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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

Reference: Operation E08/2469

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 4 OCTOBER, 2011

AT 10.07 AM

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

THE COMMISSIONER: In this public inquiry the Commission is investigating allegations that fall into two categories. The first is that employees of various local councils and other public authorities have accepted benefits including cash, gift cards and other items from private companies which supplied goods to these public authorities in return for placing orders and continuing favourable business relationships with these companies. Counsel Assisting will in the course of his opening identify the local authorities involved and also the local authorities that will be investigated in this public inquiry.

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The second category of allegations that will be investigated concerns allegations that Geoffrey Hadley, formerly senior council storeman at Bathurst Regional Council, and Kerry Smith, formerly storeman at Yass Valley Council, facilitated payment of fraudulent invoices generated by Robin Newman and others.

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The general scope and purpose of this public inquiry is to gather evidence relevant to the allegations that I have mentioned for the purpose of determining matters referred to in section 13(2) of the Independent Commission Against Corruption Act. I draw attention to the document headed Standard ICAC Directions. I understand that all interested parties have been provided with a copy of this document. Those directions are hereby ordered to apply to this hearing.

I shall now invite Counsel Assisting to deliver his opening address. There will then be a short adjournment. When we recommence I will take the appearances of counsel and the leading of the witnesses to be called will commence. Mr Campbell.

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MR CAMPBELL: Commissioner, on 29 November, 2008 Bathurst Regional Council received an anonymous tip-off of a most disturbing kind. An email asserted that the council had been ripped off to the tune of \$400,000. The allegation was that false orders had been placed from the store by a named council employee to a number of named suppliers. The council employee was Geoff Hadley, at the time the senior employee in the store. Among the regular suppliers were businesses associated one way or another with a man named Robin Newman.

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Mostly these false orders related to safety equipment of the type commonly used in roadwork. The orders were false in various senses. First a great number were simply and entirely bogus, no goods were in fact ordered or delivered. Fake purchase orders and invoices were created to cheat council out of very large sums of money. The second category is said to relate to goods which were under supplied and the third to good old-fashioned over-charging although I should say at once that on the basis of the Commission's subsequent forensic financial investigation it cannot be satisfied that any goods described in the tainted invoices were ever delivered.

Following a police investigation Hadley and Newman were convicted and are currently in gaol. Each pleaded guilty to his part in defrauding the council of \$757,467.15, a figure that must have completely appalled the people of Bathurst, indeed of the whole of New South Wales. Alas, the truth in fact may be much worse. I had mentioned already the Commission's forensic financial investigation. That occurred as part of a much wider major investigative campaign undertaken by the Commission in response to these matters to which I will return.

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The Commission has good reason to believe that the total value of Hadley's fraud is an astounding \$1,423,861.92. It takes a while to sink in, one million four hundred and twenty three - I'll withdraw that, \$1,423,861.92 of public money lost due to the corrupt conduct of one not very senior public official and involving as many five suppliers in private enterprise over a period of five years from 2004 to 2009.

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How did this happen? The answer this question and in response to the scandal, the Commission launched this major investigation, continuing for two years which has uncovered evidence implicating officials of 110 public authorities being 88 councils and 22 other governmental instrumentalities. Commissioner, I do not propose to take up the Commissioner's time now reading the name of each authority. At the close of this address I will tender a full list.

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This intensive campaign, known as Operation Jarek, involved every arm of the Commission, investigative, legal, financial and corruption prevention. This has certainly been one of the biggest investigations by the Commission in it's 20 year or so history. What is exposed by this investigation will take a little time to describe but what I want to say straightaway is that the Hadley/Newman fraud did not start with the large scale cheating into which it grew. Originally Newman actually supplied goods from companies with which he was associated. At the start one of these other suppliers might provide in Hadley's words a case of beer or something at the end of the year. He told the police that tickets to a show or the football were common gifts from supplier companies.

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Hadley was offered things like accommodation for the night at venues as diverse as Port Stephens and Darling Harbour. These corrupt, I'll withdraw that. These kickbacks were a corrupt introduction to the absolute corruption that later developed. Hadley told the police that right from the start he knew it was wrong for sure.

On Newman's side of the story, if it can be believed the progression to the next level started where I would only supply half, meaning half the goods invoiced, with him and Hadley splitting the difference between themselves. He told the police then we started doing things on the side where I would just write out invoices and no goods would be supplied. They gave a name

to an unregistered company and employed the Australian business number of another entity to cover their tracks. The name was Robin Newman Pty Limited.

The Commission's investigations have established that between April 2004 and September 2008 791,938.24 of public money was paid for this non-existent entity by Bathurst Regional Council

THE COMMISSIONER: Is that \$791,000?

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MR CAMPBELL: I do beg your pardon, Commissioner, \$791,938.24. Investigations seem to confirm Newman's story that he and Hadley split these proceeds equally. I say seem to confirm given that a large of the money paid to Hadley was posted to him in cash, not all of which can be accurately traced.

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What we say about Hadley and Newman, in hindsight, is that a definite pattern emerges. The pattern commences with what might seem to be lesser inducements or incentives to do more business by placing more orders with ones supplier. This stage can be characterised as a form of grooming. The supplier providing the incentive, in truth a kickback, is encouraging the placement of more and bigger orders. The public official, often on a modest income appreciates the benefit and obliges, placing further orders whether the goods are required by his employer or not, whether the price is fair or not and eventually whether all of the goods or any of them are delivered or not. Each of the official and the supplier degenerating to the position where the public is robbed as in the Hadley/Newman case of large sums.

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Hadley is not the only public official to have been corrupted in this way. Newman, through a legal business entity with which he was associated, Pinnacle Traders Pty Limited was a supplier to Yass Valley Council. The storekeeper there at the relevant time was named Kerry Smith. His progression to corruption was similar to Hadley's and need not be recounted at this time. We propose to establish that between April 2006 and December 2008 he received kickbacks totalling \$18,128.14 in respect of invoices issued by Pinnacle, 15 in number, and amounting to \$13,026.27.

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The Commission's investigation uncovered evidence of that first stage of grooming in each of the 110 organisations I have referred to. That is to say evidence of officials organised to procure necessary goods and equipment on behalf of their employer organisation receiving and accepting gifts from the suppliers they dealt with.

From the standpoint of the suppliers there can be no doubt that these gifts were incentives or inducements to encourage further dealings. I should say one or two things about the number 110. There has been much media discussion in the days leading up to this hearing of this number. There have been suggestions that if an organisation is not included in this number it has

somehow been exonerated. That is not so. By and large the 110 organisations are the customers of three suppliers only. The names of these suppliers were thrown up during the investigation leading to further inquiries about the identity of their customers. The results of the investigation show that this culture of the giving and receiving of incentives has been so pervasive that one can have no confidence that we have accurately outlined the full extent of its reach. That is why we intend to focus two-thirds of the public hearing on this insidious form of corruption. We will look at the fraud matters I have spoken of in the third week. The

10 second thing I wanted to say about the number 110 is that we cannot possibly hope to lead direct oral evidence in the time available relating to each of the 110 organisations. We have therefore decided to concentrate in oral evidence on 15 of them. We have had to take a pragmatic approach. We have chosen those organisations whose officials received gifts having the highest total cash value. Evidence about the remaining 95 will be in documentary form only. The 15 organisations are, Ballina Shire Council, Bathurst Regional Council, Broken Hill City Council, Burwood Council, Byron Shire Council, The City of Botany, Lithgow City Council, Liverpool

20 City Council, Narrandera Shire Council, Orange City Council, The Roads and Traffic Authority, The Council of the City of Sydney, Walgett Shire Council, Waverley Council and Yass Council. I withdraw that, Yass Valley Council. There can be no doubt that the giving and receiving of incentives is corrupt. This is amply illustrated by the fact that every organisation affected in accordance with usual government practice had in place prohibitions on the receipt of gifts and benefits either in a general Code of Conduct for employees or in a dedicated policy dealing with the topic. Many have registers for declaring the receipt of a benefit. But none of these usual methods proved effective in preventing corruption in the cases we

30 have investigated. One important reason for this may be the self-interest of the suppliers. We will hear evidence from employees and officers of three suppliers, Hilindi Pty Limited, trading as R&R Tape Supplies, Momar Australia Pty Limited and NCH Australia Pty Limited. The evidence will reveal a business model where sales staff are encouraged to build relationships with the buyer, the employee responsible for procurement, rather than the customer, the organisation. Obtaining a sale and securing further orders are the driving force of the model.

40 Gifts are stepped in a sliding scale. The bigger the order the better the gift. Surprisingly perhaps the suppliers claim to be unaware that their practices breached business ethics in the public sector. In their dealings with outside suppliers, relatively junior public employees were not supported by the organisation. Most organisations did little to maintain observance of the policies they instituted.

Even so, many of the officials readily appreciated the wrongdoing involved. They proved susceptible to the supplies to the advances or became inured by the pervasiveness of a culture. Still, it would be wrong to view these

matters as misconduct confined to a few bad apples. In truth, the corruption is systemic and in the end responsibility lies with the public section itself.

But it must be said that there is reason to doubt the sincerity of some protestations of ignorance on the part of the suppliers. It has been very common for the incentives, the nature of some of which I will describe to be delivered to the buyers home rather than the customers usual business address. Clear evidence, I will submit, that both giver and receiver were well aware of the true nature of the transaction.

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The gifts were of a personal rather than a business nature. An Apple iPod, a Parker pen set, a Camcorder, an iPhone. In one case that the Commission will examine an official received three iPhones delivered to his home address over a period of seven months. The buyer was often entitled to choose his or her gift. It might be argued that some of these type of things, and I have not sort to be exhaustive, could be useful at work. No such argument could be raised about a dozen bottles of wine, but fourteen such gifts were delivered to public officials at their homes on behalf of NCH Australia between March and December, 2010. Nor could that argument be raised in respect of gift vouchers given to buyers, a mode of incentive favoured by Momar and R&R Tape, even less so in respect of a holiday at Batemans Bay or Palm Beach.

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Gift vouchers are a prime example of corrupt conduct. No one could fail to identify the payment of cash to a public official responsible for procurement for what it was, a kickback or a bribe. Vouchers are monies kind. They are redeemable in shops for the items displayed for sale, yet gift vouchers totalling \$64,380 over the period reviewed were given to and accepted by public officials working for the overwhelming majority of the 110 authorities.

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The total value of gifts of the type I have been describing over the period reviewed is \$116,617 as best we can calculate. I say as best we can calculate, Commissioner, because some items of a small nature we have not sought to calculate. But this brings apparent corruption actually uncovered by Operation Jarek to a figure of \$1.5 million. As I indicated, we cannot be satisfied that so far as the incentive segment of the investigation is concerned, that we have done any more than identify the tip of an iceberg.

40

What can be done about these things? In due course recommendations must be made, especially to local government. I would like to take a little time to outline some of the considerations relevant to corruption prevention. To do that I wish to highlight some aspects of the Hadley and Smith cases I spoke about earlier.

In the period of time since the activities of both these errant storemen were uncovered both Bathurst Regional Council and Yass Valley Council have done much work to minimise the opportunities for corruption of the kind

that occurred and to minimise the risk of it in other procurement areas. It should not be thought otherwise. The details will be explored in evidence.

Each of Hadley and Smith were entirely responsible for what might be termed an end to end procurement regime. The storemen ordered purchases, he authorised them, took delivery, organised where delivered goods were put and passed invoices for payment. He also had a role in what was supposed to be an independent stock take. The opportunity for corruption is obvious. Until the changes made in response to the materialisation of this moral hazard, neither council had any satisfactory system of inventory management in place.

How this contributed to what happened can readily be illustrated by some examples. A frequent entry on the Hadley/Newman false invoices was barrier safety mesh. This is used to fence off hazards such as roadworks. It can be re-used. During the period 2006 to 2008 according to the invoices 444.55 kilometres of barrier mesh was supposedly supplied to Bathurst Regional Council, enough to line the Great Western Highway between Bathurst and Sydney and return. Over the period Hadley said he was ordering about 11 kilometres per month. Since he has gone the Bathurst Regional Council has required only point six of a kilometre per month.

Under Newman Pinnacle Traders purported to supply 4,000 highway guide posts to Yass Valley Council at a cost of \$57,814. According to the relevant Australian Standard, guide posts may be spaced at intervals of between 150 metres and 300 metres on alternative sides of the highway. On this basis Yass Valley Council had sufficient stock to line the Hume Highway between Yass and Sydney three times over. As is so often the case, efficient business models in the public sector provide protection against corruption as well as economic benefits and the public thereby is doubly protected.

The evidence in this inquiry will show that the mere adoption of policies will not proof an organisation against the insidious pervasive web of corruption by kickbacks of various kinds. Much more needs to be done in this area. Again, there are efficiency issues in addition to those relating to corruption prevention. The two go hand in hand. I expect to call evidence about the available measures as well as tender from the general managers of some of the councils concerned the statements they have given in relation to this important area. Commissioner, I tender the schedule of 110 public authorities.

THE COMMISSIONER: Yes. The schedule of 110 public authorities will be Exhibit 1 in this public inquiry.

MR CAMPBELL: May it please the Commission.

THE COMMISSIONER: Yes. Thank you, Mr Campbell. The Commission will now adjourn for a brief period.

MR CAMPBELL: Commissioner, pursuant to Section 34, I seek leave to examine, cross-examine witnesses concerning relevant matters during the public inquiry.

10 THE COMMISSIONER: Yes, you have that leave Mr Campbell.

MR CAMPBELL: If it please the Commission. And I tender the hand up brief, Commissioner.

THE COMMISSIONER: Yes, the hand up brief contained in a number of bundles is it?

MR CAMPBELL: Yes, it is. It's contained in I think 30 volumes, Commissioner, 29 of them.

20

THE COMMISSIONER: Right. Are they numbered?

MR CAMPBELL: They are numbered and paginated.

THE COMMISSIONER: Numbered from what number?

MR CAMPBELL: From number 1.

THE COMMISSIONER: From number 1.

30

MR CAMPBELL: 1 to 29. I think we've placed the index with the papers, Commissioner.

THE COMMISSIONER: I'm sorry, the index - - -

MR CAMPBELL: That is the index to the hand up brief.

THE COMMISSIONER: Well I think that what we'll do is we will give, we will make the present Exhibit 1 Exhibit 30. So Exhibit 1 will become
40 Exhibit 30, the present Exhibit 1 will become Exhibit 30, that is the schedule of 110 public authorities. And volumes 1 to 29 of the hand up brief will be Exhibits 1 to 29 respectively.

#EXHIBIT 1 - FOLDER 1 OF TENDER BUNDLE

#EXHIBIT 2 - FOLDER 2 OF TENDER BUNDLE

#EXHIBIT 3 - FOLDER 3 OF TENDER BUNDLE

#EXHIBIT 4 - FOLDER 4 OF TENDER BUNDLE

10 **#EXHIBIT 5 - FOLDER 5 OF TENDER BUNDLE**

#EXHIBIT 6 - FOLDER 6 OF TENDER BUNDLE

#EXHIBIT 7 - FOLDER 7 OF TENDER BUNDLE

20 **#EXHIBIT 8 - FOLDER 8 OF TENDER BUNDLE**

#EXHIBIT 9 - FOLDER 9 OF TENDER BUNDLE

#EXHIBIT 10 - FOLDER 10 OF TENDER BUNDLE

#EXHIBIT 11 - FOLDER 11 OF TENDER BUNDLE

30 **#EXHIBIT 12 - FOLDER 12 OF TENDER BUNDLE**

#EXHIBIT 13 - FOLDER 13 OF TENDER BUNDLE

#EXHIBIT 14 - FOLDER 14 OF TENDER BUNDLE

40 **#EXHIBIT 15 - FOLDER 15 OF TENDER BUNDLE**

#EXHIBIT 16 - FOLDER 16 OF TENDER BUNDLE

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#EXHIBIT 29 - FOLDER 29 OF TENDER BUNDLE

#EXHIBIT 30 - SCHEDULE OF COMPANIES

40 MR CAMPBELL: May it please the Commissioner. And I apply for an order under section 112 of the Act, Commissioner, suppressing the home addresses of the public officials and the bank account details of them and any other private individuals which are referred to in the hand up brief.

THE COMMISSIONER: Yes. A suppression order will be made as sought by counsel assisting.

**SUPPRESSION ORDER IN RELATION TO THE HOME
ADDRESSES OF THE PUBLIC OFFICIALS AND THE BANK
ACCOUNT DETAILS OF THEM AND ANY OTHER PRIVATE
INDIVIDUALS WHICH ARE REFERRED TO IN THE HAND UP
BRIEF**

10 MR CAMPBELL: Specifically, Commissioner, I'd also ask that there be a
suppression order in respect of, I'll withdraw that, in respect of the matters
which I opened on that we will be dealing with in the third week. At this
stage if any application for access to any of that material should be made to
me in accordance with the, I'll withdraw that, should be made to the
solicitor in accordance with the practice direction. That material is typically
to be found in volumes 1 to 9, 1 to 11, I'm sorry.

THE COMMISSIONER: That's a difficult order to make, Mr Campbell,
because it's so vague.

20 MR CAMPBELL: I accept that valid criticism, Commissioner. Perhaps I'll
think of that and make a more precise order in relation to specific matters
later on.

THE COMMISSIONER: Yes. Well so the only suppression order at this
stage is a suppression order in the terms initially sought by you relating to
personal details of public officials contained in the hand up brief.

MR CAMPBELL: May it please the Commission. I believe there are other
practitioners in court who have applications, Commissioner.

30 THE COMMISSIONER: Yes. I'll now take appearances.

MR VINEY: Commissioner, Viney, V-I-N-E-Y, I seek the Commissioner's
leave to appear for Martin Slade.

THE COMMISSIONER: Yes, you have that leave, Mr Viney.

MR VINEY: Thank you.

40 MR OATES: Oates, Commissioner, I seek your authorisation to appear for
Mr Fisher.

THE COMMISSIONER: Yes, Mr Oates, you have that leave.

MR OATES: If the Commission pleases.

MR CLAY: May it please the Commission, my name is Clay, C-L-A-Y, I
seek leave to appear for Bathurst Regional Council and Yass Valley
Council.

THE COMMISSIONER: Yes, you have leave.

MR CLAY: May it please the Commission.

MR WIGNEY: May it please the Commission, my name is Wigney, W-I-G-N-E-Y, I seek authorisation under the Act to appear on behalf of NCH Australia.

10 THE COMMISSIONER: Yes, you have leave Mr Wigney.

MR WIGNEY: (not transcribable)

MR NAYLOR: If the Commission pleases, my name is Naylor. I seek leave to appear for 13 persons. May I hand up, Commissioner, a list of those persons and read them on to the record?

THE COMMISSIONER: Yes, certainly.

20 MR NAYLOR: First of all, Commissioner, Lee Warner, W-A-R-N-E-R, second Jeff Duncum, D-U-N-C-U-M, third Robert Nies, N-I-E-S, fourthly Scott Ingerwersen I-N-G-E-R-W-E-R-S-E-N, fifth Peter Naidoo, N-A-I-D-O-O, sixthly, Christopher Meyers M-E-Y-E-R-S, seven Anthony Harman H-A-R-M-A-N, eight Donald Harris, nine, Grahame Gibbons G-I-B-B-O-N-S, ten Max Bancroft B-A-N-C-R-O-F-T, eleven Amjad Maaya M-A-A-Y-A, twelve Geoffrey Hadley, thirteen Kerry Lloyd Smith and might I note, Commissioner, that I'm instructed by Mr Robert McIlwaine, of the legal representation.

30 THE COMMISSIONER: Yes. Mr Naylor, in my experience here there is often problems with multiple representation because of conflicts of interest. At this stage I am quite unable to apply my mind to whether there is any conflict of interest here. I actually do not know what the involvement is of any of the persons whom you represent. Have you considered this aspect?

40 MR NAYLOR: I have, I have, Commissioner. Over the course of the long weekend I read the hand up brief that has been tendered today and I've also had conferences last Friday with a number of the persons for whom I seek leave to appear. There was one instance that I detected of a possible conflict and that situation has been remedied in the sense that I don't appear for one of those persons now. I haven't detected any conflict or potential conflict in respect of the persons for whom I seek leave. I can indicate that it's likely on the instructions I have from Mr McIlwaine, that separate counsel will be engaged during the course of the hearing to appear for Mr Hadley, certainly before the end of the last week.

THE COMMISSIONER: That seems to suggest that there is a conflict of interest- - -

MR NAYLOR: No, I don't- - -

THE COMMISSIONER: - - -relating to Mr Hadley.

MR NAYLOR: I don't say that because I detect any conflict, I say that simply because of the workload involved, that's all.

10 THE COMMISSIONER: Very well. Mr Campbell, do you have any comment to make on that, on the question of potential conflict of interest there?

MR CAMPBELL: So far as I can tell, Commissioner, most of the persons for whom Mr Naylor seeks leave to appear are council officers from different councils in different parts of the state, but I've, he's currently given me a copy of his list earlier this morning and I've not had a chance to study it, but for instance I do notice that at least two of the persons, Mr Nies and Mr Duncum, are employed by the one council and I'm not, I'm not sure whether there will be any issue between them, but that's one matter that just
20 occurs to me at the moment. It's, I think I'd need further time to consider whether in actual fact there is likely to be conflict.

THE COMMISSIONER: Yes.

MR CAMPBELL: For instance, Mr Naylor does not seek leave to appear, so far as I can tell from his list, for any supplier.

30 THE COMMISSIONER: Yes. Yes, Mr Naylor, if there are persons from the same council then there is a notional possibility that one might seem to ascribe some responsibility for what occurred to another.

MR NAYLOR: May I respond to that, Commissioner. The potential conflict that I had identified last Friday in fact was in relation to a person who was employed by the same council as two of the other persons for whom I'd seek leave today, so I'm aware of the issue that, Commissioner, you raise. All I can say is on the information that I've seen, which includes the contents of the brief, I haven't detected any other conflicts at, at this stage.

40 THE COMMISSIONER: Well, Mr Naylor, I give you leave to appear but I'm sure you understand that will be continuously under review.

MR NAYLOR: Yes.

THE COMMISSIONER: Yes. Very well. You have leave on that basis.

MR NAYLOR: Thank you, Commissioner.

THE COMMISSIONER: Yes.

MR HORTON: Commissioner, my name is Horton, H-O-R-T-O-N. I seek leave to appear for witnesses Robert Epps and David Wong.

THE COMMISSIONER: Yes, there again there is, you're appearing for more than one person.

MR HORTON: I understand that, Commissioner.

10

THE COMMISSIONER: And I- - -

MR HORTON: I've had conferences with both gentlemen over the telephone, Commissioner (not transcribable)

THE COMMISSIONER: Are they employed by the same entity?

MR HORTON: Yes, NCH, Commissioner.

20

THE COMMISSIONER: I'm very uneasy about that. I won't give you leave to appear for both because there will be allegations made against each of them and what happens, I mean, there is then, there is a notional prospect of each giving a different kind of evidence.

MR HORTON: Yes, Commissioner. Perhaps in the interim, I think they're due to give evidence on Thursday- - -

THE COMMISSIONER: Yes.

30

MR HORTON: - - -(not transcribable)

THE COMMISSIONER: I'll give you leave, I will give you provisional leave to act for both and bear in mind the comments I have made and before either Mr Epps or Mr Wong gives evidence, that leave will be reviewed and I take it you will take whatever steps you deem necessary in the meantime.

MR HORTON: I will do.

40

THE COMMISSIONER: Yes. Thank you, Mr Horton. You have leave to appear for both at this stage.

MR HORTON: Thank you, Commissioner.

THE COMMISSIONER: Yes. Are there, is there any other counsel?

MR HARRIS: Commissioner, my name is Harris. I'm seeking leave to appear for two persons also. I understand they don't know each other, they work for different suppliers. The name of the first is Paul Wright, W-R.

THE COMMISSIONER: Yes.

MR HARRIS: And the other is Mr Jamie Hopkinson.

THE COMMISSIONER: They appear for different suppliers?

MR HARRIS: Yes. I - - -

10 THE COMMISSIONER: I will give you leave to appear for both - - -

MR HARRIS: Thank you.

THE COMMISSIONER: - - - but should anything occur which suggests any conflict that will be reviewed.

MR HARRIS: Right, thank you.

THE COMMISSIONER: Yes.

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MS HUGHES: Commissioner, my name is Hughes. I'm seeking authorisation to appear on behalf of Mr Douglas Quinn.

THE COMMISSIONER: Yes, you have that leave.

MS MOODY: Commissioner, my, my name is Moody. I appear for Gary Blackford, I seek leave to appear for Gary Blackford, former employee of NCH.

30 THE COMMISSIONER: Yes, you have leave.

MS TRAYOR: Commissioner, Trayor. I seek leave to appear for Jacqueline Verdeyen, an employee of NCH.

THE COMMISSIONER: Yes, you have leave.

MS MUNN: Commissioner, my name is Munn, M-U-N-N and I seek leave to appear for three individuals who are sales for Momar Australia.

40 THE COMMISSIONER: Well, I might, the comments I made to Mr Horton apply. I won't give you leave to appear for those persons by the time they come to give evidence, for all of them, for the reason that I explained to Mr Horton but you have leave to appear in the interim and I assume that you will take whatever steps necessary to ensure that they are properly represented in due course. Yes.

MR PATTERSON: Commissioner, my name is Patterson and I seek authorisation to appear on behalf of Matthew Alan Kelly and Roger Martin

who are employees of separate organisations and are not known to one another.

THE COMMISSIONER: You have leave.

MR PATTERSON: Thank you, Commissioner.

THE COMMISSIONER: I think that will now, I've taken the appearances of all counsel. Mr Campbell.

10

MR CAMPBELL: I call Martin Slade.

THE COMMISSIONER: Yes, please be seated, Mr Slade. Mr Viney appears.

MR VINEY: I do, thank you, Commissioner. He seeks a declaration under section 38 of the Act.

20

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

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

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THE COMMISSIONER: Now, Mr Slade, you understand that you're obliged to answer all questions asked of you and it is a serious criminal offence either to refuse to answer or to give false answers. I'm sure you understand that?

MR SLADE: I do.

THE COMMISSIONER: Yes, thank you. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence? That's a matter for your conscience.

MR SLADE: Oh, under oath.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Slade, are you Martin Slade?---I am.

10 And what is your address?---It's, , , , . I've moved in the last few weeks and I was previously at , , , ,

I think you've answered my question, the first part of it. And are you employed by Hilindi Pty Limited trading as R&R Tape?---Yes.

I'll just call them R&R Tape. For how long have you been employed by that company?---Three years.

20 Did you start at the end of October 2008?---I did.

And what's the nature of R&R Tape's business?---We're a telephone sales company specialising in tape and safety equipment.

Tape and?---Safety equipment.

What type of safety equipment are you talking about?---Gloves, boots, work wear, hard hats.

30 And when you say tape do you mean adhesive tape or other sorts of tape?
---No, adhesive tapes.

All right. And are you employed as a sales representative by the company?
---Yes.

And from what you told me earlier on do we take it that your, your work is done over the telephone?---Yes.

And who is the boss at R&R Tape?---Mr Richard Pearce.

40 Is he a relative of yours?---He is my step-uncle.

Right. And what, is anyone else related to Mr Pearce? I withdraw that, Commissioner. And is Mrs Roberta Pearce at the company?---Yes. She's my aunty.

And what's her job at the company?---She's a director.

Does she take an active part in the day-to-day operations of the company?

---She's responsible for the wages and the tax.

As a salesman, who do you report to directly?---Mr Pearce.

And is there any, I withdraw that. Do you do you work from a fixed location or from your home?---No, from a fixed location.

And where is that?---In West Gosford.

10 And who else works in the office?---Do you want me to name names?

Yes?---Yeah. Okay. Brian Middleton, Jamie Hopkinson, Kylie Begg and a new guy that's just started called Aaron Still.

Now, of those people, is Mr Middleton engaged in sales?---Yes.

And Mr Hopkinson, what's his role?---He's predominantly the storeperson.

And is he also a relative of Mr Pearce?---No.

20

No. The, you mentioned a Kylie Begg?---Yes.

What's, what's, what's Ms Begg's job?---She's the accounts lady.

And the, and the new fellow who started there?---He's in sales. And there is one other person, Eron Fisher, but he works from home.

All right. Is he also in sales?---He's in sales, yes.

30 Now, the type of products you sell, who do you sell them to?---Private and councils or government departments but private business as well.

All right. Just let me ask you about the councils and government departments. Do you have a set client roster?---What, we have a client roster that we generate ourself, but yes, I had been dealing with the councils.

Right. And are they various councils throughout New South Wales?---Yes.

40 And were some of those people clients of R&R Tape or customers of R&R Tape when you first started there?---Yes.

And have you built up new contacts since that time?---Yes.

And the, is it the, the system adopted there that you telephone a known contact at one of the councils and inquire whether they need any further of your products?---Yes, pretty much, yes.

And apart from, and do you also canvass new clients in the same way?

---Yes.

And again do you focus on, I withdraw that. Up until say the start of this year, did you focus on councils and government authorities?---Not predominantly but yes, we would try to supply them.

Now, I'd like to ask you, I withdraw that. So far as the price structure of the products that you sell is concerned, does Mr Pearce give you a price list or other information?---There is not set price list. We work to a profit margin that has to be above 43 per cent.

All right. And how do you determine, I withdraw that, Commissioner. If there's no set price list, how do you achieve your profit margin of 43 per cent as you put it?---Well, whatever we buy the product for plus 43 per cent as a minimum.

So you're effectively a middleman. Is that right?---Yeah, we're a wholesaler per se.

20 Well, do you have stock on hand?---Some stock, yes.

Right. So you know the price for which the stock was acquired. Is that right?---Yes, yes.

Or you can identify another supplier who can supply the product that you wish to sell?---Yes.

And whatever that organisation charged or whatever the stock cost you, you have a working instruction that you have to get more than 43 per cent on top. Is that right?---Yes.

All right. And the 43 per cent is just a figure that Mr Pearce has given you. Is that correct?---That's the way it's always been, yes.

Well, how did you first find out about it?---Well, he told me.

All right. Now, in dealing with your work, I'll withdraw that. Are there other companies that you know of who are competitors of R&R Tape supplying the same or similar products to the same market?---Yes.

40 And is it a competitive market?---Yes.

Does that make sales sometimes difficult to achieve?---Sometimes.

So how do you go about giving yourself a competitive edge in that market? ---Trying to be, trying to maybe either reduce the price or offering incentives sometimes.

Well, I'll just take the first part first. Reducing the price is a limited option, is it not?---It is.

Because you've got your bottom line- - -?---Yes.

- - -which is your cost plus 43 per cent?---That's cost price plus 43 per cent if I wish for it to go in my sales figures for me to earn commission on it. If I wanted to sell it as less than that then it would go in the house figures and I wouldn't achieve any commission.

10

It would be no advantage to you?---Yes. Personally no, but obviously the company would still make money which means I'll be able to, to keep my job.

So you get paid on the basis of a salary plus commission. Is that correct? ---That's correct.

What's your base salary?---\$600 a week less tax.

20

And then you earn, you have the opportunity for earning commission on top?---That's correct.

But not on sales where the margin is less than 43 per cent?---That's the general, yes.

THE COMMISSIONER: And what commission do you earn?---I earned 10 per cent on top of, 10 per cent of my sales over and above my budget if I achieve my budget.

30

That's cost plus 43 per cent?---The budget's set out \$800 a day and at the end of the month if my sales are more than that, then I would get paid 10 per cent of the difference between budget and what I've sold.

But what about the cost plus 43 per cent?---That's just a working margin just for us to make money.

But, I understand that?---Sorry.

40

I thought you said that if you sell at less than cost plus 43 per cent you do not get a commission?---It goes onto the house figures so it would go under a- - -

So is your answer yes, you don't get a commission?---Yes. Sorry, no, I don't get a commission on that.

So the basis on which you said you earn commission is not strictly accurate. You earn commission on all items where you sell at a price of more than cost plus 43 per cent over budget?---Yes. Sorry.

MR CAMPBELL: Just taking up the Commissioner's question if I may. The, when you say the house figure, do you mean that that, that if you sell at less than cost plus 43 per cent it's not included as part of your budget?
---Most of the time, no.

So, so you have a doubly strong incentive to sell at cost plus 43 per cent?
---Yes.

10 Because I suppose if you're a, if you're not making your budget then there might be a question about your continued employment?---Yes.

And if you're selling at less than 43 per cent profit margin then that's not going towards your budget, as you've told me. Is that correct?---That's correct, yeah.

Now, you mentioned in giving the answer I asked you at the start of this passage of evidence that you use incentives to encourage sales. Say yes or no?---Sorry, yes.

20

And, and what type of incentives are you, and I'm asking you now about the period up until say about the end of 2010. So from the time you started until the end of 2010, what sort of incentives were you authorised to offer to people working for customers?---Liquorland vouchers and Harvey Norman vouchers would be the main things.

All right. And what we're talking about here is a voucher which is purchased by R&R Tapes from one of those two businesses you've mentioned that has a cash value?---Yes.

30

So that it's redeemable for a precise figure stated on its face?---Yes.

And is it, is it the case that, and I'll ask you in a moment about how you go about obtaining those vouchers, but are they basically \$50 vouchers?
---Normally in \$50 increments, yes.

All right. Each single voucher is \$50 and you can give more than one in a given case?---Yes.

40 All right.

THE COMMISSIONER: When you said increments, do you mean that you could get \$100 vouchers?---Yeah. It would be, if you went to Coles to buy them you could get \$100 rather than two lots of 50. That's what I meant.

MR CAMPBELL: What do R&R do, do they, do they do that sometimes?
---Yes.

All right. But the way it works is quite simple, is it not? The person who is given the voucher can walk into Coles and buy \$50 worth of goods offered for sale if it's a \$50 voucher?---That's correct.

And likewise for 100 or any other sum?---Yes.

All right. And so it's just like cash?---Yes.

10 Now, to whom are these incentives offered?---They're offered to companies and government departments by the salespeople that deal with them.

All right. Now- - -?---May I just have a glass of water, please.

THE COMMISSIONER: Yes, certainly.

MR CAMPBELL: I'll wait while you pour it?---Thank you.

All right. Are you ready?---Yeah.

20 Now during the time that you have been with R&R Tapes since 2008, you've dealt with some Shire Councils you've told us?---That's correct.

Just so I can get an illustration of how the system works, can you please tell me one of the councils with whom you do business regularly?---Byron Bay.

All right?---Well Byron Shire, sorry.

30 And was that one of the customers that you located for R&R Tapes?---He was an existing customer prior to my employment.

All right. And who's the officer there at Byron Bay Council you, for the Byron Shire Council that you deal with?---Mr Vagne.

V-A-G-N-E?---I believe so, yeah.

All right. And now what sort of equipment or goods have you sold to Mr Vagne?---It would be gloves.

40 When you say would be you mean as far as I remember it was gloves?
---Well, yeah, as far as I remember I sold him gloves.

What type of gloves?---Rigger gloves and chemical resistant gloves.

And are they goods that you keep in stock?---The majority of the time yes they are a growing concern, yes.

All right. So that when you, when you want to sell that type of item to someone like Mr Vagne, you, you know what the stock price is because you have it already?---Yes.

And you know what 43 per cent of that is on top?---Yes.

So have you contacted him at times to try and secure a sale from him?
---Yes.

10 And, I'm sorry, thank you, I'm pronouncing it Vagne, your Honour, I'm sorry, Commissioner, I'm told that it's Bob Vagne, is that right?---Yeah, sorry.

Is that right?---That's the way I pronounce it, but yes, Mr Vagne.

All right. Now just let's give the Commissioner an example of the procedure. You telephone Mr Vagne?---Yes.

20 And you say, Bob, who are the gloves going?---Yes.
Something like that?---Yep.

Strike up a conversation with him in the hope that he might say they're going pretty well?---Well hopefully he says, yes, we could do with some more gloves, send them up.

Okay. And if he says that, what do you say to him?---Oh, I'll get them on the truck today.

30 But – and there must be some discussion about how many he might need?
---Oh, yes.

And what size – how do you supply them, in a box?---Oh, they come in a box of 120.

All right. And what's the cost of one box?---It fluctuates between two and \$2.20 depending on when we buy them.

40 THE COMMISSIONER: A pair?---Yeah, per pair.

MR CAMPBELL: All right. So let's say for use of reference the box might be \$240 at cost?---Yes. Yes.

All right. And then do you have to, do you negotiate a price with Mr Vagne?---Sometimes he would ask me how much they were and sometimes I would just state that they're the same price as last time.

All right. Now in regard to that sort of procedure, given that the 43 per cent is a bottom line - - -?---Yep.

- - - are you given discretion on behalf of R&R Tapes to name a higher price?---I can charge whatever price I wish to charge.

Whatever you think the market might bear?---Basically.

10 All right. And typically dealing with Mr Vagne, what might the market bear?---Somewhere in the region of about \$3.20 to \$3.50 is what we try to sell them if possible.

Okay. That's over 50 per cent. Is that right?---Oh, around, give or take. A little bit more.

A bit more than 50 per cent?---It depends on how much we're buying for, but yes.

20 Now is this – are incentives important in this part of the process from your point of view as a salesman?---Not all the time, no.

Well let me ask you this, have you ever given Mr Vagne a voucher?---Yes.

Right. Now what circumstances did you give him a voucher?---Well the first time I contacted him he used the phrase, "what's in it for me?"

I see. And, and what was in it for him?---To the best of my knowledge \$100 worth of vouchers, I believe.

30 And what type of – what was the sale on that occasion which justified vouchers in that amount?---Once again probably three boxes of each glove.

So four boxes of gloves?---Yes.

At the rate you've told us about?---Yes, the, the red PVC gloves are slightly cheaper to the cowhide rigger gloves, but - - -

So something well over \$1,000?---Probably, yes.

40 Now did you have authority to agree to that incentive at that time?---It was the done thing so I just carried on.

Well my – well it may be the done thing, but in each individual case or in any individual case is it necessary for you to check with anyone superior to you at R&R Tapes before you make that offer?---No.

Is that because you have standing instructions in that regard?---Yes.

All right. Now – well the \$100 was what was in it for Mr Vagne?---Yes.

And I suppose it would be fair to say wouldn't it that if it was costing an extra \$100 that's an additional cost to R&R Tape in securing that sale is it not?---Yes. Yes.

So they would give you their limited scope on giving any discount on the mark up was it not?---Yes.

- 10 And so that effectively at the very least, the goods that you supply in that way, in accordance with the instructions you've been given by Mr Pearce when you started there have cost the council no less than an extra \$100. That's so isn't it?---Yes.

And indeed has it been your experience in selling things in this way that you have found that it's much easier to get the person you're talking to to agree to a greater percentage mark up when you throw in the incentive?---Yes, I would say so.

- 20 It just makes sense doesn't it?---Yeah, it does.

And – now we've mentioned Mr Vagne, what other councils have you dealt with in that way?---Gundagai Council, Lismore Council.

Any Sydney councils?---Without going through the records I couldn't tell you.

All right. What about Narrandera Shire Council?---When were they sold?

- 30 You don't remember it? I won't ask anything further about it?---Okay.

Now – all right, so that's the modus that you're dealt?---Yes.

And that's in accordance with the instructions you've been given you've told us?---Yes.

- 40 In order – now back at R&R Tape when you've proceeded in that way, what is the value of the voucher when an incentive is given deducted from the profit margin percentage?---I don't understand the question, sorry.

I'll try it another way. Just suppose you've got an order for \$1,000?---Yes.

Okay. A big order for \$1,000 net at cost. Do you understand me?---Yes.

So to make your 43 per cent you'd have to sell that for \$1,430?---That's correct.

Now if somebody in the position of the person you're talking to says, "what's in it for me?"---Ah hmm.

And you say there's a \$100 in it for me, well to make the same profit margin you've got to add \$100 to the 1,000 before you calculate your 43 per cent haven't you?---As a minimum, yes.

10 And is that the way it actually works in practice?---Generally for every \$1,000 or \$500 worth of profit you would, could give away \$50 worth of Liquorland vouchers or other five vouchers.

All right. So that's part of the standing instructions?---Yes.

All right. So \$50 for every 500?---Profit.

Profit?---Yes.

20 So in order, you say, to be authorised to give away \$50 you have to get the order up to let's say, on the example I've given you, if goods at cost are 1,000 you have to get 500, 1,500 pretty much?---Yes.

All right. So that's about 50 per cent on that particular transaction?---Yes.

Now when you take your \$50 from \$1,500 then you just get over your 43 per cent don't you?---Yes.

You get 45 per cent I think?---That's correct.

30 Sound right?---Yes.

And so that, so that goes not on house that goes to your budget?---That would go to my budget, yes.

If somebody - if the profit margin came up at 1,430, that is to say the \$1,000 plus the minimum and the person still wanted what was in it for him if you gave him a \$50 voucher then that would go on the house?---Most times, yes.

Because you didn't exceed the profit margin?---Most of the time, yes.

40 So that, all right. Now, part of the purpose of these incentives is of course to secure market share, is it not?---It would be to secure business, yes.

Yes, well, I mean, you know, don't you that there, as you've told me already that it's a highly competitive market in which you operate?---Yes.

You're seeking to get some advantage over your competitors?---Yes.

And you're seeking to get some advantage over your competitors regardless of price efficiency, are you not?---Yes.

What you want to do is sell the same products at a price that fits the R&R Tape business model and at the same time if necessary be able to afford to throw in 50 or \$100?---Sometimes, it doesn't always come with a voucher so there are times where it doesn't.

10 I suppose if someone in Mr Vagne's position said what's in it for me you might say something like nothing this time, matey, is that right?---I didn't say that but I could have.

Have you ever said that?---Yes.

And when you've said that to somebody buying from you might you add oh, maybe next time?---Sometimes.

20 I mean, the idea behind all of this is to not only gain market share but to build up customer loyalty, is it not?---It is.

And when I put it as customer loyalty you know there's a distinction between the buyer and shire council and its employee, that's right, isn't it? ---Yes.

I mean, the real customer is the Byron Shire Council, isn't it?---That's correct.

But you're dealing with you've said Mr Vagne?---Yes.

30 And we'll hear from him in due course, and the loyalty you were trying to build up is Mr Vagne's loyalty because he's the man that places the order? ---Yes.

And working things in that way, you would agree wouldn't you that that's no doubt cost the true customer real money, that's so, isn't it?---It is.

40 And if one of your competitors for instance was prepared to sell the gloves for a 20 per cent profit margin then the business model that you've been told to give effect to seeks to cut them out of the picture by giving the person doing the buying a kickback?---Yes.

That's right, isn't it?---Yes.

Now, once you've secured a deal that we've described in that way how is the voucher sent to someone in the position of the buyer at the council? ---They would be asked where they wanted the voucher to be sent to.

What do you mean by that?---Well, did they want it sent to, the goods to the council or did they want it sent to their home address.

The home address. And why would you ask them if they wanted it sent to their home address?---Sometimes they would ask us if they wanted it sent to the home address but obviously we would send it to the home address because they didn't want it to get found out.

10 So the whole purpose of that inquiry then, just if we can summarise what you're telling me, Mr Slade, is to keep that incentive arrangement secret. Is that correct?---Yes.

When you say not found out about, it's to keep it secret from the employer, ie, in the example we've been talking about the council?---Yes.

Now, what's the mechanism for delivery of the vouchers? I'll ask you a more specific question. Within, you've mentioned that Mr Hopkinson's job is mainly the storeman at R&R Tape?---That's correct.

20 All right. Now, and some goods are kept in the store?---Yes.

And some goods have to be ordered in from an outside supplier?---Yes.

Right. Now, is there a book that's kept for recording the orders in the store? ---There's an inventory on the computer system where he would file invoices.

30 All right. What about - I suppose it's fair to say that you don't want to give this incentive or voucher until you're sure that the order has gone through and that the goods are ready to be dispatched. Is that right?---That's correct, yeah.

Because I mean someone might change their mind, I suppose, before all the paperwork's done?---That's correct.

All right. So you hold it back until the order's actually placed and the order's actually ready for dispatch?---We wait for an order number to come through from the relative bodies and then - - -

40 Do you wait until you get paid or are you prepared to send it once you've got the order number from let's say the council?---When we got the order number, they would be sent prior to payment.

And you'd take the view then you've got the binding contract I suppose? ---Yes.

Yes. Okay. Now, is there some book that's kept in the store at R&R Tapes which keeps track of the incentives that had been offered in the way that I've been asking you about and you've been telling the Commission?---Yes.

And who keeps that book?---It's kept in the office where Mr Hopkinson invoices from.

10 All right. Pardon me, Commissioner. All right. And now, what's recorded in that book?---The name of the person, the company or government body that they're from and the amount or what they're getting as a gratuity.

All right. Well, a kickback would be a good word, wouldn't it?---Okay, kickback.

Thank you. And I mean, it's not a gratuity at all, is it?---No.

You understand that the term gratuity implies something for nothing, don't you?---Not until this point but it's obviously a kickback then not a gratuity.

20 Now, could you just - Commissioner, I'm showing Mr Slade or I'm about to show Mr Slade the original of some material which is in the exhibit, its volume 25 and from tab 138, thank you, I'm sorry, Commissioner.

THE COMMISSIONER: Yes, thank you. It's tab 138.

MR CAMPBELL: And I'm showing him - - -

THE COMMISSIONER: Is that 138.1?

30 MR CAMPBELL: It's not 138.1 I'm showing him at this stage, 138.1, yes, it is, Commissioner.

THE COMMISSIONER: Yes.

40 MR CAMPBELL: But I'm showing, I'd like to show Mr Slade some entries that occurred in the year 2009, during the currency of his employment with the company. Could you look at the, this, this, this page at which I've opened a book, an exercise book which the Commissioner's associate will show you and firstly do you recognise what it is you're being handed?---Yes, it's what's known as a freebie book.

Freebie book, all right. Freebie in the sense of kickback, is that right? ---Yes.

All right. And you'll see that it's, it's got some handwritten goods on it? ---Yes.

And with some entries in hand as well, is that right?---That's correct.

Yes. Now, do you recognise the handwriting on that page which I've opened?---A couple of them, yes.

And whose handwriting is it?---The bottom one would be Mr Hopkinson?

Yes.

THE COMMISSIONER: What page is that, I'm sorry?

10

MR CAMPBELL: I'm sorry.

THE COMMISSIONER: Is that, does that have a book, is that book numbered?

MR CAMPBELL: This book is not numbered, Commissioner, we'll get the page number from the exhibit for you, it's page number 10 behind tab 138.

THE COMMISSIONER: Yes, thank you.

20

MR CAMPBELL: Do you ever write in this book, Mr Slade?---I have, yes, yeah.

And your handwriting doesn't appear on this first page?---Not on that page, no.

No. All right. But could I just ask you to - just so we can understand the system - - -?---Yes.

30

The one that you identified that is the bottom one on the page which bears a date 12 March, 2009, talks about an organisation - I withdraw that. In the first of three columns it says Cootes Queensland?---That's correct.

And who are Cootes Queensland, do you know?---They're a petroleum company.

All right. And then there is a name of a private individual and what seems to be a residential address in the second column?---That's correct.

40

Right. And then, now, just according to the system, whose name and address goes in that column as a matter of usual procedure?---The person that does the ordering.

That means the person employed by the customer who does the ordering? ---That's correct.

Thank you. And, and you'd agree with me, wouldn't you, that that address shown there is that person's residential address, it's not the address of the petroleum company?---No, that's his home address.

Yeah. And then there's a figure of \$100 and the initials HN, well, perhaps, yes, HN?---That's correct.

10 Okay. Now, and that's obviously depicting the person whose name appears in that column is getting a \$100 Harvey Norman voucher?---That's correct.

Okay. On this page we can see that there is what looks like a postal sticker in the second column. I'm sorry, the first column, forgive me. And what does that tell us?---That's the receipt for the registered post.

Registered post. Why is that involved?---To make sure we know it gets to the relevant party.

20 All right. Now, the, perhaps if I could hand you back the document which I asked you to look at, which is the original book, I won't ask you to take up too much time but could you just see if you can identify one in the first few pages that you have actually written yourself? I take it, and I'm sorry I'm asking you to do a job, if you could just stop and listen to me first?---Of course.

30 That's okay. My fault, not yours. I take it that you only write up the book when Mr Hopkinson is unavailable or some such thing?---When I, there's another employee called Mr Fisher who works from home and sometimes he would ring up and say, can you write this down in the book, so I would book it and that's why there's all the staff members handwriting in the one

Anyone might make an entry in the book?---Yes.

Yeah. But it's mainly Mr Hopkinson?---Generally speaking. Do you want me to go on?

Yes, please?---I've found one with my handwriting.

40 And what page is it on?---I'm counting page 17 at the top.

17 at the top. Thank you. May I have that returned to me, Commissioner. That I suppose would be page 27. It involves a company called the CRT Group, Commissioner.

THE COMMISSIONER: Yes, I have that, page 27.

MR CAMPBELL: 26. Okay. Now, this is not a council?---It's not, no.

No. But this, to give us an idea of your system, we can see again the name of a customer. Is that right?---Yes.

The name of a private individual?---Yes.

A residential address?---Yes.

Is that right?---I believe so, yes.

- 10 Yeah. And, and a, and then the \$150 entry, is that your handwriting?
---The writing of 150 LL is my writing but the writing around it is not.

No. That's, there's more than one entry in that one box, is there not?
---It shows that the \$50 was sent on the specific date, on the 15th of the 12th and then the \$100 worth of vouchers was sent on the 26th of November.

All right. But that, that person again received by registered post vouchers totalling \$150 sent to a home address?---I believe so, yes.

- 20 And that's the way that you dealt with council officers that you provided these incentives to in the ordinary course of your employment with R&R Tapes?---Yes.

And, and, and the last one we mentioned was Harvey Norman. The LL stands for Liquorland?---Yes.

And that's part of the Coles vouchers- - -?---Yes.

- 30 Part of the Coles vouchers you mentioned to me earlier?---Yeah. Well, Coles/Myers, yeah, sorry.

Right. Now, these, these books were kept in the office of Mr Hopkinson that he occupied at the business premises of R&R Tape, you've told us?
---Yes.

Now, would you look at these four books that the Commissioner's associate is about to hand to you. I don't require you to read them, Mr Slade, if you just have a look at the exterior of them?---Yes.

- 40 And when you've satisfied yourself that you might have an answer for me, let me know. Do you recognise them?---I recognise the first three. I've not seen the one dating back to 2000- - -

That's the---?- - -but it may have been in the same pile but I wouldn't have looked through that one but the other ones I definitely recognise.

All right. But the blue hard-backed Collins notebook is, is before your time, you never had to look at it?---It was, but looking through it it looks like Mr Hopkinson's handwriting in here so- - -

You can identify that from your experience?---Yeah.

Oh, well, I tender all four of those books, Commissioner.

10 THE COMMISSIONER: Yes. These are the books called the freebie books?

MR CAMPBELL: Yes, that's yeah. Commissioner, just while you're making a note if I could interrupt you. The copies of all these books are in a hand-up brief. 138 of volume 25 as we said, and- - -

THE COMMISSIONER: Do they have dates? Well, I do see they have dates, yes. The freebie book which is a diary for 2000 is Exhibit 31A.

20 **#EXHIBIT 31A - "FREEBIE BOOK" – DIARY FOR 2000**

THE COMMISSIONER: The freebie book the first page of which contains entries in 2002 is Exhibit 31B.

#EXHIBIT 31B - "FREEBIE BOOK" – FIRST PAGE OF WHICH CONTAINS ENTRIES IN 2002

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THE COMMISSIONER: The, the freebie book the first page of which contains entries for 2006 is Exhibit 31C.

#EXHIBIT 31C – "FREEBIE BOOK" – FIRST PAGE OF WHICH CONTAINS ENTRIES FOR 2006

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THE COMMISSIONER: And the freebie book the first page of which contains entries for 2009 is Exhibit 31D.

#EXHIBIT 31D – "FREEBIE BOOK" – FIRST PAGE OF WHICH CONTAINS ENTRIES FOR 2009

MR CAMPBELL: May it please the Commission. Mr Slade, apart from these gift vouchers, were any other items passed on to buyers from time to time?---Yes.

What other type of items?---I know there was coats, Drizabone jackets and I believe previously there were some DVD players that were handed out as well to purchasers.

10 That's before your time?---The DVDs were yes.

But not the coats?---No, they're still now.

Still popular?---Still popular.

All right. And what circumstances do you get a Drizabone coat?---Some companies like out bush, some private companies I should state, like wearing Drizabone jackets.

20 Well, I suppose - well, have you ever supplied any council with any, council officer with any Drizabone jacket?---Without looking through the records I couldn't tell you. Maybe I have but I, I couldn't - if I go back through the book and stuff I couldn't probably tell.

Well, we won't take up the Commissioner's time with that now but we might ask you to do it in a moment. What, what, what do you have to do to get offered that, a Drizabone?---It's the same principle as the vouchers.

How much are the coats worth?---Approximately \$65.

30 Is that at cost?---That's at cost.

So if you went into a bush outfitter's shop in Sydney you'd pay substantially more?---I would imagine so, yes.

And what about - I withdraw that. Now, you can't remember sitting there whether you've provided them to council employees?---To the best of my knowledge no.

40 The, and they're, they're recorded in the book as well you've told us?---Yes.

Is that right?---That would be the case.

Any - are holidays ever provided to people who buy things from R&R Tape to your knowledge?---Not in my employment.

When you say not in my employment, you mean I haven't done it and I, and I, I know it hasn't been done while I've been there?---Pretty much, yes.

Okay. Do you know from your information you've obtained whilst working as an employee of R&R Tape that its been done in the past?---There is rumours, yes.

Rumours. Okay. What do the rumours say?---They say that there was a holiday provided to a council member or staff member where he went up to the Northern Territory I believe.

10 Now, I don't want you to speculate but have you been told the name of that person?---I have.

I beg your pardon?---I have, yes.

Okay. And who was that person?---Mr Hadley.

All right. Who worked for Bathurst Regional Council?---Yes.

20 Now, have you heard of any other holidays being provided to any other officers of any other council?---To the best of my recollection, no, just that one holiday.

That's the only one you've heard of?---That's the one I've heard of, yes.

All right. Now, I'd just like to ask you a question about delivery. R&R Tape don't have a transport arm I take it, is that right?---No, they don't.

Right. So when, when you want to get your order of four boxes of gloves, say, to Mr Vagne at Byron Shire Council - - -?---Yes.

30 - - - how do you do it?---Via Star Track Express.

They're couriers?---They're couriers.

Always the same courier?---Since I've worked there yes but I believe they changed before and they've come back to Star Track again.

All right. And presumably the courier company bills R&R Tape for the service?---That's correct.

40 And is that included in your 43 per cent bottom line?---We charge a nominal fee of about 20, \$25 for freight charge.

So the cost to the customer is, is cost plus percentage, plus incentive perhaps, and plus freight?---Yes.

All right. So that in every case where goods had genuinely been delivered to a customer by R&R Tapes anyone looking at the financial records would

expect to see invoices from a courier company in respect of them?---Yes, it would all be documented on the computer.

All right.

THE COMMISSIONER: And in your case you'd expect to see it from Star Track?---Yeah, they would be able to provide con notes for - consignment notes for everything sent from the, the factory I think at West Gosford.

10 MR CAMPBELL: All right. Now, sorry, you've already told me in answer to my questions a couple of times that the system that you've been describing for us today was the system that you received instructions from Mr Pearce to implement and follow when you got the job there back in 2008?---If I needed to then, yes, I could do it.

At your discretion?---At my discretion, yes.

20 Was it, was it expected you would do it?---Well, not really but it was, it was being done previously and I carried on doing it but it wasn't the norm but, yes, it was done.

Well, it was done a lot wasn't it?---It was done a lot by the, by the reps, yes.

Yes. And it was done a lot with public sector customers, wasn't it?---By looking through the books, yes.

30 Yeah, yeah. And what, you're not suggesting that, you're not suggesting in any way, shape or form that Mr Pearce didn't know what was going on, are you?---No.

Well, tell me how, how were they, did you ever have anything to do with obtaining the vouchers?---Sometimes I would go down to the local shop and purchase the vouchers, yes.

And who gave you the money?---The money would be transferred into either my own personal account or another member's of staff account and they would go down and purchase the - - -

40 Who transferred what money?---Kylee McKenzie would transfer it via EFT, sorry, Kylee Begg she's got married, she would transfer it via EFT but before I started there I believe it was a cheque that Mr Pearce would write out and go back and cash it that way.

So that, I mean, it wasn't Ms Begg own money that she was giving you?---It wasn't, no.

She's, she's just an employee like you, isn't she?---She is, yes.

So it's company money?---It's company money, yes.

And you say that on occasions the company money was transferred electronically to your bank account so you could go down and withdraw it from your account - - -?---Yes.

- - - go to Harvey Norman or Coles and buy the vouchers?---Yes.

10 And how many did you buy at a single time?---Ah, it could be anything from a hundred through to \$800.

And is that a task that you've been asked to perform frequently?---No. The only reason I did it was because my bank's with the NAB and the company bank account's NAB and it was just instantaneous money transfer.

20 And who, who gave you the direction to go and buy them?---We would on a Friday or whatever day it was, maybe a Friday, just say how many vouchers were needed during the week and then go down and purchase them on the Friday morning.

What I really wanted to know was who told you to do that?---It was already being done but Mr Pearce would obviously have put it in place prior to him moving up to Forster.

Well, did some person say to you Mr Slade, as part of your job - - -?---No.

- - - please go down and buy these vouchers?---No.

30 Well, how did you get - well, how did you come to go down and buy them? ---Because I was asked to do it by the storeman, by whoever would just say can you go down and get the vouchers today so I would just jump in my car and go down and get it.

Somebody, somebody at work?---Yes.

And typically the storeman or sometimes - - -?---Oh, well, he would add up because he would have access to the freebie books and find out how much they were and tell me from that.

40 Okay. And you say that Ms Begg being the accountant would, would on the direction no doubt from Mr Pearce make the transfer?---Yes, she would organise for the money into my account or whoever's account and we'd go from there.

From company funds so you could do that?---Yes.

Now, before you started work with R&R Tape did you, did you do this sort of work with another company?---No.

What sort of work were you in?---I was in real estate back in the UK.

All right. And do you know anything about business ethics in the public sector?---Not until, no. Well, not now but before this all started, no.

No, not until you found out something about an inquiry that ICAC was carrying out?---Very much so.

10 All right. And when you spoke to Mr Pearce about these, when he gave you these instructions as to how you were to operate, did he ever discuss with you anything about whether this was right or wrong?---We never discussed the ethics of it, no.

No. And sitting there now you appreciate, don't you, clearly this was wrong?---Of course.

20 Yes, and that any person who gave it a moment's thought would come to the same conclusion?---Yes, very much so.

And anybody - I withdraw that. You may not have been in this business before but you've been in business before?---Like I said, real estate, yes.

Yeah. Well, even real estate, you'd be able to identify a kick back for what it was, wouldn't you?---Yes.

And there couldn't be any doubt about what was going on in that work system you've been describing for us, could there?---In hindsight, no.

30 All right. Well, even if you took the slightest time at the start to give it some foresight you'd come to the same conclusion, wouldn't you?---Yes.

Is it still going on?---No.

Are you sure?---To government departments to the best of my knowledge no.

40 And when did it stop? I want you to give me an estimate of time not by reference to events necessarily?---When, I want to say when obviously the ICAC come around to the facility, but I would imagine that was May last year, but I may be off with my dates.

Well you were present were you when officers from the Commission - - -?
---Yes, I was.

- - - came calling?---Yes.

All right. And after that things changed?---Oh well I personally stopped giving away vouchers, yes, definitely, 100 per cent.

And how did the change go down with the buyers?---Some of them obviously weren't happy, but then you know, obviously some of them just carried on as normal and didn't ask for - - -

Did it affect your ability to secure a sale from a buyer in the public sector?
---Some of them no longer proceeded to purchase goods from us.

10

And what about – those who do what about the price that you get away with charging?---The price is obviously come down a little bit to secure the business.

Are the orders as big?---Yes, sometimes.

But not always?---It depends on what work and what they need, but, yeah.

Well I suppose depending on what they actually need and what price you're prepared to offer them now?---It's very much that, yes.

20

No further questions, Commissioner.

THE COMMISSIONER: Yes. Now Mr Viney, I would suggest that you go last save for any re-examination by counsel assisting.

MR VINEY: Yes, Commissioner.

THE COMMISSIONER: Now can counsel wishing to question Mr Slade please identify themselves so I know who, who wishes to ask questions?

30

MR NAYLOR: Yes, your Honour.

THE COMMISSIONER: You do, Mr Naylor. Yes. Anyone else? Mr Naylor, the field is yours.

MR NAYLOR: Thank you, Commissioner. Mr Slade - - -

THE COMMISSIONER: Please identify yourself to Mr Slade.

40

MR NAYLOR: Yes. Mr Naylor is my name.

THE COMMISSIONER: And who you represent?

MR NAYLOR: I represent 13 witnesses in this inquiry.

THE COMMISSIONER: You have to say for, Mr Slade is entitled to know whose interests you are questioning in him (not transcribable) who is involved.

MR NAYLOR: Of course, yes. Is it convenient Commissioner if I read out those names as a wholesale block?

THE COMMISSIONER: Well, I'm not sure whether Mr Slade would know who they were. Are they competitors of R&R? Can you just - - -

10

MR NAYLOR: No, they're not. I don't appear for any suppliers in relation to this inquiry.

THE COMMISSIONER: Right. You appear for?

MR NAYLOR: I appear for local council officials.

THE COMMISSIONER: Well (not transcribable) do you understand that Mr Slade?---Yes, yeah, of course.

20

Thank you Mr Naylor.

MR NAYLOR: Mr Slade just a couple of points of clarification first if I many. Early on in your evidence when you were answering, answering questions from Council Assisting you were talking, giving some evidence about how you went about setting prices for the goods that you sold?---Yes.

And you had endeavoured as best as I understood your evidence to obtain the highest possible margin for the various goods that you sold?---Yeah, it would be beneficial obviously to myself and to the company.

30

Was there a published price list of the goods that you were selling?---No.

So people with whom you made contact at local councils - - -?---Yes.

- - - in order to sell for example a box of gloves - - -?---Yes.

- - - would not have any knowledge prior to that telephone contact about what any published price might be at least from your organisation in relation of that box of - - -?---The only way they would have that is obviously via a previous invoice if they bought goods from us.

40

Yes. Okay.

THE COMMISSIONER: Mr Naylor, I'm sorry, can I, to interrupt, but just for the purposes of clarification I propose to ask a couple of questions.

MR NAYLOR: Yes.

THE COMMISSIONER: These gloves are they, they're not made by R&R?---No. We just buy them off a supplier.

And are there – do you have competitors who sell the same gloves?---Yes.

10 And do you know what prices they sell the gloves at?---Generally as a rule of thumb, yes, it would be anywhere between, like if we're talking cowhide rigger gloves for example, it could be anywhere from \$3.00, three to \$4.00, depending on the supplier.

So that sounds to me, and please correct me if I'm wrong, that there's not a great deal of difference in the retail price at which the various wholesalers put the gloves on the market at?---No, that's correct.

That's correct?---Yes.

So the, that's as a general rule?---Yeah, of course.

20 There may be instances where a wholesaler is prepared to undercut the market?---Yeah, if they have access to better prices than what we do then they could undercut us, yes.

So the inept, inept market is it the incentive that – is it the incentive offered by the wholesaler that carries the day?---Sometimes, but sometimes it's right place at the right time, but yeah, I would say predominantly if you're going to get a kickback then I would say that would be the overriding - - -

30 Factor?--- - - - factor, yes.

Yes, thank you. Yes, Mr Naylor.

MR NAYLOR: Thank you, Commissioner. Mr Slade, you've just used the word kickback and that was an expression which you were invited to use earlier in your evidence?---Yes.

And you distinguished that word from the word gratuity?---How it was explained to me, yes.

40 Yes. What, I'm a little unsure, just forgive me, but for the sake of clarification what do you understand the word kickback to mean?---It would be in receipt of something above in receipt for placing a order. To simplify it I will give you something if you do something for me.

A quid pro quo?---Scratch my backs for, that's what I would layman understand, yes.

THE COMMISSIONER: Some laymen might call it a bribe?--- Yes.

MR NAYLOR: You gave some evidence at least in relation to a local council official at, I think Byron Bay Council?---Ah hmm.

That after you'd made contact with him for the purpose of selling a particular good, a question was posed to you, what's in it for me?---That's correct.

10 And subsequently you provided to that particular council employee gift vouchers or a gift voucher to the value of \$100?---That's correct.

To the best of your recollection were there any occasions when you offered gift vouchers to council, local council employees and they declined your offer?---There may have been occasions, yes.

THE COMMISSIONER: Sorry, what do you mean there may have been? ---I make hundreds of phone calls so there may have been times where they said, oh no, not - - -

20 I'm not putting - - -?---Sorry.

- - - words in your mouth, I'm just trying to understand what you mean. But are you saying it's possible this may have occurred but you don't remember the specific instance?---Yes.

MR NAYLOR: Were there occasions when council employees, I'll withdraw that, Commissioner. Were there occasions when you offered a gift voucher to a council employee, the person declined and you nevertheless sent a voucher to that person?---No.

30 Were there regular sales meetings within your company?---No.

Did at any time you receive any training in relation to how to do your job? ---No.

40 Was there any ever, ever any active encouragement within the organisation that you work for to make these incentives, such as gift vouchers, available to those people to whom you were selling?---I believe as I said earlier if it was needed to be given then you could give it.

And who made that decision?---It would be Mr Pearce, previous employees, it was just, like I keep saying it was an unwritten rule, it was just, it was happening, just carry on with the (not transcribable)

Not actively encouraged but - - -?---You were trying not to encourage it because you wanted to try and keep the profit margin within the order.

It certainly wasn't discouraged was it?---No.

It certainly wasn't discouraged, was it?---No.

Were there any occasions as best as you can recall when you offered a gift voucher or another kind of incentive without that issue having first been raised by a local council employee?---I'm sorry, can you repeat the question?

10 Yes. Just go back a step. You gave an example earlier of the Byron Bay Council- - -?---Yes.

- - -employee in effect inviting you- - -?---Yes.

- - -or asking you for an incentive?---Yes.

20 Did it work the other way round?---There was times where I would say, thank you for your order, I will throw you in a drink, and then there was other times where I'd say, if you can do this for me, I will give you this in return.

When you use the word drink, what do you mean by that?---I'll throw you in a drink, i.e. a \$50 Liquorland voucher so you can go down and purchase some alcohol.

And you sent that voucher to the, to the person's home address, did you?
---Yes, I would do, yes, if that was what was asked.

30 Did you have a practice of sending gift vouchers to business addresses?
---If they, it's at the discretion of the person that would order.

Did you encourage the people who were doing the ordering to have their gift vouchers sent to their home addresses?---I would give them the option of where do you want it sent, do you want it sent with the goods or do you want it sent to your home address.

THE COMMISSIONER: Every time would you do that?---The majority of the time and then obviously if it was an existing relationship then you would kind of know, after that you would not need to ask the question again.

40 MR NAYLOR: So you developed relationships with certain customers?

THE COMMISSIONER: Certain buyers.

MR NAYLOR: Certain buyers with whom or to whom you regularly sent gift vouchers?---Yes, a couple of times, on more than one occasion, yes.

Apart from Liquorland and Harvey Norman gift vouchers and Drizabone coats, what other kinds of incentives, as best as you can recall, did you

provide?---Like I said, that was all I would offer, to the best of my knowledge, that, that- - -

THE COMMISSIONER: You said DVDs or- - -?---Oh, that was prior to me working for the company. What happened before that I couldn't tell you, but while I've been employed by the company it would be Liquorland vouchers, Harvey Norman vouchers, Drizabone coat- - -

Coles?---Coat, sorry, Drizabone coat, and that was pretty much it.

10

MR NAYLOR: When speaking with any local council employees in an effort to sell them products, and when the question arose about the giving of a gift voucher, did any council employees, as best as you can recall, express any kind of reservation about whether they could receive the voucher?
--- I would have said a couple of them would have said, am I allowed to do it, I know that 'cause I've spoken to, I don't know whether it's necessarily New South Wales but there has been a couple of government officials that say no, can't accept it.

20

And in those circumstances did you then try and encourage, nevertheless, the giving of the gift voucher?---No, no.

Than you, Commissioner.

THE COMMISSIONER: Mr Slade, the, is my understanding correct that the real basis of these vouchers was to, it was to establish customer loyalty and to persuade the buyer to place orders?---Yes, and to keep ongoing relationships.

30

Right. And did it sometimes happen that an order was placed and you thought that that was pretty small and you offered vouchers to persuade the buyer to go up in his order?---Yeah, I believe I have done that, yes, i.e., if you take two of something rather than one of something I will do this for you.

I see. Mr Campbell?

MR CAMPBELL: Thank you, Commissioner.

40

THE COMMISSIONER: Sorry, I beg your pardon. Mr- - -

MR VINEY: I have no questions, thank you.

THE COMMISSIONER: No questions. Mr Campbell?

MR CAMPBELL: Mr Slade, when you said to a council employee in the course of a transaction you described, if you take that I'll buy you a drink - - -?---Yep.

- - -you told the Commission that you were of course referring to the Liquorland vouchers?---Oh, yes, yeah.

Just to make this quite plain, you were offering to buy the council a drink?
---No, I was offering to send them a Liquorland voucher in return for ordering.

10 If you said to the buyer, you do that I'll buy you a drink, you're offering him something for his personal consumption, weren't you?---Yes, yeah.

And you weren't offering, as it were, to sent it to the mayor or the councillors or the general manager, were you?---No. It was being sent to the person that placed the order.

Yeah. And of course the, I'll buy you a drink, illustrates doesn't it that there was no intention in that circumstance you've describe that, that it would possibly be work-related?---I would imagine they would have received the vouchers at home and kept it for themselves.

20 Yeah. But you weren't expecting them to have a drink at work to help them do their job?---No.

No. And since, I withdraw that. You were asked some questions about instances where a public official may have refused the offer, back in the days when you'd make those offers to public officials?---Ah hmm.

30 Did you ever in those circumstances offer to take the cost of the voucher off the price?---I would say no, and I would also say that if they didn't want to take it they wouldn't have ordered the goods. Most of the time I wouldn't have offered the voucher unless they were buying goods so- - -

It wasn't company policy to, if you had in mind to give a voucher in a certain transaction, upon refusal to give a further reduction in the price?
---No.

I have no further questions, Commissioner.

40 THE COMMISSIONER: Yes, thank you. Thank you, Mr Slade. You may be excused.

MR VINEY: Can he be excused from the warrant or- - -

THE COMMISSIONER: You may leave the witness box?---Oh, thank you.

MR CAMPBELL: Commissioner, Mr Viney's asked that Mr Slade be excused and I have no reason to keep him here.

THE COMMISSIONER: Yes.

MR VINEY: Can he be excused?

THE COMMISSIONER: Yes, certainly.

THE WITNESS EXCUSED

[12.26pm]

10 MR CAMPBELL: I call Eron Fisher, F-I-S-H-E-R.

THE COMMISSIONER: Mr Oates?

MR OATES: Yes.

THE COMMISSIONER: Do you wish me to make a Section 38 order?

MR OATES: If you please, Commissioner.

20 THE COMMISSIONER: Won't you be seated. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Fisher and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

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

40 THE COMMISSIONER: Now, Mr Fisher, you are obliged to answer all question asked of you and it is a serious criminal offence either to refuse to answer or to give false answers, and I'm sure you understand that. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR FISHER: I- - -

THE COMMISSIONER: That's a matter for you.

MR FISHER: The second one's fine.

THE COMMISSIONER: Right. Would you administer the affirmation.

<ERON PAUL FISHER, affirmed

[12.28pm]

THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you, Commissioner. Mr Fisher, would you please state your full name?---Eron Paul Fisher.

Where do you live?---Avoca Beach.

10

And we've got his full address, Commissioner. And at one time did you work for R&R Tapes?---Still do.

Still do. When did you start there?---Eight years ago maybe.

And are you a sales representative?---Yeah.

And do you do your work over the telephone?---Yes.

20

Do you work from the office or from home?---I did work from the office, now I work from home.

When did your arrangements change?---When we had babies, when we had kids.

All right. And we've heard that R&R Tapes are in the business of supplying adhesive tape and safety equipment?---(NO AUDIBLE REPLY)

You have to say yes or no?---Yes.

30

Thank you. And the, before starting with them did you work in another company that was involved in the same industry?---Yeah, a few years before that, yeah.

And who was that?---Scribal Wholesale.

And do any of the people you've worked with during your time at R&R Tapes come from that company?---Yes.

40

And who are they?---Oh, Peter and them aren't there any more, oh, Brian's still there, he used to work at Scribal. Doug Quinn.

THE COMMISSIONER: Brian, Brian who?

MR CAMPBELL: So Brian Middleton, I'm sorry?---Yeah, he used to work at Scribal. Alison I think used to work at Scribal, Doug's wife. I think that might be - oh, Terry Long used to work at Scribal.

And can you tell, tell me this, when you started there did you have a client list or did you have to build up a group of customers through doing canvassing over the telephone?---Do I have a client list from R&R?

No, no, no?---I got given a few cards plus I had to cold call so - - -

All right. Cold call means you look up a company or an organisation that you think might be interested in your products in the phone book and you give them a call and try and identify the relevant person?---Yeah.

10

That's right?---Yeah.

Okay.

THE COMMISSIONER: You must say yes or no?---That's right.

Thank you.

MR CAMPBELL: Okay. Now, who did you report to or who do you report to working at R&R Tapes?---Oh, I, I report to the boss.

20

Is that Robert Pearce?---Richard.

Richard, I beg your pardon. And has it always been the case that you've only ever reported to Mr Pearce?---Oh, Doug Quinn was sort of a manager there for a while but I didn't really count him as a manager, I'd just rather speak with the boss.

30

All right. And during the course of, of, of the, of your work trying to secure orders for products that R&R Tapes supply were you given any instructions by the boss, Mr Pearce, as to the method of work you were to adopt?---No.

Well, we've heard that there's no retail price list?---No.

Is that right?---No, we'd do whatever we want.

Well, when you say whatever you want is there a bottom line margin that you're expected to work to?---Well, the minimum would be 43 per cent. That's the absolute minimum he likes to sell at, yes.

40

Well, you say he likes to sell at, that's Mr Pearce?---Yes.

And he told you that himself, is that right?---Ah, yeah.

All right. And but, but subject to that being his absolute minimum are there - do you have a discretion as to what, what's the best price you can secure? ---Just whatever the, whatever the best price is we can get.

And do you negotiate or do you tell the customer?---I can negotiate, yeah, whatever the best price I can get.

All right. And - sorry, Commissioner. So far as you're - that's concerned though were you given any instructions about things you could do to enhance your prospects of securing an order?---No, I believe that what you're getting at is the, the vouchers and stuff.

That's what I'm getting that?---Yeah, that's what I thought.

10

Yes?---Well, the other people were already doing that at work when I got there so I, I'd never done it before then but then I thought well, you know, this sounds all right and it wasn't just councils that they were offering it to, it was across the board so, yeah, that, that - - -

Okay. Let's just make this year, the vouchers tended to be of two types, Liquorland and Harvey Norman?---Oh, Coles Myer vouchers eventually ended up being because I don't know what other than Liquorland but I think 'cause they own the whole lot of them and Harvey Norman, yes.

20

At the start was it Liquorland?---I think it was Liquorland but then something happened and it become Coles Myer vouchers 'cause you use them at 14 different shops or something.

All right. All, all shops in the Coles Myer group?---Yeah, yeah.

Yes?---Yes.

Thank you. And you wouldn't buy these vouchers yourself did you?---No.

30

Who bought them?---Jamie usually.

Is that Jamie Hopkinson?---Yes.

And is he the storeman?---Yes.

Did he buy them with his own money?---No.

Well, whose money was used?---R&R's.

40

Did you ever have a conversation with Mr Pearce about this system of using these vouchers to help secure a deal?---What do you mean by a conversation?

Well, did he tell what - did he ever tell you how to use them - - -?---No, no.

Did you ever talk to him about the fact that you'd offered them to people? ---Well, he could hear us offering people.

His office was nearby was it?---There was no office, there was just sitting in the room.

Open plan as they say?---Yeah.

Okay. And his desk when he was there was close enough to yours - - -?
---Yeah.

10 - - - that he'd, he'd hear word for what you were saying on the telephone to a potential customer?---Yes.

Or a buyer. Yes. All right. And now, amongst the customers that you built up and over the years that you've been there, were there many in the public sector?---You mean councils and stuff like that?

20 Councils and stuff like that?---I didn't, I didn't deal with very many councils. Oh, I've done, yeah, one was Broken Hill obviously that you're saying about and ah, the other one was the RTA that youse know about so, yeah.

Just so far as the RTA is concerned for a moment, who did you deal with there?---Well, orders just come electronically from, I don't know where it comes from, a lady now, but there is a bloke in the store that I used to deal with, I can't remember his name, he always used to get, it'd be in the book I suppose, that you guys have already got but yeah, we just get them electronically now.

30 Well, I'm just talking about the days when, when you used to deal with the bloke in the store?---Yes. I know I never really dealt with him much, I used to ring him up occasionally to see if he wanted stock or something like that but he always just said, you know, when we need it you'll get a email or a fax.

All right. Was his name Phillip Burnie?---Yeah.

40 And did you ever give Mr Burnie incentives?---I think I gave him a couple of vouchers, I think before that Doug Quinn used to give him vouchers 'cause it was already on, you know.

On the card already?---Yeah.

What, so you're saying Mr Quinn used to have a client card and he'd keep a note of - - -?---Yeah, the same as what your guys (not transcribable) the freebie book, yeah.

Yes?---Yeah.

THE COMMISSIONER: Keep a note of the vouchers he gave?---Yeah, yeah.

MR CAMPBELL: And so you knew from looking at the history of the client whether that client responded to vouchers or not?---Yeah.

When I say client I mean the buyer that you deal with?---Yeah.

In that context, is that right?---Yeah.

10

Yes, all right. Now would it be - just, just so far as Mr Burnie is concerned, do you know that - whether this is right, that at the end of 2007 and early 2008 he received vouchers totally \$450?---He could have, if that's what's in the book, it's a long way to remember back, I'm not sure yeah, but he, if it's in the book that's what he would have got.

And if, and if it's in the book and that was, it was around 2007/2008 then you would have been the man giving him the vouchers?---I think, was it 2008, I think that would have been Doug, wouldn't it?

20

Still Doug?---Maybe, I can't remember when Doug left exactly but it was only two or three years ago and I only obtained the card after Doug left so, yeah.

All right. What about - I wanted to ask you some questions about the vouchers but just in relation to other things, oilskin coats?---Yeah.

They're Drizabone?---Yeah.

30 And did you - were they part of the things you offered people?---Yeah.

Yes. And did you offer it to people?---Sure did.

Including clients in the public sector?---I have done, yeah.

Right. What about DVD players?---Yeah, they were things back in the day or would have been, might have been then, I haven't given one of them away for a while.

40 Okay. And who, and who were they given to?---I'm not sure. I think I might have given one to Broken Hill, maybe ages, ages and ages ago. I don't think the RTA got one but.

All right. You weren't - well, I'll put it this way - - -?---If they did it wasn't off me.

It wasn't from you?---I don't think so.

Yes?---And if it was it's news to me. I don't think so.

Well, anyway, that's your best recollection?---It's a while ago.

The records will show - if the records show something different you'd defer to the records, is that right?---Well, let me, yeah, let me know, I don't think I ever gave e them a DVD player.

10 All right. What about holidays? Were you ever involved in giving people holidays?---Not the, oh, maybe Broken Hill, I'm really not sure, maybe Broken Hill got one.

Apart from Broken - I withdraw that, Commissioner. I mean - - -?---You guys have got the book, you'll be able to see that.

Have you ever heard of holidays being given to anyone working for a council in Batemans Bay?---No, never.

20 What about Palm Beach?---Palm Beach.

Palm Beach?---Where's that?

Up here north of Sydney?---No, never.

No. What about - I'm sorry, I've asked you about Batemans Bay, never heard of that?---I've heard of Batemans Bay.

But never a holiday there given to a customer or a buyer?---No.

30 Okay. Now, amongst the customers you have, apart from the RTA and Broken Hill City Council were there any other local government organisations that you can think of?---There was other ones that I have supplied but not other ones that I have given freebies to.

All right. Well, who are the other ones you have supplied?---I can't remember.

All right. Well, let me, let me just ask you - - -?---Yeah, you go.

40 - - - some questions, I will, thanks. What about for instance if, if Bathurst Regional Council received - - -?---I never rang them.

Pardon?---I never talked to them ever.

Can I finish the question so you can give the answer?---Yeah, sweet.

Thanks. If Bathurst Regional Council received gift vouchers and other things from R&R Tape you didn't do it, is that right?---Never, ever.

All right. And the same question in relation to Broken Hill City Council you've told us you did give there?---I have.

And was the man there Mr Anthony Harman?---It sounds good, yep.

Was that, is that, does that accord with your recollections is what I want to know?---It is.

- 10 Okay. And so Burwood Council, I withdraw that, Commissioner, if Byron Shire Council received things from R&R Tape did it have anything to do with you?---Never.

What about the city, I'll withdraw that. Lithgow City Council?---Never.

Never?---Never rang them.

Okay. Narrandera Shire Council?---Never rang them.

- 20 Are you sure?---Positive.

All right. And you mentioned the RTA to me. What about Yass Valley Council?---Never rang them.

All right. Now the – were you paid – are you paid a basic salary and a commission?---Yes.

And is there a budget you have to exceed to get commission?---Yes.

- 30 What's your budget?---It's \$800 a day.

And is the – is that bottom line of 43 per cent - - -?---It doesn't matter. Sorry.

- - - is it relevant to calculating whether you've met budget or not?---No.

Is there such a thing as putting it on the house in your experience?---What's that mean?

- 40 Like it doesn't go to your credit it just goes to the company's credit if you sell for less than 43 per cent mark up?---Sometimes yeah, but not, not very often.

Do you ever sell for less than 43 per cent mark up?---I have, yeah. But you know, the boss lets a few things slide with me because I'm, you know, I sell a fair bit for the company and, you know as long as at the end of the month it looks good then it's all right.

All right. You've been there for a long time?---I've been there for a while.

Now just in relation to when you have used incentives, and the purpose of those is to either close a deal that doesn't look like it's going to close. Is that right?---No, not really. I just used to use them to like just to give them to people just to keep their business. You know what I mean? And to help get more business, not just as you say, in the public sector but across the board.

10 Just stay with the public sector if we could, when you say you gave them to people you're talking about the buyer with whom you actually dealt over the phone. Is that right?---Yes.

And by and large the system was that the buyer got to choose whether or not you'd send the voucher to his home or his place of work. Is that right?
---Wherever he wanted.

His choice?---Yep.

20 It was your intention that he got it for his personal benefit. Is that right?---If he wanted it, yep. But I think like Phil Burnie maybe, I think he might've got them sent to work. I'm not positive. It's been a while, but I think he might have.

We might be a cross-purposes, I was asking you from your point of view and let him choose where it went?---Yep.

30 And the reason why you let him choose where it went is because from your point of view, having regard to the system that R&R Tape had, you were giving the voucher to the person you were dealing with for that persons personal benefit?---Yes. But there are the ones that use it for the company as well.

Well there may be but I'm asking you to answer my question?---That's what I was trying to do, like some of them use it of the company, someone might up on a barbecue at the end of the month. Some of them like - - -

40 THE COMMISSIONER: That wasn't the question?---What was the question, sorry?

The question is you gave it with the intention that the person you gave it to could what he liked with it?---Yes.

He could use it for his own benefit if he wanted to?---If he wanted to use it for his own benefit, yes.

MR NAYLOR: Thank you, Commissioner. Now – and it was the sort of thing wasn't it where you'd use them in order to encourage the people to keep dealing with you?---Yep.

I mean, that's a yes, thank you. There are a lot of other companies who supply the same type of products that your company supplies?---Sure.

And part of the purpose of giving these people including in the public sector the incentives was to build up customer loyalty?---Yeah.

10 And so that they deal with your company in preference to one of your competitors. Is that correct?---Yep.

And, and that they deal with your company in preference to one of your competitors regardless of the price that you charge them?---Oh no, not all the time 'cause like it's not like we went, oh you know, like you're going to get three boxes of riggers gloves and we're going to put \$200 on top of that because we're going to send you a \$200 voucher. It didn't happen like that. If I felt it as a go enough order then I'd throw them in a voucher, you know. But a lot of the stuff that we supply, for example, Broken Hill City Council,
20 from memory, riggers gloves were \$4.40. Like in Bunnings and places like that they were eight, 10 bucks, you know, like so it's not like we were ripping them off or nothing like that. And there is other companies around that sell them for a lot more than \$4.40.

There's probably other companies around in the same sort of line of work as you who would sell them for less than that. That's correct isn't it?---Well we could sell them for less than that if we wanted to.

If you chose to?---Yeah.
30

THE COMMISSIONER: So there were others who might be – who sell for less than you from time to time?---Yeah, for sure.

MR CAMPBELL: And – but part of the incentive was to encourage that loyalty so that the buy would keep coming back to you rather than shopping around for somebody else?---Yes.

That's right?---Yep.

40 And now, we know this Mr Fisher, we can ask you again, the whole – these vouchers had a cash figure on them, usually \$50?---Yeah, it went up in lots of 50 usually.

Yes?---Yep.

You might have one for 100 or - - -?---Yes.

- - - even 2?---Yes.

And they were just like cash in the shops where you could redeem them weren't they?---Yeah.

So it's fair - - -?---(not transcribable) cash for products, it's the same.

No, no, what I'm saying is that if I go into one of those 14 Coles Myer shops you've referred to, I can – and I have a voucher from them I can buy any product on the shelf using that voucher in the same way I'd use cash?
---Yes.

10

And, and that's what the idea was, was it not?---Well they could use it whichever they want, yeah.

Well it wasn't much good to anybody other than for going to Coles and buying something was it?---Yeah.

You agree?---Oh, yeah, one of the shops that Coles owns, yep.

20 And the - now you'd recognise would you that if you're giving out that type of incentive to a person who's buying from you, that's effectively a kickback isn't it?---I suppose, yeah.

Or to put it another way, it's effectively a bribe in the case of a public official to keep the business that he's sending your way. That's so isn't it?
---Well if you say so, yeah.

30 I'm asking what you say. Do you agree with me or not?---No, I didn't agree back in – I didn't know like five years ago or whenever it was, I didn't know that it was wrong.

Oh well, I mean if someone rang you up and said Mr Fisher I want to sell you something, it will cost you \$1,000, but if you give me \$1,000 I'll give you a 100 back, I'll put it a better way, if you get your boss to buy this thing for \$1,000, I'll give you 100 back and you can keep it. Well you'd recognise that as you being offered a kickback wouldn't you?---To be honest I just thought it was like for example, I bought a Fujitsu air-conditioner like three years ago and they gave me a \$300 voucher to be used in any shop. I just basically thought it was like that.

40 But in that case you were the consumer going into a retail shop to buy a product that you actually wanted. That's so isn't it?---Yeah, for sure.

You agree with that don't you?---For sure.

And you had a choice whether you bought the Fujitsu or some other brand air-conditioner didn't you?---Yep.

And so they offered you as the actual consumer an incentive to, to buy their product?---Yep.

All right. Now if Mr Pearce sent you down to the shop and said buy a Fujitsu air-conditioner for work - - -?---Ah hmm.

- - - and the salesperson said to you, you're sure, here's \$300, put it in your pocket and Mr Pearce still pays the \$3,000, well that would be a kickback wouldn't it?---Yep.

10

And you'd recognise it as such straight away wouldn't you?---Yeah.

You wouldn't have to think about it for even a moment to recognise that would you?---No, I wouldn't have a problem with it.

You wouldn't have a problem with it?---No.

You think it'd be okay?---Yeah, I'd tell them about it.

20 Oh I see, so you'd go back to work and hand it to Mr Pearce?---No, I'd give him the option.

I see. You (not transcribable) the boss, do you want your \$300 back boss or not? Is that what you'd say?---No, I'd just say, this is what, you know, I got for negotiating a deal or something like that.

I see. You'd recognise it was his money wouldn't you?---Yeah.

Of course?---Yea.

30

And it would be up to him whether he gave you a tip or not?---Yep.

But if the salesman said to you just put it in your pocket and you don't have to tell the boss, you'd recognise that was something different wouldn't you?---Probably, yeah.

40

Or if the salesman said to you, look for the purpose of this \$300 rebate on the price that we're going to give you for buying this air-conditioner, would you please give us an address where we can send you a money order by registered post. He said that to you and you wrote, you gave him your home address, then you'd know that was wrong wouldn't you? Still the same example, you're buying it for Mr Pearce?---As I say, I guess it would be wrong if I suppose that I did it like without telling him but if I told him then, yeah.

And it would be, it would be just the same thing, wouldn't it, if they said not the \$300 cash rebate, but gave you a voucher for Harvey Norman to buy

anything else with the \$300 cash but gave it to you at your home address, that would be just as wrong, wouldn't it?---I didn't think it was that wrong.

Well, you may not have thought at the time it was that wrong, but you think it's wrong now, don't you?---Well, I'm not allowed to do it any more, I know that.

10 Yeah. And if you thought about these questions at the time it would have taken no more than a moment's reflection to realise it was wrong. That's right, isn't it?---But we offered to everybody, not just the council, to everybody, so I just thought it was just usual in business, like what we did.

It's not, with your permission, Commissioner, we will not be inquiring into everybody but if you gave it to the purchasing officer at BHP for his own private use it would be just as wrong as giving it to the council buyer for his own private use, wouldn't it?---(NO AUDIBLE REPLY)

That's right, isn't it?---Well, I don't think it is that wrong.

20 Don't you?---No.

Well, in the example I've been asking you about since you helpfully gave me the suggestion about the buying the air-conditioner for Mr Pearce, well, you think you could quietly put the \$300 in your pocket and it wouldn't be wrong?---No, only if I told him.

30 I see. If you, you'd have to tell him. Wouldn't you have to hand him the money and say, Mr Pearce, this is what they gave me, here, it's yours? Isn't that the only right answer?---Well, you could do that or could just say this is what they gave me and give it, leave it up to him.

I see. I see. Put the money on the table and leave it up to him?---Yeah.

Yeah. And if he put it in his pocket, you'd have no complaint, would you? ---Oh, I'd least expect him to go halves.

What, give you, give you back half of his own money?---Oh, if I negotiated a good deal, you know.

40 I see. That's the way it works?---He's a pretty good boss.

THE COMMISSIONER: And that would be your employer who would decide whether to give you the money. It would be wrong if the seller gave you the money?---(NO AUDIBLE REPLY)

You nod your head. Do you mean yes?---Oh, it probably would be, yeah.

MR CAMPBELL: It would be wrong if he sent it to your home, addressed to you privately, would it not?---Yeah, it would be. If that's where they wanted me to send it and to, you know, I'll send it, I used to send it there, you know, so yeah, that's what we did.

I mean to send it, that's exactly the type of system that was employed using these incentives at R&R Tapes, is it not?---Sorry, can you say that again, please.

10 Yes. The system that you used for the provision of incentives at R&R Tapes was that the buying person- - -?---Mmm.

- - -at the council- - -?---Yeah.

- - -not the council- - -?---Yeah.

- - -got to decide where the incentive was going to go?---Yeah, for sure.

20 Right. And if it was going to his home address there was no questions asked?---No.

Right. And indeed by and large most of them sent it to the home address, did they not?---I don't know what other people did but I know I think I did with Broken Hill.

I missed the last bit?---I think I did with Broken Hill.

30 Right. And for other people that you gave incentives to, whether in the private sector or in the public sector, did the majority of it go to the person's private address?---No, a lot, a lot of them go, a lot of them go to work.

I'm asking about the majority?---I don't know. I don't know the figures but a lot of them do go to work.

Pardon me. Have you heard the expression, do you know what business ethics are?---Yes.

40 What are they? What do you regard as business ethics?---Well, what's wrong and right in business and, you know, proper practice and stuff like that.

Would you accept that it's wrong in business, any type of business, for an employee to take a secret benefit from a supplier?---Well, it might be wrong but there's a lot of, a lot of it out there.

Yeah. And would you agree it could be wrong for the supplier to press it upon the buyer?---Do I think?

Well, I withdraw the question. It's just as wrong, isn't it, for you to offer it to individual employees of other companies as it is for them to take it? Do you agree with that or not?---No, I don't think it is.

No. No further questions, Commissioner.

10 THE COMMISSIONER: Mr Oates, the general practice will be that counsel representing the witness being questioned will be invited to go last but for Counsel Assisting. Is there anyone, do any counsel wish to question Mr Fisher?

MR NAYLOR: I apologise. I appear among others for Mr Harman who was mentioned by this witness. If there are others who want to ask questions perhaps I should go after them.

THE COMMISSIONER: Yes. Is there anyone- - -

MR HARRIS: Commissioner, if I may, Harris, for Mr Hopkinson.

20 THE COMMISSIONER: Yes, Mr Harris.

MR HARRIS: Mr Fisher, I'm representing Jamie Hopkinson. You mentioned I think that- - -

THE COMMISSIONER: Sorry, Mr Harris, do you mind, and I can say this to all counsel at the third bench, could you please come forward to a microphone when you are questioning the witness.

30 MR HARRIS: Mr Fisher, did you hear me?---Yeah.

Representing Mr Hopkinson?---Yeah, mate.

You mentioned that the vouchers were bought by Jamie Hopkinson with the R&R money?---Sometimes.

Sometimes?---Yeah. I think there's, there's, and other people have gone down and got them before but I think he's the main one that usually does it.

40 Was it sometimes your practice on a Friday for example that you'd be given an order to go down and get vouchers?---Me?

Yes?---No.

No, you never did that?---I don't think so.

Right. All right. Thank you.

THE COMMISSIONER: Is there anyone else other than Mr Naylor? Mr Naylor.

MR NAYLOR: Thank you, Commissioner. Counsel assisting - - -

THE COMMISSIONER: Sorry, Mr Naylor.

MR NAYLOR: I apologise.

10 THE COMMISSIONER: So Mr Naylor represents a number of councils.

MR NAYLOR: Including Anthony Harman and a number of other local council officials. Counsel assisting was asking you some questions just before he finished in relation to sending vouchers or incentives to the home address or to the work address. I'm interested to know how it was that you came to give those people a choice as to whether or not vouchers should be sent to the business address or the home address, was that because you were given some instruction to that affect?---No. To be perfectly honest we've had some other vouchers go missing at other places like that we've sent
20 them, like they've gone out and whether the postman's knocked them off or someone in the post service knocked them off or someone in the office has – often they haven't got to the person or the area that they're supposed to go go, so yeah, that's, that's how that come about.

There was an established practice that vouchers would be sent to peoples home, home address?---Well they have been before.

Yes?---Yeah.

30 And was that a practice which was sanctioned in some way by your supervisor, Mr Pearce as far as you're aware?---No, no. I used to just ask them, sorry, I used to just ask them where would you prefer me to send it, to work or to home, but - - -

THE COMMISSIONER: But he would have heard you say that on the telephone?---Oh he probably would have, yeah. When he was in the office. He's been at home for the last fair few years.

40 MR NAYLOR: Did you – do you recall ever having a discussion with Mr Pearce about gift vouchers or other incentives?---What do you mean a discussion?

Did you ever have a conversation with him about the gift vouchers that you were supplying to local council officials?---Not really. He's always known about it, so, yeah.

You're saying not really, does that mean to say that you didn't have any discussions with him about it?---Oh, I may have had.

But you (not transcribable) or you did?---I may have had a discussion with him about it but I don't know what you're sort of referring to when you mean discussion, like he knew about it if that's what you mean.

How do you know he knew about it?---Because he would have been able to hear it and he knew there was a (not transcribable) yeah, he knew.

THE COMMISSIONER: Mr Naylor, is this a convenient time?

10

MR NAYLOR: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes. The Commission will adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[12.58pm]