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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 THURSDAY, 6 OCTOBER, 2011

AT 2.08PM

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

THE COMMISSIONER: Mr Campbell?

<GARY CHARLES BLACKFORD, on former affirmation [2.08pm]

MR CAMPBELL: Thank you, Commissioner. Mr Blackford?---Yes.

10 When you delivered that iPhone that was sent to your address in accordance with the old policy to Mr Lewis, you didn't say to him anything like, "Here's the council's iPhone", did you?---I wouldn't think so, no, I wouldn't think.

And you didn't, you didn't on your way out to his place of work call into the chief financial officer for the Orange City Council and say, "Here's the iPhone that Peter Lewis ordered on behalf of the council", did you?---No.

20 No, no. That would be a preposterous suggestion, wouldn't it?---(NO AUDIBLE REPLY)

Do you agree or disagree?---That's just an area where we had no contact.

The simple fact of the matter is, the person you had contact with was in this case Mr Lewis. Correct?---Yes.

And the iPod, iPhone, I'm sorry, was for him, was it not?---It was for the council.

30 Well, if it was for the council, why didn't you, I'll withdraw that. Are you being sincere when you say that, Mr Blackford?---Can I just say, add something to that?

No, no, I want you to answer my question?---Okay. All right.

Are you being sincere when you say that, that, that iPhone was for the council?---Yes. I saw him use it at work so - - -

40 Well, you might see anyone use their mobile phone at their place of work I suppose. That's a fair observation from everyday life in the 21st century, isn't it?---Yeah.

Yeah. Well, what about the other two iPhones that you caused to be sent to the post office box that he gave you, did you see him using all three at work?---No.

No. And, and when the system changed, did you say to Mr Lewis, "Well, now we've changed the system I'll just have to drop the council's iPhones

off at, at, at the town hall on my way out to see you.” Did you say that to him?---No.

No, of course not, because they were always intended for him, were they not?---I can’t answer that, no.

I see. Well, you delivered them to him at his post office box, did you not?
---That was the, that was the address- - -

10 THE COMMISSIONER: Did you or didn’t you?---I sent them to the post office box he gave me.

MR CAMPBELL: Yeah. And you knew that was his personal address, did you not?---No, I didn’t know that was his personal address.

Well, you knew it wasn’t the council’s address, didn’t you?---I didn’t actually check.

I see. You didn’t check?---Yeah.

20

You were just reckless. Is that, is that right?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Oh, I don’t think- - -

MR CAMPBELL: I withdraw that. I apologise, Mr Commissioner. In any event, these iPhones that I’m asking you about- - -?---Mmm.

- - -are a, quite a valuable item, aren’t they?---Yes.

30 Each of them is about, I withdraw that. Each of them is worth over \$800. Is that correct?---According to the one sheet I saw, yes, yeah.

That’s what Paula M Promotions charged NCH Australia for supplying them?---Mmm.

That’s correct, isn’t it? Yeah. So that’s in the space of about seven months, between March and October 2010, that’s over \$2,400 worth of mobile telephones that you delivered to Mr Lewis at his direction. That’s correct, isn’t it?---Correct.

40

And each one of them was for him, was it not?---It was as a result of the, of the rewards program that, that he ordered through the councils.

THE COMMISSIONER: Answer yes or no, please?---No. Whether he took it for him is, is his business, not mine.

MR CAMPBELL: I see. Are you saying that, that he effectively misappropriated the phones. Is that correct?---I don’t know.

MR WIGNEY: Well, I object to that, Commissioner.

THE COMMISSIONER: Yes.

THE WITNESS: Yeah.

MR CAMPBELL: Well, I press it, Commissioner, with respect, because- - -

10 THE COMMISSIONER: No, we don't, well, you put it in a different way.

MR CAMPBELL: I will, I will. They were delivered to him for him to do with as he saw fit. That's correct, isn't it?---Yes.

I have no further questions.

THE COMMISSIONER: So that even if it was the council's property, he could keep it himself as far as you were concerned?---I'm sure he could if he wanted to, yes.

20 MR CAMPBELL: I have no further questions.

THE COMMISSIONER: Can the counsel who wish to cross, to question the witness, can they just identify themselves. I know Mr Clay, you do.

MR CLAY: Just a couple.

THE COMMISSIONER: Yes. Anyone else? No. All right. Mr Clay, you're on your own.

30 MR CLAY: Mr Blackford I'll just ask you if you recall that the third iPhone- - -?---Ah hmm.

- - -sent to Mr Lewis was returned to you or to your company. Do you recall that?---There was a, the third iPhone, whether it was that iPhone or not, I'm not sure, but one was returned.

Thank you?---An, an iPhone was. Whether it was one of those, I don't know.

40 THE COMMISSIONER: Returned by whom?---Sent back by Peter Lewis, as far as I, yeah.

MR CLAY: I apologise. I appear for Orange Council?---Yeah, that's okay.

And (not transcribable)?---That's okay.

Thank you. And there may have been some misunderstanding, and it may be mine, but there's material that has been provided I gather by NCH and to

the Commission and in the material that's been given to me which suggests that the three iPhones were posted. I know Mr Campbell suggested at one point delivered to Mr Lewis.

THE COMMISSIONER: Well, delivery is a form of, posting is a form of delivery, Mr Clay.

10 MR CLAY: It may be, but the transcript would read more that it was handed over because he then went on to say about something you did while you were there so- - -

THE COMMISSIONER: Just put the question. What is the question?

MR CLAY: Thank you. Do you recall if they were- - -?---Delivered. - - -posted or- - -?---From, from memory- - -

20 Yes---?- - -if I'm getting it right, from memory the first one was delivered and the other two were posted.

Right. By delivered do you mean you took the first one?---Yeah.

Thank you. Yes, thank you. Nothing further.

THE COMMISSIONER: Yes, Ms Moody, do you have any questions?

30 MS MOODY: Just one clarification, you Honour. You were asked by Mr Clay at an earlier time, in fact the previous witness was asked by Mr Clay at a previous time in relation to items delivered to your home?---Ah hmm.

And you've told, you've told counsel assisting that that was common practice?---Yes, yes.

Did you ever at any time not deliver items that were sent to you for, to be handed out to - - -?---No, all these were, were sent to me and delivered or posted, yeah.

Nothing further, your Honour.

40 THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Nothing arising, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Blackford. You may be excused, sir. You may leave the witness box?---Thank you.

THE WITNESS EXCUSED

[2:15]

MR CAMPBELL: Commissioner, I call Jacqueline Verdeyen.

MS MOODY: Might I be excused, Commissioner?

THE COMMISSIONER: Yes, certainly.

MS MOODY: Thank you.

THE COMMISSIONER: Ms Traill, you appear?

10

MS TRAILL: Yes, I do, your Honour.

THE COMMISSIONER: Yes, and you wish me to make a section 38 order.

MS TRAILL: I do wish you to make a section 38 order, your Honour.

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

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30

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

THE COMMISSIONER: Ms Verdeyen, 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. Do you understand that?

40

MS VERDEYEN: Yes.

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

MS VERDEYEN: On the Bible.

THE COMMISSIONER: I beg your pardon?

MS VERDEYEN: On the Bible.

THE COMMISSIONER: On the Bible.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Ms Verdeyen, would you please state your full name?---Jacqueline Verdeyen.

10 And are you still employed by NCH Australia Pty Limited?---Yes, I am.

In what capacity are you employed?---Business Development Manager and a representative.

So when you say a representative, a sales representative?---Yes.

All right. And for how long have you been with the company?---It will be eight years this November.

20 And what does a Business Development Manager do?---A Business Development Manager trains new reps.

And for how long have you been doing that work?---Approximately four and a half years.

And may I ask you this question, have you been in the hearing room this morning whilst other witnesses have been giving evidence?---Yes.

30 All right. So you've heard the nature of the questions I've been asking? ---Yes.

THE COMMISSIONER: Were you here yesterday as well?---Yes.

MR CAMPBELL: Thank you, Commissioner. Training new representatives involves educating them in that manual The Gears of Selling, is that correct?---Yes.

And that's a manual which is still in use today?---Yes.

40 And it's the manual you use when you train the new reps?---Indirectly, yes.

Do they get a copy of it?---Yes, they do.

Do you ask them to read portions of it?---Yes.

And you ask them to read portions of it in between training sessions?---Not necessarily.

I suppose that you've been with the company doing that work for a long time so you're pretty familiar with its contents?---Yes.

That's what you meant when you said indirectly?---Yes.

All right. Now as part of the marketing strategy by NCH Australia Pty Limited has there, during the time that you've been there, always been what's been referred to by some witnesses as promotions?---Of sorts, yes.

10 What sorts?---The one that you showed before of rewards points.

All right. And is that something that you use in the course of your sales work?---The last four years, probably. Before that not necessarily, no.

All right. Well it's true to say isn't it that it's changed and developed over the last four years?---Possibly, but I don't have any dealings with any changes.

20 Well you don't institute them, is that correct?---Yep.

But you get informed of them?---From about four, four, five years ago, yes.

And from about four or five years ago, let me make this clear, you get informed of them from a period commencing about four or five years ago up until the present?---Yes.

So you may not be responsible for, I'll withdraw that. You're not responsible for the policy. Is that correct?---Correct.

30 But your superiors tell you what the policy is?---Yes.

It's your job to implement it in the course of your ordinary work?---Yes.

And because that's what you're told to do?---Yes.

And in respect of the people you train as sales reps you, you train them in the use of the current promotional information, is that correct?---No.

40 No. Who do they get that from?---No one.

Well, when I say - there are catalogues, are there not?---No, there's a sheet but not a catalogue.

All right. Well, let's call it a sheet. When they're out in the field operating as sales representatives they have to have that information?---No.

Not today?---No.

But last year?---No.

What do you mean no?---I do not involve new reps with catalogues, promotions of any sort. They have enough to learn with the Gears of Selling, they do not need to be encumbered by other things.

Well, let me ask you, did you use it yourself in your work?---A catalogue or a promotional sheet?

10 Did you use the promotional sheet and implement - - -?---No.

- - - the company's promotional - - -?---No.

So never at any time?---No.

THE COMMISSIONER: Never at any time - can you, did what? Just - do you mind - - -

MR CAMPBELL: No, I'll clarify, Commissioner.

20

THE COMMISSIONER: - - - repeating the question, Mr Campbell.

MR CAMPBELL: We need to, I know that this is a tense time in some respects, Mrs - Ms Verdeyen, I'm sorry. We need to let each other finish speaking because we commence speaking. Okay. It happens all the time. Let me ask this question, I'll ask you again. Have you ever at any time implemented in the course of your own work as a sales rep NCH's promotional policies?---Yes.

30 All right. And you have implemented those in the course of your own work as a sales rep at all time that you've been doing that type of work?---Can I clarify your question? Are you asking me if I've used the brochure or the sheet or are you asking me if I've used the availability of the promotion? ---I'm asking you about the availability of the promotion?---Yes.

And you don't, are you saying to me you don't use the sheet?---Correct.

Because you're pretty familiar with what's available?---To an extent, yes.

40 Yes, all right. And you know that you've always - I'll withdraw that. I think we've already established this but from your experience of it its, the content of the promotion has changed over the years from time to time? ---Yes.

And now I want to ask you - I'll withdraw that. Could I ask that the witness be shown folder 9, tab 46.

THE COMMISSIONER: Page number, Mr Campbell?

MR CAMPBELL: Page number 290, actually I'm in error, forgive me. I'll go to 290. 290 is something which is the current sheet, is that right?---No, I, I believe this finished.

I see. Was that - when was it finished?---September the 1st I believe.

And that, that up until that date that was the sheet that was current for a few months before, is that right?---Yes.

10

And you say it's finished, is there any promotional programme implemented by the sales staff currently?---A monthly promotion.

And what type of thing is that?---I don't know, I, I can't recall.

I see. All right. Now would you, would you please go to page 351 of the folder. Now, that's the first page of a promotional sheet that was current as it says in winter of 2010, yes?---Yes.

20

Thank you. And you were aware of its introduction because in common with other sales people you received the email that informed you that it was to be used after a certain date, is that correct?---I don't remember the email but if it was sent to me I, yes, I got it.

All right. Well, I'm happy to help you with that. If you look at 349. Do you see a - - -?---Yes.

Your name's there in the second last line?---Sure.

30

And you accept that you would have received it, Ms Verdeyen?---Yes.

All right. And because, I withdraw that. Is Mr Epps the officer at NCH to whom you directly report?---Yes.

All right. And if it's, if the company tells you this is a new revised promotion program, it's your obligation in your capacity as a salesperson to implement that program in your dealings with the company's customers? ---I don't understand what you're asking.

40

Okay. When you sell something, you apply the program?---Not necessarily, no.

Well, isn't it the case that the customer is entitled to, to the, to the promotional items- - -?---No.

- - -when he or she places an order? No?---No, it's a choice.

It's your discretion, is it?---Yes.

All right. Well, how often did you use it in the, in the latter part of 2010?
---Very rarely.

Ah hmm. Well, what does that mean, were there certain customers you used it with?---Not necessarily, no.

I see. Well, very rarely, let's say for the whole of 2010, how often did you use the current promotional program in selling goods on behalf of your employer?---You're talking about the previous one that we looked at?
10

I'm talking, I'm talking about whichever one was current at any given time during 2010?---Maybe half a dozen times in the year.

And who do you say that you, can you remember any customers that you - - -?---Not specifically.

Not specifically. All right. But could we, you'll agree, won't you, in any event, I withdraw that. It says doesn't it on 349, if you look at 349, the email, second paragraph, this is from Mr Epps, "Treat your customers to some great new promotions. And please note the category detail and conditions." Do you see that?---Yes.
20

Well, do you say you disobeyed that directive on occasions?---If you looked at it that way, yes.

I see. Why?---I didn't need to give my customers promotions.

Ah hmm. Did your established customers ever ask about them?---No, never.
30

Never?---No.

They, right, they were happy with the product and happy with your service?
---Absolutely.

Did you have any established regular customers amongst local government in New South Wales?---Do I have any?

40 Did you have in the second half of 2010?---Yes.

And could you name the councils, please?---Tweed Shire Council, Byron Shire Council and Ballina Council.

Well, in respect of any, in respect of either Byron Shire Council or Ballina Shire Council, did you implement the promotional program at any time during 2010?---Yes.

And, and let's just talk about Byron Shire Council first. Who did you do that with?---Not in Byron Shire Council, in Ballina Shire.

Because you did it so rarely would you say you couldn't have forgotten the details?---Details of what?

Of promotions that you implemented?---As to how they were structured?

10 No, as to, as to who you gave what?---No, I can remember who I gave what.

Okay. Well, what with Byron Shire Council, any, any gifts to them?---No, no.

Any promotional items to them at any time?---Not that I can recall.

And what about, what about Ballina Shire Council?---Yes.

And more than once?---On more than one occasion?

20 On more than one occasion?---Yes.

How many times?---Twice.

And when were, when were they?---I don't recall the dates.

What time of year were they? Do you know was it last year or some other year?---It was late, I think it was October last year but I can't recall exactly, and the previous to that I don't remember.

30 All right. And, and was there a particular buyer at, at, at Ballina Shire Council that you deal with?---Yes.

Who was that?---Glen Lapham.

And for how long had he been a buyer of yours?---I'm not sure. Could be a year and a half before that time but I'm not exactly sure of the dates.

40 All right. And you see, was it always your attitude that you, you wouldn't use, I withdraw that, Commissioner. Over the years with Ballina Shire Council, were there other people apart from Mr Lapham that you dealt with?---Yes.

A Gary Meredith?---Yes.

Did he ever get promotional items from you?---Sometimes he did, but not, not necessarily.

Well say you're going back from the first time you gave Mr Meredith a promotional item, how many times have you given a promotional item to somebody at Ballina Shire Council?---I couldn't recall.

What too many times?---No, not too many.

10 Would you agree with me that between 23 September, 2010, not so long ago and 22 December, 2010, you on six occasions provided promotional items to an officer of Ballina Shire Council in the course of making sales?---I can't recall. I don't have those numbers in front of me.

THE COMMISSIONER: You were asked about your memory?---Sorry?

You've been asked on the basis of your memory, it was a year ago?---Yes, but I don't remember what dates they were.

Well never mind the dates, the specific dates, you've been told about more or less when it was?---They were different dates were they?

20 MR CAMPBELL: Well let me just, you said to me earlier in giving your evidence that in latter part of last year you think, you on two occasions gave promotional items to Mr Lapham - -?---Correct.

- - - in the course of sales at Ballina Shire Council?---Yes.

Are you confident in your recollection about that is correct?---Yes.

30 Because you've told the Commissioner already in your evidence that you rarely used this technique?---Yes.

And that's because you thought you could sell the product at the stated price without using it?---Yes.

So those two occasions must therefore have stuck in your memory. Would that be fair?---Not until this all came up and I was given a folder with information to that end.

40 Before you - you were given a folder and you did review it. Is that so?
---Yes.

And you were given the folder by NCH were you not or their lawyers?
---Yes.

And you had a look at what was in that folder. Is that correct?---Yes.

Now – and so is it from having had a look at that folder that you think that you may have been involved in two promotional items late last year?---Yes.

Are you confident that information you were provided with was absolutely accurate?---If it came from NCH I would assume so.

It could be an unsafe assumption I suppose?---I would doubt it.

All right. Well could I, could I ask you whether this is true, and I'm only asking you about the latter part of, of 2010, that between 23 September, 2010 and 22 December, 2010, you gave one, two, three, four, five, six promotional items, mostly to Mr Lapham?---Yes.

10

Are you surprised to hear that number?---No.

See you used these techniques didn't you in order to secure sales for your company?---No. No.

No, not ever?---No.

Did you ever discuss with Mr Lapham what promotional sales, I'll withdraw that, what promotional items would be available to him if he, if he placed an order with you?---No.

20

Did you ever discuss with Mr Lapham how he could structure orders in order to, my word, maximize the number of promotional items that he was entitled to receive?---No.

You're adamant about that?---Yes.

You communicated with Mr Lapham in various ways did you not?---Yes.

30 You'd sometimes speak to him on the telephone?---Yes.

And on other occasions you would exchange emails with him?---Yes.

Just before I come to that, could you please in the folder that's still in front of you turn up from page, I'm sorry, tab 46, page 293. Now I want you to, have you got it there, I'm sorry, Ms Verdeyen?---293?

293. Now I want you to assume for me, I'm sorry, pardon me, Commissioner, page 293, folder 9, tab 46. Just pardon me for a moment.
40 Now you've had a chance to look at that?---Yes.

I want you to assume for me that that is a record from NCH Australia Pty Limited which was prepared subsequently to the document you were given some weeks ago in further compliance with a request for information. Now if you make that assumption, you would say it must be accurate would you not?---I would say if it was given to me from NCH, yes.

And over the space of, this is a longer period than I asked you, but over the space of the period from 26 February, 2007 to 22 December, 2007, it's fair to say you very frequently provided promotional items to officers at Ballina Shire Council in relation to orders placed with you on behalf of NCH. Do you agree?---No.

You think that's an infrequent, infrequent use of, of promotional items?
---What dates specifically are you speaking of?

10 I'm asking of the whole period from 26 February, 2007 to 22 December, 2010, which I thought I made clear in my last question.

THE COMMISSIONER: No, I think there was - - -

MR CAMPBELL: Was it my time, Commissioner?

THE COMMISSIONER: Yes.

MR CAMPBELL: Yes. Looking at it from February 2007 to December
20 2010, you fairly frequently I suggest to you provided promotional items to officers associated with Ballina Shire Council in relation to sales you were negotiating on behalf of NCH. Would you agree with that?---No.

I see. You think that's an infrequent record of the provision of promotional items. Is that correct?---No. No.

THE COMMISSIONER: I beg your pardon?---No.

MR CAMPBELL: It's not infrequent was my question?---Okay, can I draw
30 your attention to the fact that the items were delivered to my home and they were not given to the people of those councils.

I see. See we heard evidence though, well I'll just stop for a moment, Commissioner. That's earlier in the period and your home address is , , , ?---Correct.

And that will be subject to a suppression order. I only mention it for the purpose of identifying what you're talking about.

40 THE COMMISSIONER: Yes. That is subject to a suppression order.

MR CAMPBELL: Thank you, Commissioner. The - see the system - so what do you say that you pocketed those items?---No.

THE COMMISSIONER: What did you do with them?---I used them in other customers, if I found fit to, to offer them.

See but that wasn't, that wasn't the basis upon which you were authorised to deal as the agent of NCH Australia Pty Limited was it?---Possibly not.

THE COMMISSIONER: Sorry, I don't understand that. You either buy, on this document the buyer's name is recorded. Are you saying that the buyer's name as recorded in this document is wrong?---No. The promotion was ordered on the strength of their order, but they didn't necessarily get the promotion and they were not told about them.

10 MR CAMPBELL: You never ever told the customer about the promotions until you decided to give them one. Is that correct?---Correct.

And that was your invariable practice right up until 22 December, 2010?
---Yes.

Is that correct?---Yes.

20 So – well okay, if we accept what you're say, you say that Mr Meredith didn't get his Black & Decker impact drill, someone else got it. Is that correct?---Possibly.

Well, what else could have happened to it?---I could have given it to another customer.

THE COMMISSIONER: Well, that's what you're being asked.

MR CAMPBELL: That's what you're being asked, yes?---Yes.

30 Well, whether or not - okay. Well, whether or not Ballina Shire Council got what they were entitled to on the basis of NCH Australia's promotions or Mr Meredith got what he thought he was entitled on the basis of that, some other customer got it. Is that correct, at some stage?---Probably, yes.

So it still looks like then a record of fairly frequent provision of promotional items to people from February 2007 to December 2010 don't you think?
---Not in the council.

40 I see. But it certainly shows you frequently using that technique in your sales work, does it not?---Yes.

Contrary to what the Commissioner earlier this afternoon. That's correct too, isn't it?---I don't agree.

You told him you rarely used this technique in your sales, did you not?
---Over, over four years that is rarely.

I see. You'd like to withdraw your last answer about - - -

THE COMMISSIONER: I don't think it's four years, it's less than three?
---Well, February, February 2007 to February 2011 is four plus - - -

So that 22 December, 2010?---Okay, three, three years.

MR CAMPBELL: Well, you see, if we go - I'll just - pardon me, Commissioner. Would you look at this, this is not in the folder, Commissioner.

10 THE COMMISSIONER: Just one moment please, Mr Campbell, I just want to check something here.

Ms Verdeyen, by my reading of this document at page 293 from the period 20 May, 2009 to 22 December, 2010 so give or take 19 months seven promotional items were sent to somebody at - who is connected with Ballina Shire Council, you can see that on the 7 October, 2009, 23 September, 2010, another one on 23 September, 2010, one on 19 October, 2010, another one on 19 October, 2010 and another one on 19 October, 2010 and another one on 22 December, 2010 so if you look at it, really just take from
20 23 September, 2010 to 22 December, 2010, that's three months, you have one, two, three, four, five, six. Is that - in that period it's pretty frequent isn't it, that three-month period?---No.

No. Why, why do you say no?---Because if you're taking it from 17 November that was the first one, that's one, okay - - -

No, no, I said 23 September, 2010 to 22 December, 2010?---Well - - -

That's the last - - -?---The first - - -
30 - - - three, four, five six. I'm just asking about that limited period?---Well, I - - -

That three month period?---This sheet that I'm looking at - - -

Mmm?--- - - - the promotions were delivered to the council from November 17, 2009.

But I'm not asking you about that period. I'm asking you about the period
40 from 23 September, 2010 to the period 22 December, 2010?---23 September to?

22 December?---Okay. Then one, two, three, four, five, six.

Six in three months?---Yes. However - - -

Well, in that period is it not a pretty frequent use of the promotional items?

---No, because five of the items were done on two separate days so the promotional items were only ever discussed on those two days so in effect that's three times.

MR CAMPBELL: Once a month, is that right? That's a reasonable frequency isn't it?---Okay.

That's a reasonable frequency isn't it?---Once a month.

10 Yes, in that period?

THE COMMISSIONER: A bit more than once a month actually - - -?---But it was one time in - - -

There are a number of orders?---One time in September, one time in October and one time in December but considering the number of customers I got to see that is very infrequent.

20 MR CAMPBELL: You understand we're only interested in certain of your customers here?---Certainly.

Now, I'm afraid we can't display this, Commissioner, because it seems to have not been in the folder but I have a number of copies of it, could I - now I'd like you to assume that this is a, this is a part of that printout from NCH Australia relating to Byron Shire Council, do you see that?---Yes.

30 And you'll see that, that you twice in 2009, at least ordered promotional items for an officer at that council having completed a sale. Is that so?---On paper yes, but it was delivered to my address.

THE COMMISSIONER: Well, you represented to your company that these were goods, these were promotional items for particular buyers didn't you? ---Yes.

And that wasn't true you say?---The time was not given to that customer.

40 The representation you made to your company in order to persuade your company to deliver to you promotional items at your address was not true? ---It was within policy.

It wasn't true, is that right?---That it was for this customer?

Yes?---No.

So why did you tell your employers a lie?---I didn't tell them a lie. I - - -

Well, you told them that this was for a particular company, a particular buyer and you had no intention of giving it to that buyer?---It, I did not have no intention of giving it but I had no reason to.

Well, why did you tell your company that you were going to give it to that buyer?---Because I thought circumstances might arise that I could give it to the customer.

10 You were putting it in the bank as it were, were you?---A bank for anybody, yes.

MR CAMPBELL: Your, your company paid for these goods out of the proceeds of the cheque or other payment method they got from Ballina Shire Council, didn't they?---I don't know, I'm not privy to budgets.

So you're telling the Commissioner that you - I'll use the Commissioner's phrase, misrepresented the position to your employer, is that correct?---No, I would disagree.

20 THE COMMISSIONER: Were you telling them the truth?---I wasn't questioned.

Was this true, when I say this, the information contained in this document at page 293 and the separate document that's been handed up now? Was that, was the information in there true?---The order qualified for a promotion which I ordered, yes.

Was it true to say it was for the particular buyer noted there?---No.

30 No.

MR CAMPBELL: I, I tender that additional sheet, Commissioner.

THE COMMISSIONER: The additional sheet is Exhibit, the additional sheet containing two references to promotional items delivered to Byron Shire Council is Exhibit 33.

40 **#EXHIBIT 33 - ADDITIONAL SHEET CONTAINING TWO REFERENCES TO BYRON SHIRE COUNCIL**

MR CAMPBELL: You see, the truth of the matter I suggest to you, Ms Verdeyen, is that you have just completely painted yourself into a corner, haven't you?---No.

No. And that you're trying to tough it out, that's the case, isn't it?---No.

If, of one accepts the accuracy of the business records maintained by NCH Australia Pty Limited your evidence before the Commissioner this afternoon is simply untenable, is it not?---No.

Do you, it was the policy, wasn't it, at one time up until about November 2009, that the promotional items would be delivered to the home of the sales rep who would be responsible for delivering them to the buyer? That's so, isn't it?---I don't remember the dates, but yes, we did have them delivered home.

10

And in that regard, I withdraw that. The buyer was the person at the council say who was placing the orders. That's so, isn't it?---Or, or any other company, yes.

And so that these records are perfectly in order in saying that up until about November 2009, all these promotional items went to your personal address. That's so, isn't it?---All those that have my address on, yes.

20 Yeah. And it's completely in order that after that date all of the promotional items appearing in the records got sent to the address nominated by the buyer. That's correct, isn't it?---Yes.

Whether it be the buyer's home or the buyer's workplace?---Yes.

Now, you have, you see, you've, I said, I suggested to you that you've painted yourself into a corner, and I made that suggestion because I want to ask you, have you given evidence about these matters on a prior occasion? ---I'm not, I don't understand the question.

30 You gave evidence before the Commissioner on 11 August, 2011, did you not?---Yes.

In what was called a compulsory examination?---Yes.

And in the course of giving that evidence on the basis of the first lot of documents you got from NCH you said, this is at 724, line, line 20, that there was a promotional sheet but you didn't use it. That's, that's the evidence you gave, isn't it?---Correct.

40 And you said, "I vaguely recall something." Correct?---Correct.

Yeah. Well, that answer, "I vaguely recall something", was just untrue, wasn't it?---No.

Because you always knew there was a promotional sheet, it was always sent to you by your superior. That's correct, isn't it?---Yes.

Yeah. And, and you always looked at it to familiarise yourself with it, didn't you?---Not at length, but I did look at it.

Yeah. And it was more than something you vaguely recalled because whenever you dealt with one of your customers you were, you were able to, to, to correctly say what promotional item had been earned by the order they placed, weren't you?---No.

10 Because in each case, whether you gave it to the customer or buyer or not, you requisitioned it from NCH Australia, didn't you?---Yes.

And you'd have no doubt that if you'd asked for the wrong item in respect of that order they would have told you so. That's correct, isn't it?---Sorry?

If you'd asked for the wrong item in respect of the particular order, NCH Australia would have told you so. That's correct, isn't it?---I presume so.

Yeah. And they never did. That's correct?---No.

20 No. To say that, "I vaguely recall something", was just a device you used as a witness on that occasion to avoid answering a simple question that you thought might get you in trouble. That's correct, isn't it?---No.

Perhaps I should hand up a copy of the CE, Commissioner- - -

THE COMMISSIONER: Yes.

MR CAMPBELL: - - -with the evidence, I'm sorry.

30 THE COMMISSIONER: A copy of the compulsory examination relating to Ms Verdeyen is Exhibit 34.

**#EXHIBIT 34 - EVIDENCE OF MS VERDEYEN GIVEN UNDER
COMPULSORY EXAMINATION**

40 MR CAMPBELL: Pardon me, Commissioner. You said this, this is at page 726PT around line 30, you said this when you were asked, you were asked this question at line 25 or thereabouts. "Did you sometimes give the benefits that are reflected in the promotional sheet?" You answered that question by avoiding it. You said, "So the item under the amount of money is that." That's what you answered, wasn't it?---I have no idea.

Well, perhaps I'll give you a copy of it, I'm sorry. I'm just opening it at the right page. Do you see the question that you were being asked, and this was a question, a question from the Commissioner, you see at line 24 it starts.

See this question – “Did you sometimes give the benefits that are reflected in the promotional sheet?” Do you see that question?---Yes.

Let me just interrupt myself and say to you, on the basis of your evidence today, the only true answer to that question was a simple yes, was it not? ---You didn’t ask me that specific question, you asked me about particular dates.

10 What I’m asking you is, and you know what I’m asking you, Ms Verdeyen, that at the time you gave that evidence on 11 August, 2011, the only true answer to that simple question, “Did you sometimes give the benefits”, the only true answer was a simple yes. That’s right, isn’t it?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Well, I think, Mr Campbell, Ms Verdeyen answered yes in the next question.

MR CAMPBELL: Well, she did, and I’ve got something to put to her about that, Commissioner. I wasn’t going to leave that out. Do you see there,
20 firstly, you agree with me, don’t you, that the only true answer was a simple yes?---Well, if that’s what I said, yes.

Yeah. But you see, when you said, “So the item under the amount of money is that?”, asking the question, you were stalling, weren’t you?---I’m not sure what, “So the item under the amount of money is that”, means.

Well, those are the words attributed to you in the transcript, are they not?
---I don’t- - -

30 MS TRAILL: Your Honour, I’ve got to object to this. It’s very hard to tell whether that isn’t part of the question and the answer is underneath.

THE COMMISSIONER: I beg your pardon?

MS TRAILL: Your Honour, looking at the transcript- - -

THE COMMISSIONER: Yes.

40 MS TRAILL: - - -it’s hard to tell whether that is still part of the question. It’s another question and then there’s the answer, “Yes”, underneath.

THE COMMISSIONER: I’m sorry, I don’t understand what you’re saying. I don’t understand what you mean. This, it’s part of, what’s part of the question? The question is, “Did you sometimes give the benefits that are reflected in the promotional sheet?” The witness says, “So the item under the amount of money is that?”

THE WITNESS: No.

MS TRAILL: Well, that- - -

THE COMMISSIONER: And then it said, "Yes." And then she replies, "Yes, but I never gave the sheet to anyone." I don't know what your problem is.

MS TRAILL: The problem is whether or not, "So the item under the amount of money", was an answer given by the witness.

10

THE COMMISSIONER: Well, that's what it says. Well anyway, it says that. Yes, Mr Campbell. I'm not sure how beneficial all of this is.

MR CAMPBELL: May it please the Commission. My point, and I'll just ask one more question about it and move onto something else, Commissioner. The, the fact of the matter is that the evidence you gave before the Commissioner on 11 August, 2011, was not the truth, the whole truth and nothing but the truth, was it?---Yes, it was.

20

And I suggest to you on that occasion that you were, you were obfuscating because you didn't appreciate how much information was available to the Commission at the time you were giving the evidence. Is that a fair assessment?---I'm sorry, I didn't understand the second or third word you said.

Obfuscating?---Mmm.

You were prevaricating. Do you understand that word?---No.

30

I see. You were stalling and not giving full and frank evidence because you didn't appreciate how much material was available to the Commission about your involvement in this matter. That's the case, isn't it?---No, I was not stalling.

Now, you remember I asked you some questions about your communications with Mr Lapham?---Yeah.

40

And that was in the context of you saying that you'd never told anybody about promotional matters before they placed an order. Do you remember that?---Correct.

Your email address as at 17 March, 2010 was , , and can I observe Commissioner, that also will be the subject of the suppression order.

THE COMMISSIONER: Yes, there'll be a suppression order in respect to that email address.

**MS VERDEYEN'S EMAIL ADDRESS SUBJECT TO A
SUPPRESSION ORDER**

MR CAMPBELL: That was your email address?---Yes.

And has that, and that's remained, that remained your email address throughout the whole of 2010 did it not?---Yes.

10 And you had Mr Lapham's email on your computer at home didn't you?
---Probably.

Because you communicated with him in that manner. That's so isn't it?
---Occasionally.

All right. I'll just show you this email, which we'll display on the screen. It's not in the folders yet, Commissioner, we'll tender it in due course.

20 THE COMMISSIONER: Yes.

MR CAMPBELL: Now can you see it clearly?---Yes.

And you can see can't you that it's a printout of an email from you to Mr Lapham. Do you see that?---Correct.

Do you know Sandra Bailey?---Sorry, who?

Do you know the person called Sandra Bailey at the top of the thing?---No.

30 The top of the email. Do you know her as an officer of Ballina Council?
---No.

And you'll see won't you that the gravamen of the email is, is you're asking whether he needs any more product. That's so isn't it? You see, we spoke a little while ago and you were okay, but maybe you need me now. Do you see that? It's the second line?---Yes.

40 And what that means is do you need to place an order. That's so isn't it?
---Yes.

And you have then said to him, I've attached the email with all the products you use, well that was to remind him what he normally ordered from you. Is that correct?---Yes.

Make it easier for him to make up his mind. Is that correct?---Correct.

And then you ask him to get back to you. That's so isn't it?---Yes.

And of course then you say, ps, I have a promotion running that you may like?---Yes.

Well that's raising the, when you say a promotion running he may like, that's letting him know that there is a promotion which might involve an item that he might get if he places an order?---That his department might get, yes.

10 Well we'll come back to his department. I just want to deal with the fact that you've told the Commissioner this afternoon you never discussed the idea of a promotion with anybody at any time before they, before they placed an order. Do you remember that evidence?---I do remember and I would say that I had forgotten that I had done it.

Well can I suggest to you that it's a simpler explanation and that is that your evidence before the Commission this afternoon was simply untrue?---No. At the point that you asked me the question, I believed that to be right. But obviously that on occasion I have mentioned it. But I don't recall the time.

20 Well the best, the best we can say is that your recollection is not reliable. Is that correct?---That's possible.

Can you just scroll down. And then you'll see at the foot of the page there is a copy of an earlier email that you had sent to him. Do you see that?
---Yes.

That's from 2009 and that's again, that's the list you spoke about in relation to the products he'd previously used. Is that correct?---Yes.

30 Just, I beg your pardon, Commissioner. Now could we take it page 13. See 20 September, 2010 at the foot of the page there's an email from you - - -

THE COMMISSIONER: It's not up yet Mr Campbell.

MR CAMPBELL: I beg your pardon, Commissioner. There's an email from you to Mr Lapham, that's Glen. Is that correct?---Yes.

40 And you're hoping to arrange to meet him when you're in Ballina on 22 September. Do you see that?---Correct.

And the email at the top of the page is one from Lapham agreeing to meet you?---Correct.

And, can we go to page 17. Again on 14 October, 2010 you wrote to him and following a conversation you had with him giving him again a reminder about the products he normally ordered. Is that correct?---Correct.

And could we go to page 26. And you'll see - - -

THE COMMISSIONER: Just a moment, please Mr Campbell.

MR CAMPBELL: I beg your pardon. It's not up yet, I do beg your pardon, Commissioner. Now later on the same day, that is 14 October, 2010, at page 26 of what will become an exhibit, Mr Lapham sent you an order. That's correct isn't it? Do you see it at the foot of that page and it goes over the following page, which is page 27. Have you got that?---No.

10 Well let's go back, back up the page, scroll back up. You see there that there's an email from Glen Lapham. Do you see? It's to your email address and you received it Thursday, 14 October at 4.57pm. Do you see that?
---Yes.

All right. And following - - -

THE COMMISSIONER: And that's the placing of an order.

MR CAMPBELL: It's the placing of an order. Do you see that?---I
20 wouldn't agree that that's a placing of an order because there are no purchase order numbers.

Well we'll come to that. We'll come to that. But Mr Lapham's doing his best, he's saying place an order of the below items isn't he? That's what he says?---That's what he says on there, yes.

And that was following not only your email but also the telephone conversation that you'd had with him a couple of days prior on the 13th.
That's right isn't it?---I don't recall.

30 Well I'll just take you – well I'll come back to it?---Sure.

And I'll demonstrate it to you. The – you'll see won't you that, that at the end of that first group of items in bold Mr Lapham says, a total of \$12,048.26 plus GST and he says this, however, if you take off Healthy Hands you can still get phone so total would then be \$11,000. Now that's something you'd told him previously?---I think that he's cut and paste this from an email I put in.

40 Ah hmm?---He, I don't believe he wrote this.

You believe you wrote it. And I want to take you to page 28. I withdraw that, Commissioner. Page 30. I'm sorry, page 30 is, is an, is, is your response to that, that email but you think that that information about how to structure the order to still get the phone is information that he's cut and paste from something you've sent to him. Is that correct?---It wasn't specifically to get the phone, no.

Well, it says- - -

THE COMMISSIONER: Can we see it again?

MR CAMPBELL: Yeah. See it again. I beg your pardon. 26. I'm not watching the screen.

THE COMMISSIONER: Have we not got a bundle of these documents?

10 MR CAMPBELL: We do now, Commissioner, we do now.

THE COMMISSIONER: I think it would be helpful if that could just be distributed and still put it on the screen but I think the witness can see the document.

MR CAMPBELL: Yes. It's attached to a statement, Commissioner, which I will be tendering in due course. Perhaps it would be easier with, with, what I'd like you to do, in that, it may be quicker in the end if you go to page 6 of that bundle, I should say, I'll go back further, page 4 of that
20 bundle I've, I've given you, and flick through until page 45, it will be quicker for me to ask you questions about it when you've had that opportunity. Would you like to do that?---(NO AUDIBLE REPLY)

THE COMMISSIONER: What do you mean, flick through, Mr Campbell?

MR CAMPBELL: Just to familiarise herself with, with it. Perhaps I ought to do it the long way.

30 THE COMMISSIONER: It's a bit long to read.

MR CAMPBELL: Yes. Yep. Look at page 4. You'll see this is another copy of the email of 18 October. Do you see that, that I was asking you about?---Yes.

Page 6 is the, is the email of 17 March that I showed you on the screen. See that?---Yes.

40 We need to concern ourselves, page 8 we need to concern ourselves with. And page 12 is the reminder that I asked you about earlier from 6 October. Do you see that?---(NO AUDIBLE REPLY)

Are you there?---What am I looking for?

You're looking at page 12?---Yes.

You'll see that that's the, that's the reminder you sent him of the products he previously ordered, which I asked you about earlier. Do you see that? ---Yes.

At page 13 is an email I asked you about in relation to arranging a meeting with him?---Yes.

THE COMMISSIONER: And page 11 also contains the PS about the promotion.

MR CAMPBELL: Yes, it does, Commissioner. See at page 11, which is a repeat of an earlier email, with you, with you attaching an earlier email to
10 remind him of the products, also reminds him of the promotion running that he may like. Do you see that?---Yes.

Now- - -

THE COMMISSIONER: What page?

MR CAMPBELL: Page, I'm sorry, Commissioner. Now, page 15 you will see that a, that someone called Diane Harley from the council wrote to you and gave you an order number for the order that was made in September.
20 Do you see that?---I see, I see the purchase order number, yes.

Yeah. Then on 16 we have a, we have that again with you saying, "Thanks for that." Then at 17 we've got, and we'll start this again just so you've got the chance, Thursday 14 October you've, you refer to a conversation you had on the 13th. Do you see that?---Yes.

Then you've remind him again of the past sales. See?---Yes.

And at that stage you were hoping an order would come through. Is that
30 correct?---He was asking for the information because he needed to order things, yes.

Okay. And then at, from 18 through to 25 there's a, there is an email from you providing some, I think it's called an MSDS or something. Is that right?---Yes.

A material specification sheet. And then we get through to page 26 and- - -

THE COMMISSIONER: Would you put 26 on the screen, please. And so
40 - - -

MR CAMPBELL: Commissioner, just pardon me for one second, I need to check. Thank you, Commissioner. Now, it's possible that we're missing something because on page 26 you'll see the top of the page is your response to what Mr Lapham called an order at the bottom of the page. Do you see that?---Yes, which- - -

THE COMMISSIONER: Well- - -

THE WITNESS: - - -without purchase order numbers wasn't an order.

MR CAMPBELL: Well, even, well, that, if it's not an order it's certainly strong evidence in those circumstances that you were discussing with him firstly what promotion items were available if an order was placed, you agree with that, don't you?---From a previous conversation we had, yes.

10 And, well, that contradicts the evidence you gave before the Commissioner this afternoon that that had never happened, does it not?---That what had never happened?

That you'd never had a conversation with a customer about promotions before an order was placed. That's correct, isn't it?---Not totally correct, no.

No. You were wrong. That's right, isn't it?---No.

20 I see?---There had been interest shown to me that he did want to purchase things. During the conversation the promotion had come up for a specific reason.

What's more, we also have on this page 26 evidence of you telling him how he could split the order so he'd qualify for more than one item. That's so, isn't it?---No. I did not indicate to him that he could split it, he asked me if he could.

And you, and you told him he could.

30 THE COMMISSIONER: And you told him how to.

MR CAMPBELL: You told him how to do it?---He asked me if he could and I said yes and I asked the reason.

THE COMMISSIONER: But your, your email tells him how to do it and what he would get?---Yes, because he wanted to split it between three or four different areas.

40 MR CAMPBELL: Well, when you say areas, let's make this clear. Items, he wanted- - -?---No.

- - -three items, didn't he?---No. This was areas of concern to him in his job that he was trying to fix problems.

I see?---And therefore he had to, I think he said job out each product.

I see.

THE COMMISSIONER: But your email at the top of the page explains, is dealing with how he could get, how he could cover the phone and how he could cover two TVs?---Yes.

MR CAMPBELL: It doesn't say anything about how he divided up his order amongst the various sections for which he might have been responsible, does it?---Because I didn't have any input into where he sent his products, that was his decision, not mine.

10 See, Ms Verdeyen, this email entirely contradicts the evidence you've given earlier this afternoon to the Commissioner. That's correct, is it not?---No.

Look at page 28, could we have it on the screen please. Now, you see the, the top of page, you've got the copy in front of you, that is Mr Lapham's response to the email the Commissioner and I have just been asking about concerning splitting the order. That's right, isn't it?---That was his response, yes.

20 Yes. And he says split the bottom lot into two, thanks and resend, I will place order next week, so all that conversation of splitting the order and what he would get all took place before, as you recognised from the outset, any formal order had been placed. That's right, isn't it?---Because we'd already discussed what he required, he was going to put an order in, all we were trying to do was work out in which areas he wanted certain products to go.

Whatever you say about it now it contradicts the clear plain evidence you gave earlier today, doesn't it?---No.

30 If we go on to page 30, can we have it on the screen please. You'll see on Saturday, 16 October you have, you have reshaped the proposed order and suggested he give it to Diane, do you see that?---Yes.

Then on page 31 if we could have it, you have emailed Diane on Sunday the 17th and asked for the purchase order numbers, that's correct, is it not? ---Yes.

40 If we go to page 34, the top of the page, we see that on the Tuesday morning after that weekend Diane Harley got back to you and gave you the, the three order numbers, that's correct is it not?---Yes.

Then if we go to page 39 the foot of the page, the first two emails on the, I'm sorry, I'll wait until it comes up, Commissioner, it's up, I'm sorry, the, there are two emails from you at the foot of the page trying to organise a meeting with Mr Lapham before Christmas, do you see that?---Is this on page 39?

39?---Yes.

And then he, he says he could see you on the week of the 20th?---Yes.

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

If you go to page 40, you've, you've seen him and you've written to him on 22 December, that's right isn't it?---Yes.

10 Following up after your meeting and he obviously told you in the meeting that he was thinking about sourcing some products from another supplier, that's correct, isn't it?---Sorry?

He told you when you met him that he was thinking of sourcing products from another supplier, didn't he?---Possibly, I don't recall.

Well, look at the third sentence commencing at the end of the second line, "One thing I do ask though, if you have a leaning towards - - -?---Yes.

20 - - - one of the other products for your venture please give me the opportunity to help have you lean back towards Chemsearch"?---Yes.

So it's a fair inference, isn't it, that he told you he was thinking of going somewhere else for something?---Yes.

Yeah. And you assured him you'd always do your best for him?
---Absolutely.

30 Yeah. And, and you then tell him about the Weber baby barbecue promotion, don't you?---Further to our conversation when I met him, yes.

Yes, but that conversation - I've no doubt you told him about it when you met him but that was when he wasn't placing an order with you and when you confirmed the details in your email he still hadn't placed the order and you told him what he, you, you worked out a suggestion of things he'd need to order if he wanted to get the barbecue, that's right, isn't it?---Not exactly, no.

40 "Now regarding the Weber baby Q 100 barbecue I have worked this out" and then you list three products in different quantities totalling \$4,039.25, that's right, isn't it?---According to the email, yes.

And the email's correct, you wrote it didn't you?---Yes, but can I tell you what happened before that?

No, I'd just like you to answer my question. You wrote the email didn't you?---I wrote the email.

Yes, and then you say to him, "Please let me know via phone or email if this is okay, if it is Diane will either email or call me with the purchase order number."

10 THE COMMISSIONER: Is it not the case, Ms Verdeyen, that you, you were using the promotional item, that is the barbecue, to persuade Mr Lapham to buy for the Ballina Council and not from your competitors by telling him how he could get it for himself?---Not for himself. We had a conversation regarding a Christmas party they were having with staff and I did mention that we had a current promotion running, that it was a baby
barbecue that he could have if he was going to purchase the products. He asked me to email him the information of what products he would need to order in, in order for him to get that baby barbecue for the Christmas party they were having and that's what I did.

So who was going to get the barbeque?---I assume his department and his men.

20 Did you tell his department?---No, he was the head of his department, I didn't know I had to tell anyone else.

MR CAMPBELL: Did you mention - I withdraw that. You didn't tell the mayor about it or the general manager of the council that Chemsearch was providing this barbecue to the council for the use of its men?---It was not my position to, no.

It was up to Mr Lapham to decide about that was it?---It was his position to decide what he, who and what he told.

30 THE COMMISSIONER: And these other items that you were going to give him for splitting the order such as the TV set and the iPhone?---Yes.

That was also for the staff was it?---Yes, it was.

40 You really suggest that you gave him an iPhone and a TV set not for him but for the staff at the council?---The iPhone was for him to be able to email from when he was in the field because he was so hard to get. The TVs were given to him on the basis that he be able to do training and inductions via a computer or a DVD disc or any other method that he needed to and they were, they were to be put in certain areas for him to train his staff.

MR CAMPBELL: That email is again evidence which contradicts the evidence you gave to the Commissioner earlier today that you'd never discussed a promotion with a customer before he placed an order, that's correct, isn't it?---In theory, yes, but we had already discussed this order and he had already indicated to me these were the products he was going to purchase.

Ms Verdeyen, you are the very one who pointed out to me I thought, perhaps a little triumphantly when I took you to one of these emails, that it wasn't an order because it didn't have an order number. This doesn't have an order number, does it?---No, it doesn't but this was the way that we - we conversed through email, he would have me send what the order was going to be, he would then pass it on to Diane who would then send the purchase order number so at that time it was neither an order but it, it wasn't necessarily not going to be an order.

10 Commissioner, is the statement before the court? The statement in volume 29 before the Commission?

THE COMMISSIONER: I think the statement should simply be tendered as an exhibit, Mr Campbell.

MR CAMPBELL: I tender it now as an exhibit, your Honour.

THE COMMISSIONER: Yes, the statement of Mr Littleford with annexures is Exhibit 35.

20

**#EXHIBIT 35 - STATEMENT OF MR STUART LITTLEFORD
DATED 1 SEPTEMBER 2011**

MR CAMPBELL: Now do you still have folder 9 in front of you?---Yes.

Could you go back to page 293?---What section?

30 It's tab 46, I'm sorry, page 293. If you look at these orders from 23 September onwards they make sense when you bear in mind the emails do they not, because the first order from 23 September relates to you, you've sent the MSDS and you've also sent a Panasonic camcorder to Michael Howard at the Sewerage Response Unit. Do you see that?---Yes.

Michael Howard is Mr Lapham's offsider I think. Is that correct?---Yes.

And Mr Lapham told you to send that there. Is that correct?---Yes. But not so that necessarily, it was never intended for anything but the department.

40

THE COMMISSIONER: Why did you send it there?---Why did I send it there?

Or why didn't you send it there?---I'm sorry.

Why didn't you send it to the department?---It was sent to the department.

What was the departments address?---43 Southern Cross Road, Ballina.

So that's the - - -?---The depot.

Yes. That's the television set is it?---That's the camcorder.

Yes?---And Glen Lapham. The only reason Michael Howard's name was on that was because that was the account the name, the name on the account.

10 Yes, but the television set, let's talk about the television set?---Okay.

MR CAMPBELL: Yes, that's the next item, Commissioner.

THE COMMISSIONER: I beg your pardon?

MR CAMPBELL: That's the next item, Commissioner - - -

THE COMMISSIONER: Yes.

20 MR CAMPBELL: - - -that Mr Lapham - - -

THE COMMISSIONER: I'll leave that to you Mr Campbell.

MR CAMPBELL: Thank you. The - well so following that order of September 2010, you sent a Grundig LCD TV and DVD combo to Mr Lapham but at his work address. Is that correct?---Is that on the 23rd of the 9th?

It is?---Yes.

30

Then we get to the October orders. We see that the iPhone you spoke of doesn't go to the Water Sewerage Department at Southern Cross Drive, Ballina, it goes to , , , , ?---Yes.

That is Mr Lapham's home address is it not?---Yes. Yes.

And then the next Grundig TV, and there are three of them in the space of two months. The next Grundig TV also goes, although it's got Michael Howard's name on the order, it goes to Mr Lapham at his home address?

40 ---Yes.

And then the next Grundig TV on the same day which is the one we, we asked about two TV's, also goes to his home address. That's so isn't it? ---Yes.

And, and what you say is I have put further details in an email, thank you. That's, that is, that's, that's an instruction to NCH is it not, about delivery, you've given them further details in an email?---Yes.

And then when you do send the Christmas promotion of a baby Weber, it goes to the address with details as in the email to Fatima, which is the email you sent in October?---Yes.

And that went to his home address as well didn't it?---Yes.

Now this – if you look to your right, perhaps I could ask the witness to leave the witness box for a moment, Commissioner.

10

THE COMMISSIONER: Yes.

MR CAMPBELL: Come forward please and look at these items in the blue container?---Yep.

That's them isn't it?---I don't know if those are the items, but they're like those.

The barbecue, the iPhone, the certainly at least one of the TV's. Is that correct?---Those are similar to the ones that we had in the promotion.

20

I tender those items, Commissioner.

THE COMMISSIONER: Yes. How do I describe them?

MR CAMPBELL: You describe them as, pardon me, Weber barbecue, Apple iPhone, Panasonic Camcorder and Grundig TV/DVD combination as supplied - - -

30

THE COMMISSIONER: Mr Campbell, my shorthand isn't that quick.

MR CAMPBELL: I'm sorry, Commissioner. I can't think of a witty response, I'm sorry.

THE COMMISSIONER: Well Exhibit 37 is how many, how many items are there? Four, five?

MR CAMPBELL: There are, there are four items, Commissioner.

40

THE COMMISSIONER: Four promotional items being the barbecue, iPhone, camcorder and - - -

MR CAMPBELL: TV/DVD combination.

THE COMMISSIONER: - - - and TV/DVD combination. All right.

#EXHIBIT 36 - FOUR PROMOTIONAL ITEMS BEING, BBQ, IPHONE, CAMCORDER, TV AND DVD COMBINATION

MR CAMPBELL: Now the truth of the matter, I'm sorry, Commissioner. The truth of the matter Ms Verdeyen, is that you used these promotional items in your pre-purchase discussions with Mr Lapham in order to induce him to place orders with you for products supplied by NCH Chemicals. That's correct isn't it?---No.

The truth of the matter is that you advised Mr Lapham how he could split his orders to maximize his entitlements to get these promotional items. That's correct isn't it?---Not really, no.

10

And the truth of the matter is that they were intended for his personal benefit for having placed the orders. That's correct isn't it?---No.

No further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Clay, do you have questions?

MR CLAY: No.

20 THE COMMISSIONER: Mr Naylor, do you have questions?

MR NAYLOR: No, thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Wigney.

30 MR WIGNEY: Just very briefly, please Commissioner. Ms Verdeyen, I'm sorry, I appear for NCH Australia and my name is Wigney. Can I just ask some questions about one topic. You gave some evidence earlier this afternoon about some promotional items being delivered to your home address. Do you recall those questions?---Yes.

Was it the situation that at least prior to January 2010, the policy in relation to promotions at NCH Australia permitted the delivery of promotional items to the salespersons home address?---Yes.

And did that policy at some stage change?---Yes.

When did that occur?---I don't recall.

40 Right. If I can ask you to please go to page 349 of that bundle, which is volume 9. Sorry, I'm just getting it up on my screen as well.

THE COMMISSIONER: While Mr Wigney is doing that, Mr Campbell, did you tender that bundle of documents containing the emails?

MR CAMPBELL: Yes, I did Commissioner. It was attached to Mr - - -

THE COMMISSIONER: You did. Yes, that's correct. Yes, thank you.

MR WIGNEY: I'm sorry, Commissioner, I'm technologically challenged. Thank you. So 349 you'll see is an email and do you identify that as an email that was sent to you on or about - - -

THE COMMISSIONER: She's done that already.

MR WIGNEY: Yes?---Yes.

10 And if you go through the next through to 352 you'll see that there's the attached promotional document. If that could just be turned around and you'll see on the front page, in the blue box towards the bottom of the page there's an instruction, all items will be delivered to the buyers workplace or home via registered mail. Do you see that?---Yes.

And does that assist you in terms of recalling when the policy changed in relation to permitting items, promotional items to be delivered to- - -

THE COMMISSIONER: I have no objection if you lead her, Mr Wigney.

20 MR WIGNEY: Yes. By June 2010 that had changed?---If this is when this was produced, yes. I don't recall the exact time or date.

And once that, do you recall who communicated to you that that policy had changed?---Mr Epps.

Right. And do you now why it changed?---Not specifically, no.

30 Right. And from the time that it did change did you at all times comply with that policy?---Yes.

Yes, thank you. Thank you, Commissioner.

THE COMMISSIONER: Ms Traill? Ms Traill?

MS TRAILL: Thank you, your Honour. Just in relation to the iPhone that was delivered to Mr Lapham's address, was that at his request?---Yes.

40 And also the Grundig TV?---Yes, there was a specific reason for that happening.

And what is that reason?---The Camcorder that was delivered to the depot actually went missing. To this day I don't know if it was found or who, who had it so the decision was made that any further promotions would be delivered to his home address at which time he would be called and that was the other instructions in the email, he would be called on his mobile that the delivery vehicle was at his home in order for him to go from the depot to the home to pick up the goods, and my understanding was to take them back to the depot to be put in the areas that we had discussed.

And where were those areas?---One was going to go in his office, the TV, another was going in the storeroom and another one in the tea room. These were all being put in these places in order to do inductions, in order to do any training of anyone. They had a response unit which was a vehicle response unit that Michael Howard was in charge of and Michael Howard would make decisions on products he required for that unit and what they wanted to do with the camrecorder was to record any instances they had in the field where drains had exploded and sewerage was everywhere. They wanted to use the Camcorder in order to record this to show training, to show what had happened, how they cleaned it up, what the end result was and therefore to help training other people within that department. So the Camcorder could be plugged into any of the TVs and training could be given. That was the sole purpose of the TVs, the Camcorder.

Now, as of 2010 or ever, have you ever seen Ballina Shire Council's Code of Conduct?---No, never.

No further questions.

20 THE COMMISSIONER: Have you visited Ballina Shire Council since these promotional items were delivered to Ballina?---I don't recall. I may have done but I don't recall. Glen Lapham would contact me if he wanted me to go to see him then we would arrange either by phone or by email a time and date.

And can you just explain why they were delivered to, some of them were delivered to his home and not to the council offices?---Yes, I just did. But the first- - -

30 Just tell me again, please?---Okay. The first television and Camcorder were sent to the depot.

Yes?---I believe the television arrived safely, the Camcorder- - -

The Camcorder was- - -?- - -went missing.

Yes?---And therefore from that moment onwards it was requested that all items be sent to his home so that we would know his department would get those items.

40 He requested it?---He requested it.

And how long after the order was placed was that?---Were the products sent out, promotional items?

Yes?---I don't know. I wasn't privy to that. I don't know what- - -

Did he request you?---Did, did he request that I put the information in?

Did he request you to deliver it, to- - -?---No.

- - -arrange for it to be delivered to his home?---No. He knew that it would go on our Web order entry and it would be done by administration in our office. I have no dealings with promotions being sent out, whether it be post or courier or what.

10 So, so this evidence that you gave in response to Ms Traill's questions, where do you get the information from?---Which information?

The reasons why the- - -?---The Camcorder?

- - -the particular items were delivered to his home?---I'm sorry, I don't understand.

Well, some of the items were delivered to his home?---Yes.

20 How do you, you say you have given an explanation for that?---Yes.

Where did you get the information from which forms the basis of that explanation?---Of why they were delivered to his home?

Yes?---Because the camcorder went missing when - - -

I know but where do you, who told you that?---Mr Lapham.

30 When did he tell you?---Oh, I don't recall exactly what time but I did ask if they received the camcorder in order for them to do the filming of the spillages that they'd had and he informed me that the camcorder had not, had not turned up, they hadn't seen it.

So did you arrange for another camcorder to be delivered?---No, I asked for him to let me know at some stage, nothing was said so I did no more about it.

So he phoned you up after - - -?---He - - -

40 Sorry, I'm still not, can you just go through this again. When he first placed the order for the four items - - -?---Yes.

- - - where were they to be delivered?---The first two items were to be delivered to the depot which - - -

Yes?--- - - - was where they were requested to be delivered to.

And the other two items?---The subsequent - - -

No, at that time?---I didn't have any items at that time. This, there was a time lapse - - -

There were four items that had to be delivered because he was getting four particular items on promotion wasn't he?---He got two items first and then I think three and then one.

10 But he qualified more or less at the same time for all of them?---No, no. There was a month, a month between one lot and - one was November, two items were November, three were in October and one was in December from my memory.

And you arranged for the first two, the first two were the camcorder and?
---The TV to go to the - - -

And, and you arranged for them to be delivered to the council premises?---I did not arrange it, I requested it on the order.

20 You requested it?---Yes.

And then, and what happened, and then what happened to the, how - did you make a request for the, for the other items?---When I arranged to see him again following oh, I don't know, three, four weeks after that to go and see him about other products I said to him did you get the two items that I sent you and he said no.

All right. Now, at that stage had you already done whatever was necessary to arrange, to request the delivery of the other item?---No.

30 So did you only request for other items to be delivered to his home after he told you and that was the first time he made any such request, is that right?
---Yes, based on the fact the camcorder went missing, yes.

You didn't - I see, all right, yes. Mr Campbell?

MR CAMPBELL: I have no questions, Commissioner.

40 THE COMMISSIONER: Yes, yes. You are excused from the witness box, Ms Verdeyen.

THE WITNESS EXCUSED

[3.48pm]

MR CAMPBELL: I'm sorry I have not yet made up time, Commissioner, I'm, I'm working on it but I appreciate that members of the public have been here all day and have been here for a couple of days but I think there's

no point in commencing someone this afternoon. The people who have been waiting for this period of time we'll deal with in the morning.

THE COMMISSIONER: Yes.

MR CAMPBELL: And we'll try and reorganise tomorrow's list and put some people off till Monday.

10 THE COMMISSIONER: Yes. My apologies to the people who have been waiting, it can't be held.

MR CAMPBELL: (not transcribable) No. Thank you, Commissioner.

THE COMMISSIONER: Yes, we'll adjourn till tomorrow at 10.00.

**AT 3.48 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.48PM]**