Now, in terms of - - -

THE COMMISSIONER: Well, perhaps we should adjourn for 15 minutes.

MS DAVID: Sorry, Mr Commissioner, just before, I just wonder in relation to that whether there could be perhaps some kind of suppression order on that in relation, it is really an industrial relations matter, this particular exchange of, of correspondence in terms, it's not really relevant to the wider inquiry.

THE COMMISSIONER: Yes. I'm not sure what the relevance is.

MS DAVENPORT: With respect, Commissioner, it's, it goes again to Mr Gamage's I suppose response to - - -

THE COMMISSIONER: Well, why is that relevant?

10 MS DAVENPORT: Well, I, Commissioner, I'm told that it goes also to the cost, that is that - - -

THE COMMISSIONER: Well, I'm unpersuaded by that. I withdraw it, withdraw these documents as exhibits.

#EXHIBIT 34 - [EXHIBIT WITHDRAWN]

20 MS DAVENPORT: May it please the Commissioner.

THE COMMISSIONER: We'll adjourn for 15 minutes.

SHORT ADJOURNMENT

[11.39am]

30 MS DAVENPORT: Ms Smith, you mentioned in response to one of my, I think a question asked by the Commissioner, that you had concerns about privacy issues in relation to checking further than just the nominated referees?---Yes, that's correct.

If for example persons who were being interviewed were to sign a release saying that they gave permission, for example, for queries to be directed to the former listed on their resumes, would that, you think, assist you in overcoming qualms you have about privacy issues?---Well, I think it would to some, to some extent. It's quite often you'll get an applicant who actually specifically asks that you don't contact their current employer for fear of, you know, repercussions.

40 Yes. And that can have quite a valid reasoning but, but in terms of previous employment, employers?---Previous, yeah, most certainly. Yes, yes.

I want to also take you back. You said in relation to the referees who were nominated by Mr Gamage that you only contacted one?---Yes.

Why was that?---Because I've never seen a bad written reference and I've never heard a bad verbal reference.

All right. I want to take you now to the written references. In relation, could the witness be, do you still have Exhibit 15?---No, I don't, no.

If the witness could be shown that again. And if I could take you back to that same page, that page 11, sorry page 12, which, pages 12 and 13 of the resume of Mr Gamage, firstly, the first page is, it says, was headed Reference From Mr Manam (Reproduction). Did that strike you as an unusual reference?---Not really. I just interpreted that to mean it was a photocopy.

10

Well, it's not signed though, is it?---No.

So on the face of it would it have struck you as being an odd form of reference?---It did but then I guess I took into account that I was dealing with someone from overseas who may not be conversant with the way Australians might put in an application.

All right, and similarly the reference from Mr Perera that's on the following pages?---Yes.

20

In the same terms, isn't it, reproduction?---Yes.

And no signature?---Yes.

And that didn't strike any chord with you as being odd?---No, no.

All right. Yes, I have no further questions, Commissioner.

THE COMMISSIONER: Yes. Any questions?

30

MS DAVID: Yes.

Just on the issue of qualifications, you said before that you, it's difficult to actually get people with Australian qualifications to apply for positions in the country, is that correct?---Yes, that's correct.

Is there, if I could say a preference for someone with Australian qualifications or do you feel more comfortable with - - -?---I, I think it's a case of just feeling more comfortable. I think in the local government culture itself, you know, it's mainly or usually Australian qualified people that you have on your books but I do concede that that is certainly changing and it has changed since I've been in local government, yeah.

40

Yes, so, and you would agree that perhaps you recognise the university, you have some sort of understanding of, you know, perhaps how that university is - - -?---Yeah, certainly, yeah, yeah.

- - - rated or viewed?---If they were quoting the University of Sydney or New South Wales yeah, you'd just say, yeah, I know that place, yeah.

All right, okay. Thank you. Just in the, so if, for example, you had an application where there was someone with Australian qualifications and someone with qualifications from overseas, would that be something that would - - -?---If, if they both met the essential criteria, I would certainly invite both in for an interview, yes.

10 All right. Just going back to Mr Gamage, when he, you said that he was, sorry, just going back to that process, did you interview anybody else during - - -?---No.

Okay, he was the only one that was interviewed?---Yes.

All right. Thank you, nothing further.

THE COMMISSIONER: Mr Harris, you don't questions?

20 MR HARRIS: I don't have any questions, thank you, Commissioner.

THE COMMISSIONER: Ms Davenport?

MS DAVENPORT: No, Commissioner.

THE COMMISSIONER: You may be excused, thank you, Mr Smith?
---Thank you, Commissioner.

30 **WITNESS EXCUSED** **[12.02pm]**

MS DAVENPORT: Yes, I call John Griffiths.

THE COMMISSIONER: Mr Griffiths, you're not legally represented?

MR GRIFFITHS: No.

40 THE COMMISSIONER: But you've been in court and you, in the hearing room when I have explained what a Section 38 order is?

MR GRIFFITHS: That's correct.

THE COMMISSIONER: You understand that?

MR GRIFFITHS: I understand.

THE COMMISSIONER: And you would like me to make one for you?

MR GRIFFITHS: Yes, please.

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

10

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

20

THE COMMISSIONER: Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR GRIFFITHS: Under oath, please.

THE COMMISSIONER: Ms Davenport:

MS DAVENPORT: Could you please tell the Commission your full name?
---John Joseph Griffiths.

10 And Mr Griffiths, are you still the General Manager at Coonamble Shire
Council?---Yes, I am.

And you've held that position I think since July of 2004?---That's correct.

And you have made I think two statements in relation to the matters the
subject of this hearing?---Yes, that's true.

One dated 8 April, 2010 and I think one dated 9 April, 2010?---That's
correct.

20 And Commissioner, I tender copies of those statements.

THE COMMISSIONER: Yes. What are they dated please?

MS DAVENPORT: 8 April, 2010 and 9 April, 2010.

THE COMMISSIONER: Mr Griffiths' statement of 8 April, 2010 is
Exhibit 34 and his statement of 9 April, 2010 is Exhibit 35.

30 **#EXHIBIT 34 - STATEMENT OF JOHN GRIFFITHS DATED
8/04/2010**

**#EXHIBIT 35 - STATEMENT OF JOHN GRIFFITHS DATED
9/04/2010**

40 MS DAVENPORT: Now, in January, 2009 the Council advertised for the
position of Director of Engineering Services, is that correct?---That's true.

And your role as General Manager was to be part of that selection process,
is that correct?---That's right.

And to produce an information package et cetera for that job?---Yes, to lead
the recruitment process.

Now, in terms of Coonamble Council, does it have any written policies in relation to recruitment processes for executive staff?---Not really, no.

So in terms of the process, was that an ad hoc process employed by you?
---No, well, it's one that we've employed ever since I've been at the Council. We, we, we follow the same process each time in developing an advertisement, developing a job specification and job description and an information package for prospective applicants.

10 And what about the process of determining the appropriate applicant. Is there any procedure - - -?---Yes, we have a, we have a set selection criteria that we use specific to each of the positions and we usually, not usually, we always forward, have, have, sorry, we always have a list of set questions that are asked to every applicant.

All right?---Sorry, every applicant that's interviewed.

All right. Now, in terms of that position, the Council received a number of applications, is that correct?---Yes, that's true.
20

And one of those was from Mr Gamage?>?---Yes.

Who included a resume?---Yes.

And at the time that you read that, did you accept that information was genuine?---Yes.

Were a number of applicants short listed for interview?---Yes, we short listed three for interview.
30

And one of those was Mr Gamage?---One was Mr Gamage.

Now, during the course of the first interview, was that conducted by telephone because he was in Western Australia?---Yes, that's true. Our Mayor actually had been in, in Perth and, and had spoken to Mr Gamage while he had been there first, mainly just to, to see his suitability to the, to the position.

Well, he met up with him?---He met up with him for, for coffee. That is actually omitted from my, my statement.
40

All right?---I, it had slipped my memory.

And had that occurred before the telephone interview?---That's correct.

All right. Now, in terms of that interview that was held by phone, Mr Gamage claimed in his resume that at that time when he applied for the

job he was the Operations Manager of Fremantle Project Managers?
---That's correct.

Was that a company that had, that you knew anything about?---I knew nothing about it at that time.

Did you make any inquiries as to what operations were carried out by that company?---No, because Mr Gamage was a civil engineer his email address was at Fremantle Project in, yeah, Fremantle Project - - -

10

Manager?---Manager. And the referee that was subsequently given to me was also a person from that company.,

All right. And the previous employment was given, for example, the direct previous employer was Global Management and Engineering Solutions at Liverpool. Again, no, no inquiries were made as to what sort of operations that company - - -?---No, we did ask Mr Gamage at interview about the, about that company and about his work at that company. There was nothing that led us to believe that that wasn't true.

20

All right. Now, during, after the initial interview, that's the telephone interview, you had carried out face-to-face interviews with the other two persons, is that right?---No. One failed to, failed to show up on the day. The other one we had carried out a face-to-face interview.

All right?---And we subsequently got Mr Gamage to come in person to Coonamble where he was again interviewed by a number of the original panel.

30

And during that second interview, face-to-face, did Mr Gamage confirm that the work history contained in his resume was correct?---Yes.

Now, during that interview process, did Mr Gamage supply you with a name of a referee?---Yes, he did.

And was that name Nalin Harsha?---Yes.

And did Mr Gamage tell you, did he have a telephone number on which he could be contacted?---Yes.

40

Did you contact that person by phone?---I did.

And did you in fact get a Mr, did Mr Harsha tell you or the person purporting to be Mr Harsha tell you that he was in fact the direct supervisor of Mr Gamage at Fremantle Project Managers?---He even went so far as to say that he would be sorry to lose him.

And you've heard in the Commission today that in fact it was Mr Perera who pretended to be Mr Harsha?---Yes. I actually feel a little foolish.

Well, what I want to ask you is, what, what processes do you think can be put in place to overcome the problem that clearly happened here?---Well, throughout my career in local government, we've always, we've always sought out people from other councils. They're getting very scarce, the people who are willing to move around. There are quite a number of applicants these days from outside our industry. In the past there was
10 always the opportunity to, to contact the, another council provided too much time hadn't elapsed. I think that I was of the same understanding that Mr Smith stated, that under privacy provisions we don't have the facility to, to contact other than the people that were, that were nominated. And to that extent I think that there has to be something, I think your idea of a, of a signed statement that we're free to contact any of the previous employers would be a good one.

Of course in terms of, of the resume given by Mr Gamage to Coonamble Council, for example, he has, and I know you were present yesterday,
20 admitted that he worked for two days for Freemantle Project Managers and Global Management and Engineering Solutions never carried out any engineering work of any substance. In terms of trying to contact those places presumably, well particularly Global Management and Engineering Solutions, presumably the way of doing that would've been to do some sort of Google search as to that company to find out just - - -?---Yes. I would agree that, that is something that certainly could be put into procedure, even to the extent of Googling the, the name of the applicant. And that would've brought up some information in respect of Torres Shire.

30 Yes?---But that was not done.

In terms of that information in relation to Torres Shire, was that accessed by virtue of the fact that councils publish on the webs their annual reports?
---Yes. Not only our annual reports, but in our case all of our minutes and I think that Torres minutes also were available on the web. And that's how, I know Mr Gamage on the first day made made, made reference to Coonamble Council deliberately putting something, putting a Google search in there. Well, that's not the way it works. Our minutes are available on
40 our website and anyone who Google's a reference will, will, will come up with our minutes of a council meeting.

All right. So in terms of the, the waiver as it were, that an applicant would give, would give the council permission to access not only, well not only to contact the councils, but to access records of the, the employer's nominated through a Google machine for example?---Well, I think that if it's freely available on Google, you're not breaching any privacy legislation in any event.

You heard Mr Gamage say that his claim for Boonah Shire Council was because it had in fact been amalgamated with another council and he thought that might make it difficult to access?---Yes, I, that was one of the reasons I didn't, I didn't attempt to contact Boonah Shire and the fact of course, that it was about nine years since he left there.

2000, yes?---Yes.

10 Now in terms of your dealings with Mr Gamage, you did at some stage become aware of issues relating to the validity of his resume. Is that correct?---That was drawn to my attention by the officers of ICAC when they came in April.

All right. And I think you had, you've referred to it in your second statement, you had an interview with Mr Gamage in which he conceded that aspects of his resume were incorrect?---That's correct.

20 Now in terms of the process of, that you undertook, at the time that you employed him, were you aware that there was a risk of resume fraud? Did it occur to you that the resume may have been fraudulent?---No, not really. Whilst they're reasonably paid jobs, they're not high profile jobs. They're not, they certainly are stepping stones to go through a rural council and, and make your mark, so to speak. But I, in 39 years I'm not aware of in the councils that I've worked in any fraud in that respect at all.

30 But would you agree would you not, that it's a bit like unreported crime, it's not something that, that you can readily assess?---That's correct. You know, it may well have occurred and gone undetected, but if the, if the performance of an individual is, is satisfactory, you have no reason to check.

So once somebody gets the job if they perform satisfactorily, then there'd be no reason to check?---Well, only, only if doubts are thrown up and in a lot of the smaller councils you only have one, perhaps two qualified engineers and therefore there is no check on the, on the quality of their work. It would only be if an incident occurred that you would need to, need to have any doubts at all.

40 And indeed, I think you referred in your statement to the floods at Coonamble in 2009/2010?---Yes.

Was that, was that something that first brought to your attention perhaps aspects of Mr Gamage's performance that were lacking?---Yeah, it probably went back a little, a month or so before that, because in the early part of, of his employment he was carrying out, well when he started there in April, we already had our management plan for the following year out on public exhibition. A lot of the leg work had been done in terms of engineering. We have a very good engineering staff who, once the budget and the management plan is set in place, they go about scheduling their work and

getting the work done. And therefore, Mr Gamage's job was quite easy in terms of having to implement the management plan of council. But as you get towards the end of the year, you then enter into the phase of, of having to start on projects or start developing the projects for the following year. And, and that's where Mr Gamage started to fall down. And that probably was around about November, December. The floods was, it really highlighted the inadequacies of not only his abilities but also his work ethic, which had come into, come into question by me on a couple of occasions because of lack of punctuality and that over, from around about probably the beginning of November on.

Do you, you remember me asking questions of Mr Smith about the, the efficacy of having, for example, a list of persons who have been dismissed from, from councils that could be accessed in terms of checking the work history. Do you think that that would assist in terms of overcoming resume fraud?---I believe that if somebody's caught out resume fraud, that's fine. But let's, let's not lose sight of the fact that personality clashes can often sway people's thoughts on another one and their ability to do the job. I've worked with quite a number of people from other countries that, because of their cultural differences, had difficulties settling into the, into the organisations and, and to a certain extent that didn't happen with, with Mr Gamage at Coonamble. But some of the other ones (not transcribable) in, you know, don't lose sight of the fact that people don't like other people because of their ethnic or cultural differences.

So you think that could be a very blunt instrument to assess people by?---It certainly could and it certainly would, you know, if they've carried out a fraud they, you know, there's no doubt that local governments should be staying clear of that person because the last people that any of us want to, want to be is to come and see you good people here.

So it could work to the disadvantage of people who've been terminated for personality reasons rather than reasons associated with their ability to carry out the job or resume fraud. Is that what you're saying?---It would need to be a very definitive reason for putting a person on such a list.

All right. I suppose, I suppose just a list would by its very nature not really tell a story, would it?---I believe that there would need to be some brief explanation as to why they're on the list - - -

Yes?--- - - - you know.

In terms of the evidence given by Mr Smith about the difficulty in filling positions, particularly for jobs like civil engineers, have you suffered the same sorts of problems in Coonamble?---We certainly have and it's not only engineering, it goes across, we have a qualified financial person leave us, we had her leave us a few months back and we haven't been able to fill that position at this point in time. However, and we do, however, have a couple

of applicants for the vacant engineer's position. We advertised a project engineer's job and filled that three or four months ago, I think that you've got to be lucky and I think that you've, you've got to be able to hold your area out as, as being somewhere that, that is, is good to live, you know. I mean, the fact of the further west you go the better the people are that, that still applies but a lot of people don't understand and don't realise that.

10 Do you think that the, the challenges of recruiting, particularly highly qualified people to remote rural areas has affected the way in which the recruitment process has taken place? Do you think it's made it a bit more, because you're happy to or you're needing to fill a position that you're more prepared to accept on face value what people will tell you?---In actual fact in my case no, I do try to be, to be diligent with the, with the process that I use and have always used. However, obviously I wouldn't be sitting here if it didn't have some weaknesses and it's not the fact that you, you can't get anyone, it's the fact that you need the right person for the job and we went to great lengths to try and ensure that firstly the person could work within our organisation and secondly that their professional expertise was such that that, that they would give good value to us. In Mr Gamage's case I'm afraid
20 that we did not succeed in getting somebody who could fill the second part of that.

In terms of the process of employing and then terminating Mr Gamage's employment, did that have an effect on the overall morale of staff at the Council?---I think that many of his subordinates were happy to see him go. He was a great delegator. We had a cadet engineer who has tremendous potential and he left and went to another council. Since Mr Gamage's departure he has actually come back in another role and, because he didn't like the other council that he was at but I think that the message that I was
30 getting was simply that they weren't sorry to see him go, his, his immediate subordinates.

In terms of a process that could be put in place to minimise the possibility of resume fraud, given your experience, have you got any suggestions as to, for example, a recommendation you'd be making to Coonamble Council to overcome the problem that's arisen through this, Mr Gamage's - - -?---Well, I, I have already stated to Council that I believe that a Google search on anyone would be, would be desirable and the Councillors basically, you know, have agreed with that but I think that if a waiver to, forwarded out
40 with information packages that has to be signed and returned to allow a search of the previous employers would be a good step forward.

THE COMMISSIONER: And a search of the companies for which the candidate has said to have worked could also be helpful, wouldn't it?---That could be the case but when, you know, like to search for, for a company you go into the ASIC site and you put the name and the name of the company comes up if it's a legitimate company and it may even have some, some details about who the principals of that company area but - - -

Quite?--- - - - you know, beyond that, there isn't any information available as to whether they actually do anything or not is, is not freely available but -
- -

So is there no way of checking, for example, GMS, whether GMS is a, what the business of GMS is?

10 MS DAVENPORT: GM and ES, Commissioner, that he has nominated.

THE COMMISSIONER: GME.

MS DAVENPORT: There are two separate companies, one was GMS and one was GM and ES, that's Global Management and Engineering Solutions
- - -

THE COMMISSIONER: Right.

20 MS DAVENPORT: - - - which is the one nominated to Coonamble.

THE COMMISSIONER: Right. Is there no way of checking that?---Well, in the, in the ASIC search it does have the objectives, the purpose of the company normally and, and I, I, if it's a public company there is more information available.

Yes?---However, if it's a private company there, there is, the information is quite scant.

30 But you could, I mean even a check in the Yellow Pages would tell you whether the company is actually operating?---Yes, certainly. If, if they are traditionally listed in the Yellow Pages that would, that would be a good indication, I guess.

I mean, one would think that if the employer was unknown there should be some attempt to check that it's real?---I can't dispute that statement.

40 MS DAVENPORT: For example, in relation to that company, Global Management and Engineering Solutions, Mr Gamage claimed that it managed projects worth between one and \$200,000 and was building, was building buildings, roads and bridges and land development so you would expect, would you not, that a company of that size would at least have a listing in the yellow pages and/or some website in relation to it?---Yes, that, that certainly would be a basic check that you could do.

THE COMMISSIONER: This is not intended to be critical at all but I mean, once the, once it's, once the candidate says I work for a company and did all these projects, a little bit of questioning into where they were and what they were - - -?---Well, we did do that at the interview process.

And what happened?---And, and we were told that he did some work on the M4 and also for some councils in traffic control.

And I suppose it's a question of how far you go?---Correct.

MS DAVENPORT: In fact, even at the time that you had a, the interview with Mr Gamage just before he was dismissed you made some notes in relation to his resume, is that correct, about what he told you at that time?

10 ---Yes, that's true.

And I think he still maintained that Global Management and Engineering Services had been involved in, I think your note is RTA, M5 projects. Is that correct?---That's correct.

So he still maintained even at that stage that that company was in fact involved in the sort of work that it, that he claimed?---Mmm.

20 THE COMMISSIONER: It seems to me that the key to, that a key to all of this is the, is the approval, in the case of an engineer candidate, that the candidate gets from the Institute of Engineers?---Well, I certainly rely on that as being a check as to the fact that they have formal engineering qualifications.

30 And does that, does the, imprimatur of the Institute, does that, does that say something about the standard of the degree?---Well, certainly throughout my career in local government. I mean, once upon a time you used to have to have a clerk's certificate to be a shire clerk or a deputy shire clerk, you needed formal qualifications and you needed experience to, to actually gain a town clerk's certificate. That was done away with in 1993 when the, when the Local Government Act changed and to be a General Manager you don't need any formal qualifications under the legislation but you, you still, you still need qualifications if you're going to hold yourself out as an engineer and certainly the, the old pre-runners of Local Government Managers Australia today, they certainly have taken this up with the government on, on many occasions to try and get some formal qualifications but the, what was formerly the Institute of Engineers, it might even be IPWEA or something now that, you know, I still believe that they're a professional body and they require some, you know, they have some
40 stringent rules as to how you gain membership there so you do need experience in addition to the qualifications.

Do, you don't know whether they do any checks on the particular institute?--I don't know, no, I don't, sorry.,

MS DAVENPORT: But they're the sort of gatekeepers, are they, in terms of engineering?---Well, that's, that's what I've always considered them as.

And so the fact that Mr Gamage's qualifications came from an institute that was unknown to you, you assumed that that had been verified, in a sense, by the Institute of Engineers in terms of giving him corporate membership?
---That's, that's what I believed rightly or wrongly. I mean, I'm not saying that, you know, I don't think that there's anything wrong with his qualifications. I think that they're, they're probably real but, you know, I, I certainly relied on the fact that he was a member of the Institute of Engineers.

- 10 But you put more emphasis on, am I right in saying, on what he claimed as the work that he had done since he qualified?---That's true. The other point with Mr Gamage in, in, in making his appointment was the fact that he had lived in Coonamble before.

With the RTA, when he was - - -?---When he was working with the RTA and, you know, I mean, as I said earlier it's, it's one thing to say yes, these are nice places but it's, it's another thing to know what to expect when you get, when you go out there to live.

- 20 And he also had lived in the far west in terms of working in Brewarrina, et cetera, and I don't think he told you that, did he?---Yes, he did.

Did he?---Yes.

So that was something that, yes, Brewarrina Shire Council?---Yeah.

- 30 So that was something was in his favour that he wasn't going to have that period of adjustment and then finding he didn't like the area?---Well, we, you know, we also have different conditions. In, in Coonamble Shire, for example, we don't have any ridge gravel and we have black soil roads that you get five mill of rain and you can't drive on them and that's all, that's all there is to it. Road building is a, is a different experience in, in Coonamble Shire.

- 40 And you assumed that because he had worked there before he was aware of all those potential problems?---Well, and he certainly said that he, he was aware of, he was aware of the different methods that had to be employed, albeit he was working on a state highway where, you know, money, money is not such a, a, a problem or wasn't back in the days that he was, that he was working there. It wasn't, it's not such a problem.

Yes, I have no further questions.

THE COMMISSIONER: Are there any questions?

MS DAVID: Yes, Commissioner.

You said previously that there was some, often some issues, cultural and ethnic sort of differences that might be experienced in councils, is that correct, with different personalities?---Also, also in rural communities because the ethnicity of the, of any particular person. We don't, we don't experience a whole lot of people. If you go a bit further north to Lightning Ridge it's a multicultural town. Our town only comprises, I think it's just under two per cent of people from, that weren't born in Australia and, and as such of course the old, the older ways still, still apply.

10 What do you mean by older ways?---The fact that foreigners are, are, are somewhat undesirable I guess or not so much undesirable as, as not straight down the line like, because of their cultural differences.

And that's something that you would factor in when you were engaging a person?---Very, very important and, and I don't care where the person comes from, it's important that they can fit into our organisation. We're only, we're only reasonably small. We, we have about 97 employees these days and it's important that a, that a person can fit in and can fit in socially into the town.

20

So would you see, so the old ways, there's an element of racism clearly, is that what you're saying?---Yeah, look, racism isn't quite the thing. We've got 32 per cent of indigenous population in our town and I don't consider it to be a racist town at all but certainly people from other countries that could be said although we have a councillor this time from, who was born in Lebanon so that's not a, you know, that's probably an untrue statement.

30 So going back to perhaps a suspicion if I could, or that - - ?---Certainly. The, the outlook, the look is, is a little different. We haven't yet caught up with the ways of the city, if I could put it that way.

All right. So just in that regard, again you may have heard me ask Mr Smith this question so if you had applicants with Australian qualifications, would you prefer those from overseas qualifications?---Not necessarily. Qualifications, a bit of paper that says that you're something and the experience to go with it is, is, is equally important.

40 Yes?---Now, if I can, if I know that it's, I think Mr Smith used University of New South Wales, University of Sydney, sure, it's much easier for me to know the standard of that tertiary education. You know, the, the qualifications that Mr Gamage had were, were, were quite different to what, to what is granted in Australia.

And, and you would, really it would be very difficult to have, to measure any, other than the very, the elite universities, it would be very difficult to measure an overseas university, would that be correct?---Correct.

Yeah. So just, so would it be fair to say though that if there was a preference, if, if you had two candidates of, of equal experience and one had University of New South Wales qualifications and the other had a University in Russia, which one you might pick, all other things being equal?---That would, that would come back very much to, to a personal preference. I can't answer that without having the two people and the two circumstances in front of me. I, I certainly believe that, that all people, their experience isn't the same and, and had I of, had we have had that situation with Mr Gamage and Mr Gamage was the best applicant for the job, but had
10 we have had that situation, we certainly would've leaned towards Mr Gamage because of his previous involvement with Coonamble.

All right. And in that regard, the other, you said there were three people listed for the interview. One didn't turn up. The other turned up and from those two, is it your evidence that Mr Gamage was the preferred applicant from those two?---Yes, unanimously. Well, he was certainly the best of the two candidates unanimously. One, one person I seem to recall was asked whether it might be worthwhile readvertising and, and seeing if something else, somebody came out of the woodwork.
20

Just in relation to, just, do you, do you remember you have a person at the Council (not transcribable) by the name of Darryl, is that correct?---Yes.

In a managerial position?---He was our cadet engineer.

All right. Okay. And at the time you, that was a recent appointment, was it, last year, late last year?---No. Darryl has been with us for, he joined us about, be two and a half years ago, might be three years ago now and has been working his way through. He left us and went, went to another council
30 and has since come back.

All right. So let's say there's no other person called Darryl at the Council, is that - - ?---No.

Okay. Do you remember a Mr Divekar, D-I-V-E-K-A-R that applied for a job at Council?---I think that that was a, he applied for the project engineer's job.

Yes?---Mmm.
40

And did you, have you recruited anybody into that position?---Yes.

And what is that person's name?---That person is Brian Burge.

And so Mr Divekar applied for that initially, didn't he?---Yes. He was, his experience was very limited in the, in the areas that we wanted to, the areas that we wanted him to deal in and there was a panel of three that actually interviewed that person. I wasn't one of those. Mr Gamage wished to

appoint that person. The other two people did not wish to appoint that person.

Okay. And he was a civil engineer?---He was a civil engineer. Yes.

And the person Brian Burge, is he a civil engineer?---Yes.

So he's qualified, he, he is a qualified engineer?---Correct.

10 So when you, the position, Mr Burge telephoned you after the interview, the first interview had taken place with Mr Divekar, didn't it, didn't he? Do you recall that?---I don't recall that.

Is that possible?

MS DAVENPORT: Commissioner, I object. Anything's possible.

THE COMMISSIONER: Well, I'm not really sure where this is going.

20 MS DAVID: No, I just, yes. Just in relation to Mr Divekar, do you agree that he was of South Asian origin?---I, I'm not too sure of his, of his nationality.

THE COMMISSIONER: Why is this relevant?

MS DAVID: Well, I say it is relevant - - -

THE COMMISSIONER: Relevant to what?

30 MS DAVID: Well, relevant I think to the wider issues of this inquiry in terms of the recruitment process and, but also in relation to attitude of certain persons of ethnic, of different cultures?---Mr Commissioner, if it's being suggested that I, that I was party to not employing that person because of his ethnic background, that's not true.

But is it the case that you actually said, "Forget the fucking Indian, we advise again for two, two weeks"?---I didn't, I never use that word in terms of talking about anyone with an ethnic background. And I certainly don't use that word to my senior staff, me executive staff, sorry.

40

Do you agree that Mr Divekar didn't get the job?---He did not.

Okay. Now just coming back to Mr Gamage. Do you agree that in his performance review he, it was a positive review, that was in late 2009 and that is his salary was increased as a result of that performance review? ---Yes. At that time I, I even went to the extent of telling Mr Gamage that I had factored in his absence from local government for a considerable period and the fact that he was still getting up to speed with that. However, he had

successfully completed some of the, some of the jobs that were, were on the books when he got there.

Thank you. Nothing further.

THE COMMISSIONER: Mr Harris.

10 MR HARRIS: If I may, thank you, Commissioner. You said earlier candidly I think, that it does make you feel a little foolish when you hear a person such as Mr Perera here today acknowledging that he'd purported to be someone else?---Correct.

You'd agree though it wasn't that conversation with him who'd, that wasn't, I 'm sorry, that wasn't the decisive factor in your employing Mr Gamage was it, that phone conversation?---Well, certainly it carried some weight because, you know, I mean, if you're not going to take any notice of what people tell you, and as with Mr Smith, I certainly have never heard a bad referee report.

20 Right.

THE COMMISSIONER: Well, if he had of told you the truth and said that I'm not Mr, what's his name?

MS DAVENPORT: Nalin Harsha.

30 THE COMMISSIONER: And my, my name is really Perera and I know nothing about this, I know this man, but I've never worked with him ever. And I have no idea why he puts me up as a referee. Maybe that might've had some influence on you?---He would not have got the job.

40 MR HARRIS: Of course, I think we have said that there three interviews so to speak with Mr Gamage. (not transcribable) a phone call to, to Perera? There was a telephone interview, the Mayor in fact (not transcribable)?--- The Mayor met him in Perth and we had a telephone interview and we had a face to face interview with him. And the reason for the face to face interview was, was, you know, we did have some little doubts in the back of our mind and we, we needed to, we felt that we needed to meet him face to face.

Presumably the meeting face to face was sufficient to assuage the nagging doubts anyway?---Yes, certainly.

All right. Thank you. Thank you, Commissioner?---And in addition to actually clarifying some of the, some of the things that had been, had been said at the, in the phone interview. It's very difficult with a phone interview, particularly when you have quite a number of people on board

that are actually, everyone gets a different impression as to what, to what the person said.

MR HARRIS: That's the phone interview with Mr Gamage himself isn't it?---Yes, yes. That's right.

That's what you're talking about there?---Yes.

All right. Thank you, Commissioner.

10

THE COMMISSIONER: Ms Davenport.

MS DAVENPORT: No, I have nothing.

THE COMMISSIONER: You may be discharged, thank you Mr Griffiths?--Thank you, Commissioner.

THE WITNESS EXCUSED

[12.45pm]

20

MS DAVENPORT: Commissioner, there is no further evidence to be called, but there are a large number of documents that I seek to tender.

THE COMMISSIONER: Yes.

MS DAVENPORT: The first is a statement of George Brown of The Think Education System in relation to the issue of resume fraud, I assume, qualifications and resumes.

30

THE COMMISSIONER: Well, Exhibit 36 is the statement of George Brown.

#EXHBIIT 36 - STATEMENT OF GEORGE BROWN

MS DAVENPORT: The second is the statement of Barry Door of Brewarrina Shire Council.

40

THE COMMISSIONER: Exhibit 37 is the statement of Barry Door.

#EXHBIIT 37 - STATEMENT OF BARRY DAWE

MS DAVENPORT: Do you wish me to date these Commissioner?

THE COMMISSIONER: No. I take it there's only one statement.

MS DAVENPORT: Only one from each person, that's correct. The next is the statement, is a statement of Karen Edwards from the Roads and Traffic Authority of New South Wales.

THE COMMISSIONER: Ms Edwards' statement is Exhibit 38.

10 **#EXHIBIT 38 - STATEMEN TO KAREN EDWARDS**

MS DAVENPORT: The next is a statement of Steve Finlay from Engineers Australia. I'm sorry, there are two statements there. One is, they're both dated 18 May, 2010.

THE COMMISSIONER: Well, two statements dated 18 May, 2010 from Steve Finlay will be Exhibit 39.

20

#EXHIBIT 39 - TWO STATEMENTS OF STEVE FINLAY DATED 18/05/2010

MS DAVENPORT: The next is - - -

THE COMMISSIONER: Is that, are they, is that the body, the certifying body?

30 MS DAVENPORT: They're called Engineers Australia, yes, Commissioner. And there are a number of annexures attached to that.

THE COMMISSIONER: What does he say?

MS DAVENPORT: That's a good question.

THE COMMISSIONER: Why, why hasn't it been tendered, just as a matter of interest?

40 MS DAVENPORT: He's just producing, Commissioner, the records of, that Mr Gamage produced to the, the Engineers in order to get his certification. But he doesn't really, I think talk about the, how they go about (not transcribable). Well, he does go into that Commissioner. I don't know whether you would seek to have him as a witness before the Commission so questions could be asked of him.

THE COMMISSIONER: Well, I think that he would be, he would be helpful. I mean if there is a suggestion that there should be

recommendations which affect the Institute, then it would be essential to have him here.

MS DAVENPORT: Commissioner, there is no issue that indeed, Mr Gamage does have the qualifications that he asserts, that is that he is a Master of Science and Civil Engineering from the Kharkov Highway University.

THE COMMISSIONER: Well, I mean - - -

10

MS DAVENPORT: But it's, it's - - -

THE COMMISSIONER: What are the standards of that particular institute?

20

MS DAVENPORT: Indeed. I'm instructed Commissioner that there was no intention to deal with recommendations to the Institute in relation to the, seeking to, I accept Commissioner, given what's come out in terms of Mr Gamage's expertise that perhaps if they are going to be accepted as the gatekeeper's and therefore a potential employer say that if he's accepted as a member of the Institute, then it's important that the Institute itself could place some processes whereby they ensure that, that overseas qualifications do come up to some basic level of, or basic standard. All they, all they do I think is ask for a certified copy of the actual qualification and accept that on face value as to whether the Institute itself is rated on a, on a scale that worked, placed 999 out of 1,000, I don't think they're concerned, as long as they have a certified copy of the, of the qualification.

THE COMMISSIONER: I'd like to see Mr, I'd like to see him.

30

MS DAVENPORT: You'd like to see Mr Finlay?

THE COMMISSIONER: Mmm.

MS DAVENPORT: All right. Well, I'll withdraw the tender at this stage, Commissioner. Commissioner, the next - - -

40

THE COMMISSIONER: Well, I can put in his statements but I, am I correct that simply by, on the acceptance by the Institute that the person, that a person has passed some degree that the person is then qualified to practise in Australia as an engineer?

MS DAVENPORT: I think they also require, for example, I think, Commissioner, we tendered yesterday they required some references from persons for whom, who had employed or had knowledge of the, the background of the person rather than, remember, Commissioner, yesterday, there was the, Mr Sivarasa and he was, he had also, Mr Gamage had also worked in Australia at Brewarrina for the Council there, albeit only for four months before he applied for membership so to some extent - - -

THE COMMISSIONER: But what does membership of this Institute allow one to do?

MS DAVENPORT: It merely allows what I think to say that you are a member of the Institute, well, formerly it was called the Institute of Engineers Australia and it's now called Engineers Australia. It merely allows one to assert membership. Now, clearly the, the - - -

10 THE COMMISSIONER: Well, what I don't understand is why everybody accepts that that is, that establishes that the person who is a member has a, is of a certain, has passed an examination of a particular satisfactory standard. That's what I don't understand.

MS DAVENPORT: Well, Commissioner, Mr Finlay himself says that in his opinion the, the CP Engineerings, which is what they can put after their name when they're members of this Institute, is a benefit - - -

20 THE COMMISSIONER: CP, what is that?

MS DAVENPORT: CP Eng.

THE COMMISSIONER: What's that?

MS DAVENPORT: It means that the CP Eng is, what does the CP mean? Certified Practising Engineer. Now, his, his view is that that provides evidence that the person is professionally highly regarded, evidence that the engineer (not transcribable).

30 THE COMMISSIONER: I want to see Mr Finlay.

MS DAVENPORT: We'll tender those two statements, Commissioner.

THE COMMISSIONER: Yes. Well, those are Exhibit 39. Can he be here this afternoon?

MS DAVENPORT: We can make some inquiries, Commissioner, if not perhaps tomorrow.

40 THE COMMISSIONER: Right.

MS DAVENPORT: A statement of Bernard McCarthy from the Torres Shire Council.

THE COMMISSIONER: Exhibit 40 is a statement by - - -

MS DAVENPORT: Bernard McCarthy, Torres Shire Council.

#EXHIBIT 40 - STATEMENT OF BERNARD McCARTHY

THE COMMISSIONER: Yes.

MS DAVENPORT: Dan McPherson of Boonah Shire Council.

10 THE COMMISSIONER: Exhibit 41 is the statement of Dan McPherson.

#EXHIBIT 41 - STATEMENT OF DAN McPHERSON

MS DAVENPORT: David Rowe of Yass Shire Council.

THE COMMISSIONER: Exhibit 42 is the statement of David Rowe.

20 **#EXHIBIT 42 - STATEMENT OF DAVID ROWE**

MS DAVENPORT: Kevin Thomas of AMS, was a company that Mr - - -

THE COMMISSIONER: What's that?

MS DAVENPORT: Mr Gamage worked for AMS in Western Australia when - - -

30 THE COMMISSIONER: Why is that being tendered?

MS DAVENPORT: Because, Commissioner, with respect he worked for them at a time when he claimed in his resume to have been working for Fremantle Project Developments.

THE COMMISSIONER: Kevin?

MS DAVENPORT: Kevin Thomas.

40 THE COMMISSIONER: Okay. Exhibit 43 is a statement by Kevin Thomas.

#EXHIBIT 43 - STATEMENT OF KEVIN THOMAS

MS DAVENPORT: A statement of Guy Underwood of the RISQ which I assume is an acronym for the RISQ Group and that relates again to resume fraud et cetera.

THE COMMISSIONER: What resume fraud?

MS DAVENPORT: There are a number of - - -

10 THE COMMISSIONER: Does that show that he was working - - -

MS DAVENPORT: No.

THE COMMISSIONER: Then what does it show?

MS DAVENPORT: It is, a number of statements have been taken from organisations where there, they are seeking to assess the degree of resume fraud that exists within the workforce.

20 THE COMMISSIONER: So Exhibit 44 is a statement by Guy Underwood, did you say?

MS DAVENPORT: Yes.

#EXHIBIT 44 - STATEMENT OF GUY UNDERWOOD

THE COMMISSIONER: Yes.

30 MS DAVENPORT: Stephen Wilton of the Cook Shire Council.

THE COMMISSIONER: Exhibit 45 is a statement by Stephen Wilton.

#EXHIBIT 45 - STATEMENT OF STEPHEN WILTON

40 MS DAVENPORT: Cathy Wood of the Sydney City Council and that relates to the, one of the persons that Mr Gamage nominated as a referee, that is the person who's name is Asella Manon who was nominated.

THE COMMISSIONER: Sorry (not transcribable).

MS DAVENPORT: Commissioner, you recall that in relation to Cobar Mr Gamage nominated two persons as referees.

THE COMMISSIONER: Yes.

MS DAVENPORT: One Don Perera and one Asella Manon and this was - -
-

THE COMMISSIONER: I see, all right. Exhibit 46 is a statement by Cathy Wood.

#EXHIBIT 46 - STATEMENT OF CATHY WOOD

10

MS DAVENPORT: I also tender, Commissioner, the call charge records of Don Gamage in relation to two numbers and they've been integrated, his landline number of 0-2-9-6-7-1-7-6-2-3 and his mobile number of 0-4 - - -

THE COMMISSIONER: Do we really need all this bulky paper?

MS DAVENPORT: Well, Commissioner - - -

THE COMMISSIONER: What are we doing with it all?

20

MS DAVENPORT: - - - there is an issue that has arisen, particularly in relation to the telephone calls between Mr Gamage and Mr Blackadder and they cover - - -

THE COMMISSIONER: What does he (not transcribable) what does that prove? Is there anything in dispute there?

30

MS DAVENPORT: Well, Commissioner, for example this morning it was suggested to Mr Blackadder that there was a lengthy conversation on 26 October between himself and Mr Gamage in which he explained his role et cetera, it shows for example that that phone call lasted only three minutes and 30 seconds. There are - - -

THE COMMISSIONER: Well, did Gamage say it was lengthy?

MS DAVENPORT: No, but it was suggested to him in cross-examination that it was lengthy.

40

THE COMMISSIONER: That's not evidence.

MS DAVENPORT: And I must say I can't recall Mr Gamage's evidence about that but in any event - - -

THE COMMISSIONER: I keep resisting the idea that all this paper is produced, can you just tell me why.

MS DAVENPORT: Unfortunately they've been copied already, Commissioner so the trees have died and - - -

THE COMMISSIONER: I don't understand it.

MS DAVENPORT: It's merely, Commissioner, the issue is this, that if for the purposes of writing the report challenge is made to these issues then these are the - - -

THE COMMISSIONER: Probably if there's no challenge made in the course of the hearing (not transcribable).

10

MS DAVENPORT: Well, there has been a challenge with respect in terms of cross - - -

THE COMMISSIONER: No evidentiary challenge.

MS DAVENPORT: Well, with respect, Commissioner, they, they are - - -

THE COMMISSIONER: All right. Look, I'm not going to make a fuss about it yet.

20

MS DAVENPORT: And I also tender, so the call charge records of Mr Gamage's phones and the call charge records of Mr Blackadder's mobile phone.

THE COMMISSIONER: For what period?

MS DAVENPORT: What area?

THE COMMISSIONER: What period?

30

MS DAVENPORT: What period, from 1 September through to 17 December, Commissioner.

THE COMMISSIONER: Every one of those days is relevant, is it?

MS DAVENPORT: I wouldn't have thought so but - - -

THE COMMISSIONER: No.

40

MS DAVENPORT: I think you're arguing with the wrong person, Commissioner, but in any event both of those call charge records cover that period in relation to the telephones.

THE COMMISSIONER: What happens to these papers, do they form part of the, once they are admitted at exhibits do they then form part of the report?

MS DAVENPORT: They form part of the prosecution brief,
Commissioner.

THE COMMISSIONER: What, the prosecution has got to have, should it go to the prosecution, the prosecution's got to have their records for every day even though there is no evidence about, no evidence has been led about telephone calls on a particular day.

10 MS DAVENPORT: Well, Commissioner, apparently it has to be a continuous record rather than just a random record of days.

THE COMMISSIONER: Who says?

MS DAVENPORT: I'm taking instructions from the investigators.

THE COMMISSIONER: I know, Ms Davenport, this has got nothing to do with you. All right.

20 MS DAVENPORT: Grudgingly accept.

THE COMMISSIONER: I'm not going to accept it.

MS DAVENPORT: Well, with respect perhaps, Commissioner, if the period from 25 October which is the first contact between - - -

THE COMMISSIONER: Can I just ask this question. Should material go to the - - -

30 MS DAVENPORT: Director of Public Prosecutions.

THE COMMISSIONER: - - - Director of Public Prosecutions why does it have to be tendered as an exhibit?

MS DAVENPORT: Because it's also, Commissioner, it will be relied upon in terms of proving the contact that there was.

THE COMMISSIONER: What greater verisimilitude does it get because it becomes an exhibit in this inquiry?

40 MS DAVENPORT: Because otherwise, Commissioner, there is no independent evidence to confirm that the timing et cetera of those phone calls was in accordance with the evidence.

THE COMMISSIONER: I understand that but I mean the fact that it's admitted here doesn't add to the weight to be attached to.

MS DAVENPORT: Well, for example, that phone call that I referred to in terms of 26 October, the length, the duration of that is in my submission relevant to corroborate in a sense Mr Blackadder's version.

THE COMMISSIONER: I thought you just did. A question was asked and there is no evidence to support the dispute. The question was asked from Ms David to which you could've objected because there is no evidence by her client to the contrary. Can you just show me what the documentation was, and that's all there is?

10

MS DAVENPORT: That's all it is. This is one is Mr Blackadder, this one is Mr Gamage.

THE COMMISSIONER: All right. I have been successfully oppressed.

MS DAVENPORT: Thank you, Commissioner.

THE COMMISSIONER: So just tell me what they are.

20

MS DAVENPORT: They are the Telstra call charge records of Don Gamage in relation to his landline being 0-2-9-6-7--1-7-6-2-3.

THE COMMISSIONER: For what period?

MS DAVENPORT: And if I could - - -

THE COMMISSIONER: (not transcribable) Mr Blackadder's landline.

30

MS DAVENPORT: No, for Mr Gamage, it's integrated between his landline and his mobile.

THE COMMISSIONER: All right. Well, just describe it as the Telstra call - - -

MS DAVENPORT: Charge record.

THE COMMISSIONER: Call charge records.

40

MS DAVENPORT: Between 1 September - - -

THE COMMISSIONER: And Mr Gamage from - - -

MS DAVENPORT: 1 September.

THE COMMISSIONER: - - - 1 September, 2000-and?

MS DAVENPORT: 9 to 21 December, 2009.

THE COMMISSIONER: I'm sorry you got involved in that. It's just clearly an internal matter. I'm sorry, the other counsel look a bit bored listening to this irrelevant stuff. That's Exhibit 47.

#EXHIBIT 47 - TELSTRA CALL CHARGE RECORDS OF MR GAMAGE FROM 1/09/2009 TO 21/12/2009

10 THE COMMISSIONER: And Exhibit 48?

MS DAVENPORT: Is the call charge records of Mr Blackadder for his mobile phone 0-4-1-2-2-5-5-1-4-9 from 1 September through to 17, sorry, to the 20, 17 December.

THE COMMISSIONER: Exhibit 48 is the Telstra call charge records for Mr Blackadder from 1 September, 2009 to 17 December, 2009.

20 **#EXHIBIT 48 - TELSTRA CALL CHARGE RECORDS FOR MR BLACKADDER FROM 1/09/2009 TO 17/12/2009**

MS DAVENPORT: The last but not least is the bundle that you had your eye on, Commissioner, and they are transcripts of the contact between investigators Michael Riashi and Paul Grainger with Mr Gamage at Coonamble on both 8 and 9 April last year and it consists of a number, I think there was seven. Sorry, this year, 2010.

30 THE COMMISSIONER: So what does that prove?

MS DAVENPORT: Commissioner, it goes to the issue of the execution of the Section 22 notices. If you recall, Commissioner, part of those were shown yesterday in this Commission.

THE COMMISSIONER: Yeah. All right. Just, so how do I describe them?

MS DAVENPORT: The conversations between ICAC - - -

40 THE COMMISSIONER: What is it? It's a transcript?

MS DAVENPORT: It's a transcript of conversations between investigators Riashi and Granger and Mr Gamage at Coonamble on 8 and 9 April, 2010.

THE COMMISSIONER: Between Mr Riashi and - - -

MS DAVENPORT: Mr Gamage and at times also Mrs Gamage and - - -

THE COMMISSIONER: What date?

MS DAVENPORT: 8 and 9 April. Some of them are on the 8th, some of them on the 9th. There are in all I think - - -

THE COMMISSIONER: 2010?

MS DAVENPORT: Yes, Commissioner.

10 THE COMMISSIONER: Yes. That's Exhibit 49.

#EXHIBIT 49 - TRANSCRIPTS OF CONVERSATIONS BETWEEN INVESTIGATORS MICHAEL RIASHI/ PAUL GRAINGER AND MR GAMAGE ON 8/04/2010 AND 9/04/2010

20 MS DAVENPORT: The last document, Commissioner, is a document entitled Australian Standard Employment Screening which is produced by whom?

THE COMMISSIONER: What is what?

MS DAVENPORT: It's from the Australian Standards. It's recommendations in relation to the process of employment screening and it goes to the corruption prevention issues./

THE COMMISSIONER: All right. What's the document called?

30 MS DAVENPORT: It's called Australian Standard Employment Screening.

THE COMMISSIONER: It's Exhibit 50. The Australian Standard Employment Screening.

#EXHIBIT 50 - AUSTRALIAN STANDARD EMPLOYMENT SCHEME

40 MS DAVENPORT: And that's it.

THE COMMISSIONER: And that's it, all right.

MS DAVENPORT: But subject to getting, there has been an attempt to contact Mr Finlay and they've left an urgent message asking him to call back.

THE COMMISSIONER: All right. I presume that nobody here is really interested in being here when Mr Finlay's here.

MR HARRIS: I'm not sure whether I'm interested or not.

THE COMMISSIONER: Well, why are you interested? I can't see that it's anything to do - - -

10 MR HARRIS: Well, sir, I think the case of Mr Sivarasa is that my client who was excused today was instrumental in Mr Perera - - -

MS DAVENPORT: Yes, mmm.

MR HARRIS: Sorry, Mr Gamage actually being admitted to the Institute - - -

MS DAVENPORT: Yes.

20 MR HARRIS: But I haven't formulated a view.

THE COMMISSIONER: The relevance of Mr Finlay's evidence is the, well, it goes to the measures taken by his body to ensure that what they certify is true, that generally and not in relation to Mr Gamage. I'm not interested in his dealing with Mr Gamage. I'm interested in the general measures that the Engineers Australia take to ensure that what they certify is true.

MR HARRIS: Yes, yes.

30 THE COMMISSIONER: So if you have given the assurance that he will not be asked any questions about Mr Gamage or Mr Sivarasa, then there's no reason for you to be present I assume.

MR HARRIS: I accept that, thank you.

THE COMMISSIONER: Mr David?

MS DAVID: Yeah, I mean, I have some concerns.

40 THE COMMISSIONER: You can be here if you want to.

MS DAVID: Yeah, I am a bit, well, you know - - -

THE COMMISSIONER: Well, we'll let you know when he's coming and you can come.

MS DAVID: Yes, and we can work with that.

THE COMMISSIONER: And we can do it with both of you but I'm not adjourning. If we get a date that's suits him and us - - -

MR HARRIS: I'll (not transcribable)

MS DAVID: I appreciate that.

THE COMMISSIONER: I'm not going to adjourn it. I mean (not transcribable) disrespect but it's just, I just don't regard it as worth it.

10

MS DAVID: Yeah, no, I appreciate that.

THE COMMISSIONER: And you'll be given the same notice as Mr Finlay.

MS DAVID: I just want o, if I could perhaps that I have, I'll just make sure - - -

MS DAVENPORT: Commissioner, just in terms of Mr Finlay, given what you have said, it's not going to affect any submissions that I might make because it goes to corruption prevention issue which will not be - - -

20

THE COMMISSIONER: You may make some submissions on that too, but I mean - - -

MS DAVENPORT: But generally speaking that's not - - -

THE COMMISSIONER: That's correct.

30 MS DAVENPORT: So I - - -

THE COMMISSIONER: There's no reason why you shouldn't start preparing now so how long would you like?

MS DAVENPORT: Commissioner, I'd like until the close of business on Friday.

THE COMMISSIONER: Yes. So can we have your submissions on Friday week?

40

MS DAVID: Yes.

THE COMMISSIONER: Yes. Mr Harris?

MR HARRIS: Yes, I doubt if I'm going to make any.

THE COMMISSIONER: Well, if you want to make submissions they should be in by Friday week and you should have Ms Davenport's submissions what - - -

MS DAVENPORT: By Monday morning I should - - -

THE COMMISSIONER: By Monday morning. Will that give you sufficient time?

10 MS DAVID: Yes, I think so, Commissioner, thank you.

THE COMMISSIONER: Yes, very well.

MS DAVENPORT: Sorry, Commissioner, I don't appear to have a copy of Exhibit 39. I think I missed getting access to that.

THE COMMISSIONER: The two statements. Can you just make sure Ms Davis gets the two copies. All right. So shall we adjourn and then the inquiry is complete subject to hearing from Mr Finlay.

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**AT 1.10PM THE MATTER WAS ADJOURNED
ACCORDINGLY**

[1.10pm]