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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 FRIDAY, 7 OCTOBER, 2011

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Clay?

MR CLAY: May it please the Commissioner, I have the pleasure in informing you that I have been appointed Senior Counsel in and for the State of New South Wales, ranking next after my learned friend, Gregory Anthony Farmer. May it please the Commission.

THE COMMISSIONER: Mr Clay, thank you for informing me of that. Your appointment is a signal honour and I'm very pleased that it has
10 occurred. My sincere congratulations.

MR CLAY: Thank you, Commissioner.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Please the Commission. I call Mr Robert Epps. Your Honour will recall that Mr Horton appears for Mr Epps.

MR HORTON: Commissioner, I sought leave on Tuesday to appear for Mr
20 Epps, Commissioner.

THE COMMISSIONER: That is correct.

MR HORTON: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Horton. Do you wish me to make a section 38 order, Mr Horton?

MR HORTON: Thank you, Commissioner.

30 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Epps 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 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR EPPS 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.**

THE COMMISSIONER: Mr Epps, you do understand I'm sure that you are 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.

MR EPPS: Yes.

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

10 MR EPPS: Affirm.

THE COMMISSIONER: Would you administer the affirmation, please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Epps, would you please state your full name?---Robert Reginald Epps.

- 10 And are you employed by NCH Australia Pty Limited trading as Chemsearch?---I hope so, yes.

You remain in that employ?---Yes.

And what office do you fill within the company?---I'm a divisional manager of NCH.

And which division?---Chemsearch.

- 20 And what are your, well firstly how long have you been in that position?
---About six years.

And for how long have you been with the company?---23.

And what are your obligations and duties as divisional manager of Chemsearch?---To organise and manage the day to day running of the Chemsearch division. And look after the needs and motivation of, of staff.

All right?---For 25 or so sales reps.

- 30 And, my next question, in particular do you have responsibility for the sales staff?---Yes.

And do you have, at your level, a responsibility for the marketing strategies adopted by the Chemsearch division to promote its products?---Yes.

And you've been in the hearing room I think Mr Epps during the course of this weeks hearing?---Yes.

- 40 And you've heard the evidence of, of some of your staff?---(NO AUDIBLE REPLY)
Well you've heard the evidence of three members of your staff this week?
---Mmm.

And you've heard their explanation of how they operate?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Mr Epps, you must say yes or no?---Yes. Yes.

MR CAMPBELL: Yes. And you've seen me ask them questions about documents provided to the Commission by NCH?---Yes.

All right. Now could I just, I wish to ask you some, some questions in relation to, you'll appreciate, the promotional scheme. And I'd just like to go through some of this fairly quickly if we can. Commissioner, could I ask that Mr Epps be shown volume 9, tab 46, page 392, in fact it's 391. It's tab 46, Mr Epps, and it's page 391. Have you got it open there?---Not yet.

- 10 Just before I ask the question I have in mind, may I ask you this question, before becoming divisional manager, was your background in sales?---Yes.

All right. And had you been a sales representative for Chemsearch?---Yes.

And had you received your training according to that document we've referred to titled The Gears of Selling?---Yes.

And to your understanding is that a manual which has been in use in the company for a long time?---Yes.

- 20 And indeed is it the case that NCH Australia Pty Limited is part of an international group of companies?---Yes.

And where is the parent group, parent company?---The US.

And would it be fair to call NCH a global company?---Yes.

- Now - and is it also the case that, that many of the corporate structures and practices are inherited from the parent company in the United States?---(NO AUDIBLE REPLY)

That's a question, not a statement?---Yes, in, in the majority of cases, yeah.

All right. All right. Just taking you back to what I was going to ask you about and that's at page 393 of folder 9 and we looked at this one of the witness, witnesses yesterday. This is a Certilab rewards programme I think, is that right?---That's right.

- 40 And can you tell me was Certilab one of the - I'm sorry, Certilab one of the NCH trading names at one time?---Yeah.

All right. And as we heard in evidence, this, this was a system whereby customers would get points for their, for their dollar spend?---That's right.

But after a period of time you could become eligible for a reward - I withdraw that. You could become eligible to redeem your points for a nominated award?---Yes.

All right. And if you just flick through the succeeding pages of the brochure that you've opened at we can see that most of the goods on offer were what I would refer to as industrial products, would you agree with that description?---Yes, yes.

And, and the idea behind that promotion was that when you got your points you would be able to redeem them for something which might be useful in the workplace?---Yes.

10 Is that basically correct?---Yes.

Yes. And we looked yesterday at what's on 390 which is - are the terms and conditions of the, of the reward programme. Without going through all of them if we look at definition 4 it's quite clear, is it not, that the customer means the trading entity that purchases products from Certilab?---Yes.

Now, as we all know in, in this life companies can only act through human beings so there has to be a human manifestation of the corporate entity and that person here is referred to in these terms and condition as the agent?

20 ---Yes.

Now, the, the agent was the person who placed the order, is that correct?
---That's right.

And that, that person had to be a, an authorised representative?---Yes.

But the idea, without glossing over it, was that it was, it was, there was no - I withdraw that. There was no confusion in the scheme between customer and buyer, you'd agree with that, wouldn't you?---In our terminology, yes.

30

Yes, that's right because you make it quite clear the customer's the entity paying for the goods, you don't even use the term buyer, you refer to an authorised agent, that's correct, isn't it?---Yeah.

So - and there's no doubt that under this Certilab system an ongoing loyal customer and I use that term customer in accordance with the definition, could once accumulating sufficient points within a short enough period of time redeem those points for one of those industrially useful items shown in the catalogue. That's correct, isn't it?---Yes.

40

Yes, all right. Now what I'm - can we, can we then move on a little and - I withdraw that. I'd like to ask you this question, what, what - over, over the years it's necessary that, that marketing strategy develop, that's so, isn't it?
---Yeah, yeah.

Something that has an impact one year won't have any impact the following because fashions change?---Possibly.

Well, has that been your experience is what I'm asking really?---Some marketing strategies work for a few years, others need to be changed regularly.

All right. Thank you. But in any event if we go forward in the bundle to page 357 - - -

THE COMMISSIONER: Backward.

- 10 MR CAMPBELL: It's backwards, that's so, that's so, thank you, Commissioner. It's backwards in the bundle, these documents have been arranged in file order rather than brief order, Commissioner. But we'll see that this is a, an email from you and it's to your sales staff, is that right? ---That's right.

And it's dated 2 March, 2009, and there is a, there's a, there's a special promotion on for a limited time that you're informing them of which, which relates to a jacket. Is that correct?---That's right.

- 20 And the, the, the, the jacket, we can see the various styles of jacket on pages 355 and 356. Is that correct?---No, that's a different jacket.

I see. That's a different jacket?---Yes.

That's the 2010 jacket, I'm sorry. The jackets that were available in 2009 were, were a stone-colour jacket it says on the thing. Is that correct? ---That's right.

- 30 And pages 358 and 359 are a, contain some other products of a, of an industrial type. Is that correct?---Yes.

And were those products current at the same time as the jacket promotion was on?---Yes.

All right. Incidentally, we see the name Mantek, M-A-N-T-E-K, at 360, page 360. Is that another division of NCH Australia Pty Limited?---Yes.

And that's not a division for which you're responsible?---No.

- 40 But so did the jacket have a, have the company logo on it?---(NO AUDIBLE REPLY)

The 2009 jacket?---I believe so.

All right. And by that time, looking halfway down 357, you'd made a, you'd, you'd brought the rewards program to a, to an end or rather perhaps closed the books on it?---No.

Well, can I, well, perhaps I'm drawing the wrong inference. You see that it says, "Customers in the rewards program can still earn points."?---Yeah.

So the rewards program was still, still current?---That's right.

Yeah. How long did it continue for?---Oh, I can't remember. It wasn't much longer.

Beyond- -?---It stopped pretty, pretty soon after this.

10 After 2009?---I believe so.

After March 2009?---Oh, look, I can't remember, I can't remember. It might have stopped- -

THE COMMISSIONER: At about that time anyway?---Yeah, about that time.

MR CAMPBELL: Yeah. These, the difference with the, with the limited
20 promotion on the jackets was that the jackets by definition had to be directed to an individual, would they not?---They did.

Mmm. And can I suggest this to you, that the intention was that the natural recipient of the jacket would be the person who was placing the orders with the company. Is that correct?---Yes.

Yeah. And, and, and that was the intention of the scheme, both in respect of your private sector customers and your public sector customers?---Yes.

30 We've described these products as being industrial chemical products. Is that correct?---Yes.

And, and it would be fair to say, wouldn't it, that the, that the public sector is a pretty large consumer of the type of products you have to sell, sell?
---Yeah.

Yeah. Now, and obviously you're trying to motivate the team because you say in red at the bottom of the page, "Let's pull out all the stops for the next two months at least and set some records." Is that correct?---Yeah.

40 Yeah. And that's record sales?---Yes.

Yeah. And can I ask you this. I mean obviously a man in your position has to, has to inspire the troops?---Sure.

Yeah. That's part of the leadership role?---Yes.

Yeah. And but how did they go, did they manage to set some records, can you recall?---I honestly cannot recall.

Okay?---No.

And but the jacket, looking at what's in this material that the company has provided, as I've said, directed a promotional item to the agent rather than the customer. Would you agree with that?---In your terms, yes.

- 10 Yeah. But I'm asking you if you agree with what I say?---Well, the customer to me is the person who buys the goods.

All right.

THE COMMISSIONER: Even though he doesn't pay for them?---Well, I mean- - -

Even though he doesn't pay for them. Is your answer yes?---Yes.

- 20 MR CAMPBELL: That's part of the philosophy of selling which comes out of Gears of Selling is it not?---Yes.

THE COMMISSIONER: Mr Epps, I must tell you that the Commission is considering when making its report to find that this approach of identifying the employee buyer with the customer lies at the heart of the problem, that we have seen is prevalent in, in many aspects, at least in public sector life. You've got, you know, got the opportunity of explaining what the justification is for doing that?---Well we deal with people who know where products are used. Those people are employed by the customer and the
30 customer would have no idea of the nature of our products. That's why they employ the agent of their business to buy products from us to use for their interests and their benefit.

Well what is the basic justification for awarding the buyer and not the customer who actually pays for the goods? What is the moral justification for that?---Well I guess we're trying to do what every other business does and offer a rewards programme for a person who buys some goods.

Irrespective of the morality?---I can't answer that.

- 40 Well you can, you're doing it?---Well I've answered it the best way I can.

You're not prepared to answer that it seems to me?---I don't know how better to answer it.

Well you don't care whether that's moral or immoral. That's the best way to achieve sales?---Well that may be your interpretation.

Well I'm, is that not true?---I do care.

All right. Can you explain how you manifest that caring?---We, we supply products to help the customer in their business. The customer being private enterprise, the Labor government.

Yes, I'm asking about the rewarding of the individual buyers when the customer actually pays?---We have no reason to call on the customer because they're not interested in seeing us. We deal with their agent,
10 thereby - - -

The customer would be very interested to get a discount on purchases wouldn't it?---I can't answer that, perhaps, perhaps.

(not transcribable) how long have you been in business for?---Perhaps.

You're playing with me?---No, I'm not playing with you, no.

Well I think you are and you must know that the customer, whether the
20 customer is, customers generally are interested in getting a discount on purchases they make?---Well I'd have to say yes, they would be interested in getting a discount.

Well you'd have to say yes. Why don't you give them a discount? Why do you actually pay an individual buyer even though the buyer is not paying for it?---We have, well I have 25 reps in my sales force. They're interested in earning a dollar. Some reps give discounts to customers, some reps don't. They are Commission driven.

30 The policy that you, that we have seen as manifested from the documents that have been admitted show that your company encourages your salesmen to reward individual buyers and not give discounts to the customer?---That's a matter of choice from the sales rep.

It's your policy isn't it?---No.

It's in the documents we've seen?---They have a choice, they have a choice of offering the promotion, giving the rewards item or offering a discount to the customer.

40 Have any of your sales representatives ever offered a discount to a council?
---Yes.

When?---On many, many occasions.

What kind of discount?---A percentage off the price of the product.

So that's a perfectly appropriate way of conducting sales?---Yes.

And do you think it's a perfectly appropriate way of conducting sales to give a present to the buyer without telling his employer, a present as a reward for placing orders for which the employer will pay?---Well, I believe that's probably the buyer's responsibility not ours.

Not yours?---Not ours.

You just provide the opportunity?---Yes.

10 MR CAMPBELL: Thank, thank you, Commissioner.

Mr Epps, you haven't given evidence or made a statement about this matter before I don't think so forgive me if I don't know your full background. Do you have tertiary qualifications in commerce or a related discipline?---Do I have what, sorry?

Tertiary qualifications?---Yes.

20 20 In commerce?---Yes.

And, well, can I ask you, and did you, did you do marketing?---No.

No. Okay. Could I ask you this, this question. It's fair to describe the products that you sell as industrial consumables, is it not?---Yes.

Being consumable the client needs to renew them periodically of course?
---Yes.

30 30 It's a very competitive market, is it not?---It is extremely competitive.

And it's important for any company in the market to build up an ongoing relationship with major consumers?---Yes.

It just makes sense, doesn't it?---Yes.

40 It's fair to say, isn't it, that normally by application of the, of, of market theory the way that you would do that is by reference to three principles which I'll enunciate. Firstly, quality of product, secondly reliability of supply and thirdly competitiveness of price. Would you agree with that?
---Yes.

By adding in these promotion items you're in fact adding in a confounding, I suggest fourth factor, are you not?---Perhaps.

THE COMMISSIONER: You're creating the psychological dependency?
---Are we?

That's your words?---(not transcribable)

When I say your words I mean NCH's words.

MR CAMPBELL: Do you remember the Gears of Selling?---Yeah, that's a different issue.

Well, well, I suggest to you it's not for this reason, that by, by, by introducing this fourth confounding matter into the economic equation what
10 you are doing is giving an incentive to someone who is not the customer to buy your goods other than on the basis of the three cardinal principles I've discussed with you, that's, that's so isn't it?---Yes.

And attempting to get the desired and necessary repeat business even though your product might be good, even though your supply logistics might be reliable, what you're doing is you're getting the buyer not the customer to place the orders regardless of the competitiveness of price in some respects because there's something in it for him, that's so, isn't it?---That's a pretty broad statement because we have 25 reps in the company and they all
20 operate differently. Some will offer discount and price competitiveness.

THE COMMISSIONER: Well, let's, let's stick with those who offer promotional items?---They'd be a small percentage of the sales staff.

That's not an answer to the question. All right.

MR CAMPBELL: You see the confounding - the reason why the promotions as a personal gift to the buyer confound the economic equation is because there's something in it for the buyer rather than the customer.

30 That's correct, isn't it?---It's a basic reward item for business gain.

THE COMMISSIONER: It's something in it for the buyer, not the customer, isn't it?---Well, I regard the customer as the buyer, yeah.

Well, that is what, that is what I said to you in the beginning and asked you to comment on that proposition, that is, the basic problem underlying the conduct of the supplier's - - -?---Okay, well, I'll agree with you.

40 - - - is this identification of the buyer and the customer?---And therefore it's up to the buyer to declare what they might have received.

That's your attitude?---Yeah.

MR CAMPBELL: Isn't your marketing strategy necessarily putting that individual in an invidious position because you are giving him a conflict of interest. There's something in it for him, not just, I withdraw that. There's something in it for him which conflicts with his duty to his employer to secure the best price. Do you agree with that?---No.

Well, let me ask you by way of example. The, we heard evidence, and you were present when it was given, that the laptop computer was worth \$895. And I'll take you to the brochure if you wish in a moment. To - -

THE COMMISSIONER: I'm not sure if it was worth it, it cost, cost you, cost NCH that, it might have, a retail price might be much higher.

10 MR CAMPBELL: \$895 was the cost to NCH. And to achieve that incentive or gift, the buyer, your customer you say, had to place an order for \$10,000. Do you remember that example?---Yes.

Yeah. And you agree with, my maths is shaky at the best of times but you agree that's nearly nine per cent of the purchase price?---Yes.

20 Yeah. The, put yourself in the position of the council's financial controller for a moment, if you would. You're sitting in your office let's say at the civic centre or chambers in Ballina for a moment. Assume, assume you're that person. What would you rather have, would you rather have someone like the buyer get a laptop or would you rather have the council receive the nine per cent discount?---(NO AUDIBLE REPLY)

Please answer my question?---If I was in the council I would want to make sure I was getting goods that were doing a good job and- - -

THE COMMISSIONER: You're not answering the question.

MR CAMPBELL: What's the answer, Mr Epps?---Discount.

30 Of course. You were going to tell me about all your product, you were going to tell me about reliability of supply, weren't you. That's right, isn't it?---Yes.

You weren't going to mention at all competitiveness of price, were you? ---No.

40 No. Okay. Let's go to Orange City Council. You're the chief financial officer at Orange City Council. What would you rather have, someone in the position of a buyer, we've heard a name, Mr Lewis, in this inquiry, receive over the period of seven months iPhones, three of them, worth over \$2,400, or would you rather have that \$2,400 returned to council's coffers? ---I'm not a financial controller. I can't answer that.

Oh, come, come, sir. You're a business manager. You can answer that question for me. Tell me what the answer is?---The latter.

Of course. There couldn't possibly be any other answer to my question, could there?---(NO AUDIBLE REPLY)

Not from a, not from a sensible man of business, could there?---No.

No. The simple, I withdraw that. You've said to the Commissioner already that, oh, well, not all of your salespeople act in the same way, but the simple fact of the matter is, they are all, every man and woman of them, urged to deploy these promotional offers to generate record sales, are they not?
---That's their choice.

- 10 No, answer my question. The question is, they are urged to do it by the company, are they not?---No.

Oh, they're not. Let me go back. Let me go back to page 357 of the bundle. 946. Have you got it in front of you, sir?---Yes.

All right. This went out to every man and woman employed as a sales rep in your division, did it not?---Yes.

- 20 All right. And the subject of it was, "For the next three months you have a great Winter promotion." Correct?---Yes.

You then explain how the promotion operates. That's so? That's right isn't it?---Yes.

In red at the foot of the memo, towards the foot of it you say, only one promotion per order. That's correct isn't it?---Yes.

And you explain how the buyer will receive the jackets, at the end of the month and delivered ASAP. Correct?---Yes.

- 30 And then you say this to them, the final two paragraphs, April is the last month of fiscal '09. Let's, in red, pull out all the stops for the next two months and at least, I'm sorry, the next two months at least and set some records. New line, good selling and have fun. Now everyone is urged by that memorandum to use these promotions in pulling out all the stops are they not?---That's an interpretation I think you put on it. You don't have to, you offer promotions to set records.

- 40 No, no, no, but - - -?---They have a choice to do that. That's the idea of the email.

The whole context of, of the motivational conclusion is the promotion available for a limited time is it not?---It is there for a limited time, yes.

The whole context of the motivational conclusion is the promotion is it not?---Yes.

THE COMMISSIONER: Well perhaps a good example of express urgings at page 347, Mr Campbell.

MR CAMPBELL: Thank you, your Honour. Yes, could you turn to that please, Mr Epps. Once again this is an email memorandum to all of your sales team. Correct?---Yes.

I should ask you this, copied in are Mr Peter, am I pronouncing it correctly, La-Vite?---Yes.

10

He's the, he's the chief in Australia?---Yes.

Also Roberto Pavan?---Yes, Pavan.

Pavan, thank you, sir. He is, he is the operations manager for Australia? ---Yes.

So the most senior management is copied into this are they not?---Yes.

20

And again we have got an order of the day for the troops in the field have we not?---Yes.

And we see that the first quarter was up nicely. Is that right?---Yes.

And with that up nicely result in mind you tell them, I have a sensational promotion. That's right isn't it?---Yes.

30

And you say expressly to them, you say, I have a sensational promotion for your customers for August to help get your second quarter off to a flying start. And what you offer them or what would be offered to what you call the customers, is an iPad. Correct?---Yes.

And as the Commissioner observed, that is expressly urging them to produce even better results by deploying this, this promotion directed at not the person who pays the bill but the individual who places the order. That's correct isn't it?---(NO AUDIBLE REPLY)

THE COMMISSIONER: You mean you're actually telling your sales representatives to "give them one." Do you see that?---Yes.

40

Wouldn't you say that's urging them?---Again, that's a sales reps choice.

MR CAMPBELL: But could you answer the Commissioner's question, I'm sorry, Commissioner. The Commissioner asked you in this memorandum directed to all of the representatives would you say "give them one" by reference to the iPod, is urging them to use the promotion to achieve better sales?---Yes.

Thank you. And of course we know, as you say, only one promotion per order, we know that the option is given to the customer of splitting the orders so he or she can access more than one promotion at the same time. That's correct isn't it?---Not in this instance.

No, but if you - let me just put it this way. The products you sell are sometimes very expensive, are they not?---(NO AUDIBLE REPLY)

10 Well, I'd regard them as expensive. I mean, it's not unusual to have - I withdraw the question. It's not unusual to have, have, have orders in excess of \$20,000 for instance in some, in some cases, is that right?---Ah, I wish there'd be a lot more orders of greater than 20,000. It's not a common, not a common thing at all.

I wasn't saying that the products weren't worth it, Mr Epps, please don't take me that way, all I'm saying is that the orders often run into thousands of dollars, do they not?---(NO AUDIBLE REPLY)

20 Yes. And although \$9,000 is no doubt regarded as a pretty good order by the company it's, it's by no means the largest of the orders that you get from time to time?---No.

You're agreeing aren't you?---Yeah.

Yes. But so - perhaps directing my question to the point, if, if a buyer perceives a need to, to, to order more than \$9,000 of your excellent product and does so in a single order than all he or she gets if he or she wants it is the iPad?---Yes.

30 But if he or she is canny and has \$15,000 worth of product that he or she wishes to order then a \$10,000 order will secure the iPad yes?---Yeah.

And on the same day at the same time for the same commercial entity or public entity a second \$5,000 order will secure something else from the promotions list if the buyer has the desire. Is that correct?---Yes.

40 Yes. So that directing these things - I withdraw that. Directing these promotions to the individual and not the corporate entity can lead the buyer astray I suggest to you. Would you agree with that?---Our - - -

THE COMMISSIONER: Just, can you just answer the question, that's a question?---Yes.

MR CAMPBELL: And not only can it lead the buyer astray in that way but these, if, if one knows an iPad is available for nine, an order of \$9,000 or above and the buyer thinks I only need \$8,000 worth but gee, I'd like that, that iPad it can encourage the buyer to over order to secure the reward. That's so, isn't it?---No.

You think not?---No, then it's up to the representative to introduce other products that are of benefit to them to keep competition out.

Well, I think you're agreeing with me not disagreeing because if, if - - -? ---It's not over-ordering, it's supply product that they can use - - -

All right?--- - - - for their benefit in their workplace.

- 10 Well, is this, is this how it might work, Mr Buyer says gee, I think I just need \$8,000 worth but I'd like that iPad and then the sales rep might say well, what else do you, have you, do you do? I've got these other products which might be just right for you?---Or the sales rep might say well, let's got to your store and have a look at what you're down on on another company's products and then replace those products with ours.

Something like that?---This is the competitiveness of our business.

- 20 THE COMMISSIONER: Irrespective of the price?---Well, the price doesn't come into it, it does - - -

MR CAMPBELL: No, because the buyer wants the promotional item and he's forgotten about the - - -?---No, no, no, the customer knows the quality of our products and they would in many cases want to use our products in preference to other companies' products.

Well, the quality of products is only one of the three cardinal principles we've established, is it not?---It may be, yeah.

- 30 And one out of three ain't so good, is it?---I've heard that before.

Yeah. So an iPad is chosen in this promotion we're looking at here because in current thinking it's, it's a new and desirable product, is it not?---Sure.

And it's pretty expensive for an ordinary householder to buy. Would you agree with that?---Yes. It's a great tool with business applications.

THE COMMISSIONER: (not transcribable)?---Perhaps.

- 40 MR CAMPBELL: Now- - -?---I'd love one myself. I still haven't got one.

Well, it just shows you how desirable it is I suppose, Mr Epps. Now, could I just go back a page to 351 and just talk about this, the brochure we've, we've, we've, we've been asking people about over the last couple of days. It's 351 and 352, Mr Epps. And we see, don't we, that there's been a change overall in the nature of the products that are being offered as a promotion. That's so, isn't it?---Yes.

Yeah. And, look, it's fair to say that the emphasis has gone from industrial consumer products to just consumer products generally. That's so, isn't it? ---They are products that all have an application in the workplace, yes.

Yeah, but- - -

THE COMMISSIONER: You mean like twelve bottles of premium red wine?---Apart from that one, yeah.

10 Oh, and digital camera?---Oh, for sure. We all use digital cameras in our workplace.

Really?---Yes. We take photos of before and after situations, the use of a situation before they use our product and then how it looks after. So digital cameras are perfect for the workplace.

And the Apple iPod?---Apple iPod?

Yeah?---I don't, I don't, I don't know much about an Apple iPod.

20 Well, you can look, read it in the, in your catalogue?---I think it was music.

It can hold up to 30,000 songs, 150 hours video or 25,000 photos?---Well, you go into many workplaces and there's music going all the time and they use it for that type of thing.

MR CAMPBELL: I think you still offer or still were offering socket sets at one time but it's, it's, it's, the industrial applications of these goods, given the nature of your business, are much less obvious than the industrial
30 application of a socket set, are they not?---Well, a socket set's good for a mechanic, something else would be good for a different type of occupation.

No, Mr Epps, it's quite clear, isn't it, looking at these things that's what's obvious about these things is even if you could think of some way of using them at work, a lot of them would be just terrific at home. That's so, isn't it?---Sure.

40 Yeah. And except perhaps for the Tefal steam generator iron, I don't know what you'd use that for at home. A little joke, I withdraw that. All right. Now, is it still your view, sir, that the buyer is the customer?---Yeah.

Is it still so far as you can say the view of NCH Australia Pty Limited?
---I can't speak for NCH Australia Pty Limited.

Well- - -?---That's my view.

THE COMMISSIONER: You think it's quite appropriate to pay the buyer and not pay the person, the entity that's actually---?---I, I understand how it's---

---paying for the goods---?---it's important to pay the entity that is paying the bill, yeah.

10 But that's not what I'm asking you. I'm asking you whether you still think that it's quite appropriate to reward the buyer for, for orders without telling the buyer's boss or the entity and without offering---?---Well---

Can I just finish?---Yeah.

And without offering the entity a discount. You think that's perfectly proper?---I, I would hope that the buyer would inform the---

Just that's yes or no?---Well, can you repeat the question, please.

20 MR WIGNEY: Well, Commissioner, there's actually two, there are two limbs to that question and one relates to not telling the employer, one relates to without discount. It may be fairer with respect to, to break it up.

THE COMMISSIONER: I think that you can actually answer that question with both there.

MR WIGNEY: Well, perhaps you could, other than just strictly yes or a no, but I mean ---

30 THE COMMISSIONER: That's true. I'll try again. All right. Mr Campbell I'll leave it to you.

MR CAMPBELL: Thank you, Commissioner. Can I take it up this way, you have these goods which are desirable, that are terrific at home, you agreed with. Do you think it's a fair approach to business ethics that you should be directing those to the customer's agent, is the first question?
---Yes.

40 Do you think it's fair as a matter of business ethics that you should be directing them personally to the customers agent so that that person can have them delivered at home without telling anybody?---Again, I'll say that it's up to that person.

THE COMMISSIONER: Well that's quite in order to do that?---Yes. Well it was a the time.

No, no, now?---It was at the time that we, we don't do that now.

MR CAMPBELL: We'll get on to that?---We don't deliver anything to customers' homes now.

I will give you the chance to explain that Mr Epps, I promise you. But let's talk about what's happening now, what was happening then. So you think that's, that's good business ethic?---The reason we sent them to peoples homes was because the items were being stolen or lost or disappearing when they were sent to a workplace address.

- 10 So desirable were they I suppose that people might decide to purloin them. Is that, is that what you're saying?---Might decide to what?

To steal them?---Yeah.

There's lots of ways of avoiding that and still deliver them in an open and frank manner to the workplace. You'd agree with that wouldn't you?---Yes.

- 20 The whole idea of giving the buyer the choice of having it sent to his or her home was so that he or she knew that it was fully intended for his or her personal enjoyment. That's correct isn't it?---Yes.

And I'll ask you again, do you think that's, accepting that we live in an age of personal responsibility, as we always have, do you think it's fair to put a buyer on a, what might be by your standards fairly modest income, in that position?---I can't answer that one.

Why not?---I think you have to direct that to those people.

- 30 It's a question of simple morality isn't it? One may, one may, one may criticise Adam for succumbing to temptation and at the same time criticise Eve for offering it. That's so isn't it?---Perhaps.

Do you think it's fair to put the buyer in that position?---It's the buyer's choice.

THE COMMISSIONER: Well I think we've got the answer, it's yes.

- 40 MR CAMPBELL: Now you remember I asked you a question about whether or not it was still company policy that the person placing the order was to be equated with the customer. Do you remember that question? ---Ah hmm.

Perhaps I didn't put it that way. I asked you whether you still believed - - -

THE COMMISSIONER: I think he's answered yes.

MR CAMPBELL: He's answered yes. Is it still company policy I was asking you and you, you fended me away by saying that you couldn't speak for the company, but you are in a senior management position are you not?
---Yes.

You have a responsibility for sales within the division do you not?---Yes.

Well you are privy to executive meetings are you not?---Yes.

10 Where company policy is discussed and established are you not?---Yes.

Well you are in a position to say what current company policy is are you not?---Yes.

Well is it still company policy to equate the buyer with the customer?---Yes.

I see. Could you, could you have a look at page 291 of folder 9, tab 46. And this is an email from Mr La-Vite of 9 February, 2011 directed to yourself and Mr Wong. Is that correct?---Yes.

20 And other, is it fair to say, other members of the management team?---(NO AUDIBLE REPLY)

That's a yes I think?---Yes.

Thank, thank you, sir. Mr Hajitoffi, what's his position?---Business development manager. Oh, well, he's the, yeah, business development manager.

30 And Ms Jacqui Verdeyen, who we saw yesterday, has the same role?---Yes.

So all of these people are privy to senior strategic decisions in relation to marketing?---Yes.

And all these, and people holding those roles always would have been, is that correct?---Yeah.

Yeah. All right. Well, you've seen, you've seen the, this email before because you got a copy of it, is that correct?---(NO AUDIBLE REPLY)

40 You have to answer yes or no?---Yes.

Thank you, sir. And you'll see, may I read a bit of it? It says, "Attached is a directive from Dallas Legal." The reference to Dallas is a reference to Dallas, Texas, is it not?---Yes.

And a reference to legal is a reference to the legal department in the head office in Dallas, Texas?---Yes.

It also says this, "This directive was set up on 17 January, 2003." That's so, isn't it?---Yes.

That's eight years ago, yes?---Yes.

So the American parent had adopted a policy eight years ago, before all of these incidents which the Commission is investigating occurred, is that so? ---Yes.

10

It says, it says this, that "Please note, a full review of the programme will be initiated by legal department to see what other ways we can properly manage promotions. Now, which legal department is that? Is that Dallas Legal?---Yes.

All right. You don't have a legal department here in Sydney or, or in Australia?---No.

20

No. All right. Now, can we turn over to 292 and can I take you straightaway to the second paragraph. Just - which is this, "Our customer is the person or entity that pays our bill. This could be the qualified buyer but often it is not and the (not transcribable) is only the customer's employee." That's what Dallas Legal say isn't it?---Yes.

That's what Dallas Legal said back in January 2003 before all this happened. That's correct?---Yes, this was the first time that I ever saw this document, that was 9 February, 2011.

30

I accept that from you, Mr Epps. I don't question what you say about that but the simple fact of the matter is that the American parent had that policy eight years ago, correct? You've agreed with that, and it's now, is it not, the policy of the Australia offspring, correct?---Yes.

And so I need to contradict you, don't I, and say in fact today NCH's company policy is that you cannot equate the customer with the buyer, that's correct, isn't it?---I guess.

Now - and that's the first time that that obvious conclusion from the memo has occurred to you, Mr Epps, I'm being fair to you?---Yes.

40

Now, the - now go back to 290, that's forward, back to 290 and this is a document that - a more recent document, 2011 to 2012 promotions and is it fair to say that NCH has this year completely abandoned this, these promotion deals involving consumer durables, is that right?---We have restructured our promotions completely, yes.

Yes. And, and one of the things - part of the restructuring is you've knocked over the promotions programme which entitled the customer's employee to have a dozen bottles of wine sent home?---Yes.

THE COMMISSIONER: And also entertainment?---Yes.

MR CAMPBELL: This list was in for a short period of time. Is that correct?---Yes.

10 When did it cease?---1 June, I think, yeah.

You're unsure?---Some time around then.

Is that when it ceased or when it started?---No, it ceased.

All right. And has it ceased - - -?---No, 1 September it ceased.

I think we heard some evidence the other day it was 1 September?---It was 1 September, yeah, yeah.

20 Now the evidence we heard the other day was that it had suspended on 1 September?---Ah hmm.

Has it suspended or has it ceased?---Suspended.

Pending what?---It'll probably be gotten rid of.

30 Pending getting this inquiry out of the way?---No. Because we've restructured many of our promotions prior to anything to do with this inquiry. As I said earlier, we look at different ways of marketing things very regularly and change them as needed. And this is one of those issues.

Do you have a promotions or reward programme at all currently?---Yes.

And who's that directed to? Which sectors?---Everyone.

Including the public sector?---Yes.

40 What's it consist of?---We have two promotions. We have one which is a combination work drill combination kit for a \$5,000 sale. And we have a twin halogen 500 watt light kit, which is for a fifteen hundred dollar sale.

Well one can see readily - - -?---But that, that is shipped with the goods to the customers workplace and is indicated on the invoice.

And is it, is it, when you say the customers workplace, are we talking about the entity that pays the bill?---Yes.

Addressed to that entity?---Yes.

Well if you're worried about employees pilfering it, how do you, how do you ensure that won't happen?---We're not now, we're not now. You're not any more, I see?---No.

But is the customer given, I'll withdraw that. If the drill is, if the drill is on what purchase, sorry Mr Epps, I forget?---\$5,000 sale.

10 So, and how expensive is the drill?---Around \$300.

What about the halogen lights, how expensive are they?---I don't know.

A hundred or so?---Yeah, less than 100.

Now are they give the option of, of having the drill or having, having a \$300 rebate?---Yes.

20 On every occasion?---I can't answer that. I don't know. I'm not on the field with the reps.

You have to ask the sales staff?---Yeah.

THE COMMISSIONER: So the sales staff have got the option - - -?---Yes.

- - - to offer either a straight discount - - -?---Or the promotion.

- - - or the promotional item?---Yes.

30 And would this - and the promotional item is sent to the entity?---Yes.

MR CAMPBELL: I suppose a large commercial entity mightn't have a lot of drills in its workshop. Would you agree?---Could do.

Pardon?---Could do.

Could do. Or have a lot of work lights available for its employees who have to work in the field?---I don't know, you'd have to ask them, possibly, yes.

40 Possibly. Okay. Now listen you've done, your company has done a lot of work in the public sector over how many years?---Well ever since I've been with the company, 23 years.

Have you never heard of public sector Codes of Conduct?---Yes.

Well if you've heard of those Codes of Conduct have you head of those Codes of Conduct including policies in relation to the receipt of gifts or benefits by employees?---Yes.

And what do you understand to be the general rule about those policies?
---Well you know, in my early years as a rep I used to supply local government departments and I would offer them promotions and they'd put it in the wheelbarrow for the Christmas raffle or put it of the social club or something like that.

10 Well you've had that experience, but I was asking you about your understanding of the content of, of policies relating to the receipt of goods and benefits. Do you have an understanding of - - -?---Well every, I believe every entity has a different policy.

I see. Well, are you familiar, have you been familiar with the idea that other than token gifts or benefits should be refused by employees?---I, I - -

Have you heard that idea?---I think that may be isolated cases.

20 Have you, have you, have you heard of the idea that it's only when it would be unreasonable presumably because it would cause unnecessary offence to refuse the gift and benefit that you can accept it? Have you heard of a policy that states that?---Sorry, can you repeat that?

That it should only be accepted when it is unreasonable to refuse them.
Have you heard of that policy?---No.

Have you heard of something called a gifts and benefit register?---Yes.

And how do you understand that they operate?---That if they are to receive a benefit then they need to record it.

30 And that's something which you have been familiar with for a long time. Is that right?---I know every entity has some policy in that regard. What those policies are I have no idea.

40 So putting, putting the buyer, I withdraw that. Knowing that those policies exist in the public sector and knowing that they include those details that you and I have been discussing, do you think it represented good business ethics when dealing with the public sector to put the buyer in the position of temptation in which you put him?---That's, that's a, I can't answer that difficult question.

I see?---Mmm.

Well, do you have a view about it?

THE COMMISSIONER: I think we can leave that.

MR CAMPBELL: May it please the court.

THE COMMISSIONER: (not transcribable)

MR CAMPBELL: Yes. Thank you, Commissioner.

THE COMMISSIONER: Mr Epps has been given the opportunity to deal with that and we heard what he said.

10 MR CAMPBELL: Thank you, Commissioner. I have one final question for Mr Epps.

THE COMMISSIONER: Yes.

MR CAMPBELL: Look, this has obviously been a bad experience for your company?---Certainly.

20 Yeah. Looking back on it from where you sit now, and having had this experience, do you think there's anything the public sector could have done to avoid this issue having arisen in the way it did?---Again, difficult to answer.

I have no further questions, Commissioner.

THE COMMISSIONER: Mr Naylor, do you wish to question Mr Epps?

30 MR NAYLOR: Yes, yes, thank you, Commissioner. Mr Epps, I appear for a number of local council employees, a number of whom purchased Chemsearch products on behalf of their council entities for whom they worked. You've managed sales representatives in your company for about six years now I think was your evidence, and those sales representatives, a number of those sales representatives offered and made arrangements for the giving of promotional goods. That's correct, is it?---Yes.

And did you ever or have you ever given a directive to those sales representatives to this effect, that they should make sure when offering or giving promotional goods that the buyers who were doing the purchasing were made aware that the goods were intended for the council entities- - -?
---No.

40 - - -for whom they were purchasing?---No.

Thank you.

THE COMMISSIONER: Mr Clay?

MR CLAY: No questions.

MR WIGNEY: I have no questions, Commissioner.

THE COMMISSIONER: Mr Horton?

MR HORTON: No, Commissioner.

MR CAMPBELL: Commissioner, might Mr Epps be excused?

THE COMMISSIONER: You may be excused, Mr Epps?---Thank you.

10 Thank you for your evidence.

THE WITNESS EXCUSED

[11.14am]

THE COMMISSIONER: And perhaps we should adjourn till 11.30.

MR CAMPBELL: Thank you, Commissioner.

20

SHORT ADJOURNMENT

[11.14am]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: I call Peter Wong. Mr Wong. David Wong, I beg your pardon, Mr Wong, will you come forward please.

MR HORTON: Commissioner, I appear for Mr Wong.

30

THE COMMISSIONER: Yes. Mr Wong, won't you be seated.

MR WONG: Thank you.

THE COMMISSIONER: Mr Horton, do you want me to make a section 38 order?

MR HORTON: Thank you, Commissioner.

40

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Wong and all documents and 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.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR WONG AND ALL DOCUMENTS
AND 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.**

10

THE COMMISSIONER: Now Mr Wong, 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 WONG: Yes, I do.

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

20

MR WONG: Affirm.

THE COMMISSIONER: Would you administer the affirmation, please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Wong, would you please state your full name?---David Alan Wong.

And are you an officer of NCH Australia Pty Limited?---Yes.
10

What's your current position?---I'm the technical director, Asia Pacific for our lubrication division.

All right. And how long have you been in that job for?---Since August this year.

And before that what was your role?---Prior three years, division manager.

And was that the manager of the Mantek division?---Yes, sir.
20

And so you were the equivalent of Mr Epps, from whom we've just heard in that division?---Yes.

And like him, you had many obligations, but one of them was obligations in relation to the sales team and marketing strategies?---Yes.

Now Mr Wong, with the Commissioner's permission, I want to ask you this straight forward question, you've sat here today listening to Mr Epps' evidence, I think?---Yes.

30 Do you agree with it?---Specifically what part - - -

MR HORTON: I object to that question, Commissioner. (not transcribable)

MR CAMPBELL: We'll do it the long way then, Commissioner. I want to ask you - - -

40 THE COMMISSIONER: Just a moment, Mr Campbell. You're quite right, Mr Horton. And if you press the objection I will uphold it. There is a lot to be said for the question and that's, why don't we see what he says, it may be it'll save a lot of time. But if you, if you persist on your objection, I won't allow it, but I do think that it may help. Do you understand what I'm saying?

MR HORTON: I do, Commissioner, yes.

THE COMMISSIONER: But if you – I mean there is no, no hard feelings if you object.

MR HORTON: Perhaps we can make a start on asking a few questions to see where we're going and then we can (not transcribable)

MR CAMPBELL: All right.

THE COMMISSIONER: Whenever you wish stand up and object.

MR HORTON: Thank you, Commissioner.

- 10 THE COMMISSIONER: Mr Wong, it's a very difficult question to answer?---Yes.

And whatever you answer I don't think you're going to be held to the detail of anything, but it's pretty plain what the basic ideas are that Mr Epps has advised. So if you can give what, is there anything that strikes you with which you disagree? If you don't say it, you're not going to be held to be a liar or anything like that?---Clearly I'm not a, I don't come from a sales background so I don't have the same sales experience that Mr Epps answered this question from. But generally I guess I agree with most of the

20 things he said.

MR CAMPBELL: Could I say Mr Wong, that the Commissioner's question was much better than mine. Are there any substantial points that you disagree with?---Not that come to mind.

All right. You said you're not from a sales background, what is your background?---Technical.

All right. A chemist?---No, engineer.

- 30 Engineer, I beg your pardon. And – but I suppose in business these days people have to wear many hats. Is that correct?---Correct.

All right. But can I ask you is it the case that the Mantek division ran pretty much in parallel with the Chemsearch division so far as marketing strategies were concerned?---Yes.

In fact did you have the same sales team?---No.

- 40 No. Different people in each division?---Yes.

But given that what you've told me about your background, did you tend, and I don't mean disrespect either to you or to Mr Epps, did you tend to defer to Mr Epps greater expertise in that line of territory?---Not specifically to Mr Epps, no.

To whom did you defer?---If I had any difficult questions to my superior.

And was that Mr Pavan or Mr La-Vite?---Mr La-Vite.

All right. And the – these are – I'll withdraw that. We've heard that, we've heard that – from Mr Epps that there were strategy meetings in relation to doubtless all manner of things relating to the business. Is that correct?

---Yes.

One of them was marketing?---Yes.

- 10 And the decisions that were taken in relation to marketing were taken by the leadership group as a whole. Is that correct?---Yes.

And under of course the leadership of the chief, Mr La-Vite?---Yes.

All right. And the whole company management was privy to the, the discussion process. Is that correct?---Yes.

And also to the decision making process following it?---Yes.

- 20 Can I, given the change of policy in, in the NCH Australia Limited approach to marketing that's happened this year, can, can I take it that you would now regard the previous approach using these promotional items directed to the buyer rather than the customer as flawed?---Yes.

And can I ask you this question, sir, that, do you agree with me that if, I'll withdraw that. Do you agree with me that the process I took Mr Epps through was a growing trend to rely upon these promotional items, culminating in the items that were really designed to attract the interest of the consumer generally? Do you agree with that analysis?---Yes, I do. Yes, I do.

- 30 And do you agree that given that the promotional approach was flawed, that that culmination in that particular promotion really represented a substantial deviation from a good path for the business to follow?

THE COMMISSIONER: As laid down by Dallas Legal in 2003?---Yes, I agree.

- 40 MR CAMPBELL: Now, following the Commissioner's question, had you, prior, prior to February of this year were you aware of the Dallas Legal memorandum?---No, I wasn't.

And I take it that when you saw it, when it came from Mr La-Vite, that you certainly thought it made a lot of sense?---Yes.

THE COMMISSIONER: Well, did you, did you see a 2003 memorandum? ---No, I didn't.

So what you saw was the subsequent letter which- - -?---Correct.

- - -referred to the 2003 memorandum?---Yes.

MR CAMPBELL: Could I, is, is folder 9 with you in the witness box, sir? It's probably not. Could he be shown. Perhaps I could ask you, ask you this. If you, if you turn up to tab 46 and then go over to page 291, the, do you, do you see by looking at the memorandum from Mr La-Vite of 9 February, 2011, do you see that?---Yes.

10

And that refers to the Dallas Legal directive. Looking over the page to page 292, can you tell me whether that is a copy of the original directive or is that something which, which is the re-establishment of the original directive, to adopt the language of Mr La-Vite?---I never saw the original directive so this, page 292 is the first one I've seen which states this.

All right. And you don't know if the original one was in entirely the same terms?---No, I don't.

20

No. You, you, you heard me ask some questions by reference and what I put to Mr Epps was an application of classic market theory. Do you remember those questions?---Yes.

Quality of product, reliability of supply and competitiveness of price?
---Yes.

Do you accept that those things are an accurate summary of how one should establish, according to market forces, a good ongoing relationship with a consumer of your products?---Naturally.

30

And it's fair to say, isn't it, that the diversion from the true path represented by the promotional programs was a confounding factor on those important market forces. Would you agree with that?---Yes, I would.

And indeed if we look at the top of page 292, the memorandum commences, does it not, "To insure", in the American way, "That we have no misunderstandings with our customers", and it goes on. That's so, isn't it?
---Yes.

40

The, the, the promotional approach not only confounded market forces by, in the way I discussed with Mr Epps, but it also confounded them in terms of creating an enormous capacity for there to be misunderstanding between NCH Australia Pty Limited and the entity who pays its bills?---Yes, I can see that, yes.

And the - would you, would you agree with me that to, and I'll leave out the biblical illusion, but to put the buyer in the position in which NCH Australia Pty Limited put him or her was not good business ethics?---In hindsight, no.

Well, thank you for that. And, and if you, if you - do you agree with me that had serious consideration been given at the time to the, to the possible ramifications of adopting such a policy, that is to say in prospect not in retrospect, you would have come to the same conclusion, do you agree?---More than likely.

Have you ever heard of a Public Sector Codes of Conduct?---I have heard of it, yes.

10

And had you, had any, did you have any familiarity with, with gifts and benefits policies in the public sector?---No, I would have to say no.

All right. Certainly with the benefit of hindsight, you'd, you'd say that you would not wish to compromise the position of someone else's employee by attempting to breach the consumer's policies would you?---No, I wouldn't.

20

Now, given the, given what you now believe and given what the company has now adopted as its proper policy with the benefit of hindsight is there something you think that the public sector could have done to help its suppliers understand its position in relation to these matters earlier?---Yes, I do.

What, what, what do you think it is?---I think one of the things should, should have been some documentation to outline specifically the, the, the receipt of gifts and benefits to, to council employees made clear to suppliers. I, I must admit the first time I had a very good read of it was upon being summonsed to this hearing.

30

Yes. And I take it what you're saying, Mr Wong, you would have appreciated to have had that opportunity at the time you started doing business with some of these entities?---Yes.

So, for instance, to follow up what you say if - I withdraw that. Some of the invoices, most of the invoices for your company's very worthwhile products run into thousands of dollars, that's so, isn't it?---Yes.

40

And it may well be that if the first time an invoice of that magnitude came across - I've said the chief financial controller for a council's desk from a new supplier that, that maybe contact should be made with the new supplier to inform it of council's requirements in regard to dealing with its staff? ---Yes.

And for instance if NCH Australia Pty Limited had had that opportunity so far as you're a part of the leadership team would it have followed the customer's in that regard?---Yes.

And would it have instructed its sale staff accordingly?---Yes.

Would it have impressed upon its sales staff the importance in dealing with public sector consumers of observing public sector business ethics?---Yes.

No further questions, Commissioner.

THE COMMISSIONER: Yes. Does anyone wish to question, Mr Wong?

MR CLAY: No, thanks.

10

THE COMMISSIONER: Thank you, Mr Wong.

MR CAMPBELL: (not transcribable) excused.

THE COMMISSIONER: You may be excused from your summons.

THE WITNESS EXCUSED

[11.49am]

20

MR CAMPBELL: Commissioner, I call Mr Roberto Pavan.

MR SMITH: Commissioner, Justin Smith, might I have leave to appear for Mr Pavan?

THE COMMISSIONER: Yes. Please sit down, Mr Pavan. Do you wish me to make a section 38 order, Mr Smith?

MR SMITH: Thank you, Commissioner.

30

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Pavan witness 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.

40

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR PAVAN WITNESS 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.**

THE COMMISSIONER: Mr Pavan, you are 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. And you understand that?

MR PAVAN: Yes.

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

10

MR PAVAN: Under oath, please.

THE COMMISSIONER: Under oath.

THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you. Mr Pavan, would you please state your full name?---Roberto Pavan.

And are you an officer of NCH Australia Pty Limited?---Yes, I am.
10

And what position do you fill there at the moment?---I'm the operations manager.

And for how long have you held that role?---I've been with the company for 19 years now, in that position for about 11 years.

And what's your professional background?---I'm a chemist.

All right. And I didn't mean anything about chemists and engineers by the way, Mr Pavan, when Mr Wong was in the witness box. Now, as, as, as an operations manager, are you, are you responsible for the administration of the company?---I'm responsible for the administration of the operations part of the company, which is the back office, if you want to call it that.
20

And what, what does the back office do?---We pick, pack, well, we process the orders, we pick, pack and ship the goods, we collect the money, we pay the bills, we provide technical support.

THE COMMISSIONER: You don't sell?---I don't sell.
30
And nobody for whom you are responsible sells?---No.

MR CAMPBELL: Now, thank you, Commissioner. Were you the, were you the officer who was responsible for complying with the section 22 notice that the Commission issued to the company as part of its investigation?---Myself, yes, I was involved in compiling the information that was requested, yes.

All right. Could, could I have that document. There are quite a large number of documents in evidence already, but would you please look at this document that the Commissioner's associate will show you. We've seen a couple of, of, of, there's a document like this already in evidence, but what I want to ask you about is this particular form of this document. Do you see that it has down the far right-hand column, price information?---Yes.
40

Yes. Thank you. You have to answer?---Yes.

Now, were you the officer responsible for seeing that (not transcribable) compilation included that information?---Yes.

And do you tell the Commission that that information as to price is accurate?---To the best of our knowledge, yes, it is.

THE COMMISSIONER: That's cost to you, is it, cost to NCH?---Cost to NCH.

- 10 And is that a retail cost or a wholesale cost or do you know?---I, it's the cost from the supplier.

But is the, what is the- - -?---I don't know. I'm not sure if it's- - -

The supplier's not a retailer?---No.

Is the supplier a wholesaler?---I couldn't, I'm not sure.

Well, if it's not a retailer- - -?---Well, it's not, yeah, it's not a retailer.

- 20 I presume the cost, you pay less for it than a, than a normal consumer going into Harvey Norman?---Possibly, yes.

MR CAMPBELL: The, is, do you, does your section organise the procurement of the promotional items and their delivery to the buyer, or did it in those days?---Yes.

- 30 All right. So can you, can you tell the Commissioner then that these, these items are sourced through Paula M Promotions Pty Limited?---Amongst others, yes.

Amongst others. And, Commissioner, can I just say, we looked at some of these the other day, they're behind tab 45.

THE COMMISSIONER: Yes. So they are already, the whole lot are in evidence?

MR CAMPBELL: Yes, they are, Commissioner, yeah.

- 40 THE COMMISSIONER: So the purpose of this part of Mr Smith's evidence is simply to prove the correctness of that material?

MR CAMPBELL: Yes. And incidentally to provide a convenient summary of it.

THE COMMISSIONER: Quite so.

MR CAMPBELL: All right. You would suppose though, as a man of business, wouldn't you, that, that Paula M Promotions probably have some mark-up on, on, on what it costs them to acquire the goods?---Yes.

Yeah?---Yeah.

Right. All right. Now, just in relation to the section 22 compliance, and I'm not, I'm not criticising you about this, we've heard evidence from Mr Epps today that there is, that there has, that, that there is a new promotions policy 10 in place that involves a good quality drill and some halogen lights. Is that correct?---I believe so, yes.

Yeah. And is there a written policy in relation to that matter?---I believe there would be another flyer, not unlike flyers that we've seen.

All right. And Commissioner, could I ask for a direction that Mr Pavan perhaps provide it within a reasonable time?

THE COMMISSIONER: Yes. Yes. Well, really, Mr Wigney- - -

20 MR WIGNEY: We'll attend to that.

THE COMMISSIONER: Yes. I won't make a directive, I think that you'll simply do it.

MR WIGNEY: I'll seek some instruction.

THE COMMISSIONER: You don't need a direction, do you?

30 MR WIGNEY: No.

MR CAMPBELL: I'm grateful to my learned friend and to you, Commissioner. I should have checked my learned friend previously and I apologise to him for not doing so. There's also another document which, if you'll pardon me for a moment, pardon me, Commissioner. Fatima Rodrigues is part of your team. Is that correct?---Yes.

40 And, and, and what does Ms Rodrigues do?---Oh, she does a bit of everything. She's a big of a office roundabout. She does, she does, she helps me, she helps Peter, she helps the office staff.

THE COMMISSIONER: Administrative assistant, is she?---Yes. (not transcribable) yeah, that kind of thing, yeah.

MR CAMPBELL: And we heard evidence yesterday that Ms Verdelyn sent an email to Ms Rodrigues, I think it's Ms Rodrigues, about a matter concerning Ballina Shire Council. If, if I, if I give you the information would it be possible that, can you say that that email would still be in your

computer system?---It depends if I was copied. If, if I wasn't copied then I couldn't vouch for Ms Rodrigues as to whether she's kept that email or not.

All right. Well, perhaps, I haven't raised this with Mr Wigney but perhaps if I could just say what it was I'm looking for, he might make a note of it. And it's, it's the, the only Fatima is Fatima Rodrigues. Is that right?
---Correct.

10 And she'd be a person who a sales rep would communicate with about delivery details in relation to promotional items in the old days?---Possibly, yes.

Possibly, yes. All right. And, pardon me. The, it's, it's an email from Ms Verdeyen to Ms Rodrigues concerning an order that was taken on 19 October, 2010. It's order number 8-7-2-8 and it relates to Mr Lapham and Ballina Shire Council. And if, if, if, if the company could- - -?---If you give me the details I'll look into it.

Thank you.
20 THE COMMISSIONER: Thank you.

MR CAMPBELL: Thank you. Mr Pavan, you're part of the leadership team. Is that correct?---I believe so.

Very modest. I, I, I, I thought that was a safe question because if you, if you turn to, to tab, I'll show you volume 9, tab 46 and if you'd look at, at page 291. (MOBILE PHONE RINGING) That's me again, Commissioner. I think that's a (not transcribable)

30 MR WIGNEY: Three strikes and you're out.

MR CAMPBELL: I think that's correct. I think that's only fair. I think that's only fair. Pardon me, everybody, especially you, Commissioner.

Yes, so is Mr Wong. Now, all right, I beg your pardon, you see that that email of 9 February, 2011 was sent to you. Do you see that?---(NO AUDIBLE REPLY)

40 And that's why I asked the question whether you're part of the leadership team. Do you meet with the divisional managers and with Mr La-Vite to determine company policy?---Yes, I do.

All right. And you have been – you have been privy to the marketing strategy meetings that were held concerning promotional items - - -?---Yes, I have.

- - - over the years?---Yes.

And, and you've been – you've attended the meetings more recently which have established a new direction for the company in relation to marketing strategy. Is that correct?---Yes.

Now I believe my learned friend Mr Smith will permit me to ask this question, Commissioner, you've heard the evidence of Mr Epps and Mr Wong this morning, do you have any disagreement with anything they said about the matters I asked them in relation to, I'll put it neutrally, the wisdom 10 of the policy?---I have no major, you know, disagreement with any of their comments, no.

Just so I give you every opportunity, do you have any minor ones?---Look none that spring to mind.

All right. Okay. Now – and as a man of business do you now accept with the benefit of hindsight that the policy was flawed?---Flawed is a very strong word. I mean - - -

20 I understand that?

THE COMMISSIONER: I think it's a very weak word in this context. What word would you use?---It could be improved upon.

MR CAMPBELL: You see you said you had no major disagreement, yet you heard Mr Wong say, and I think Mr Epps as well to be fair to him, that the policy represented a departure from the standard of good business ethics. I think that was the affect of their evidence. Do you agree with that?---The affect of their evidence, yes.

30

THE COMMISSIONER: But do you agree with that proposition?---Look I do, I believe you know, we, we, we complied with it, trying to undertake good business, good business ethics.

MR CAMPBELL: Well you said you were doing - - -?---Apparently, yes.

I beg your pardon. You said you were doing that but do you agree with me in fact you failed to achieve the standard of good business ethics in regards to the promotional programme?---We failed, yes.

40

And indeed the failure is most graphically illustrated by that email at page 291 and its attachment at page 292 of volume 9 is it not?---Yes.

THE COMMISSIONER: Have you seen that – the directive of 17 January, 2003?---I hadn't seen it prior to this.

I'm curious about that and the fact that no one has seen it. Is there – can you think of an explanation why nobody had ever heard of it?---Well prior to 2007 there was a different country manager.

A different?---A different country manager.

What is that?---A different general manager to Mr La-Vite.

10 And therefore?---A different person, different management style, different communication style, Commissioner.

You're suggesting that there's a possibility that he may have - - -?---She. - - - she kept it to herself?---It's quite possible.

And not shown it to anyone?---Yes, Commissioner.

MR CAMPBELL: The - - -

20 THE COMMISSIONER: Sorry, Mr Campbell. When you complied with that section 22 Notice did you have a look at the documents that she had in her possession to see whether there was any - - -?---She left the country in 2007.

But the documents?---I am not, I am not privy to any of her documents.

So - well could if I might ask that a search could be made for that directive of 17 January, 2003 just to see whether you have it.

30 MR WIGNEY: Just to clarify that, Commissioner, any communication of that policy from the United States or from Dallas Legal, as it's referred to, to Australia prior to this particular directive of February, 2011?

THE COMMISSIONER: Yes.

MR WIGNEY: Yes, we'll ascertain - - -

THE COMMISSIONER: I think that – as I read the email, it's probably only one and that was sent in January 2003.

40 MR WIGNEY: Well certainly that's when the policy was, that it was first propounded.

THE COMMISSIONER: Yes.

MR WIGNEY: As to its communication to Australia - - -

THE COMMISSIONER: Yes.

MR WIGNEY: We'll conduct some inquiries.

THE COMMISSIONER: So we would be interested in that.

MR WIGNEY: Yes.

THE COMMISSIONER: Yes, thank you.

- 10 MR CAMPBELL: Sorry Commissioner, just checking, I beg your pardon, Commissioner. Look quite apart from anything else do you agree with the proposition that it was bad business ethics to put the customers employee in the way of temptation?---In hindsight I guess it was.

And it was bad business, I'll withdraw that. It was bad business ethics to decide that it could be left up to the employee to exercise his own personal responsibility. Do you agree with that, in relation to whether the product should be refused or if not refused, declared?---Yes.

- 20 And do you agree with me that anyone could have, I'll withdraw that. Forgetting about hindsight, because this has been a very bad experience for the company hasn't it?---Yes.

And they say even a fool can be wise after the event. That's so isn't it?---I guess so, yes.

THE COMMISSIONER: Well - - -

MR CAMPBELL: It's Friday, Commissioner.

- 30 THE COMMISSIONER: It wasn't the best question.

MR CAMPBELL: No, no. Well I didn't mean to be offensive with it, let me say. But I mean if you'd sat down at the time that these policies were adopted and given it a moments thought, as though this bad thing hadn't happened, applying business ethics, the same decision should have been made, that is to say that it didn't rise to the standard of ethics expected of people in business. That's so isn't it?---Perhaps that's so, but I mean the objective of business is to grow your business. And that was one - - -

- 40 THE COMMISSIONER: These matters all seem pretty clear.

MR CAMPBELL: Yes, thank you, Commissioner. I won't press it. And I have no more questions for Mr Pavan.

THE COMMISSIONER: Yes, thank you. Does anyone else wish to ask Mr Pavan questions?

MR CLAY: I wonder if Mr Campbell is going to tender the - - -

MR CAMPBELL: Oh yes, I am. And I tender that, that augmented schedule of orders with promotional items.

THE COMMISSIONER: All right. Thank you. The schedule, the augmented schedule with promotional items from January 2007 to August 2011 is Exhibit 38.

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#EXHIBIT 38 - SCHEDULE WITH ORDERS OF PROMOTIONAL ITEMS FROM JANUARY 2007 TO AUGUST 2011

THE COMMISSIONER: Yes, Mr Clay.

MR CLAY: Thank you. Mr Pavan, I appear for a number of councils, but just on the schedule N/A does that mean not available, not applicable?

20 ---Yeah, not available. Yes, we just couldn't find it.

All right. Thank you.

THE COMMISSIONER: Yes, anyone else? Mr Smith?

MR SMITH: No.

THE COMMISSIONER: No. Yes, you may be excused?---Should I leave this here?

30

Yes, thank you. Thank you Mr Pavan.

MR SMITH: Might I be excused?

THE COMMISSIONER: Yes, certainly.

THE WITNESS EXCUSED

[12:08pm]

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MR CAMPBELL: Commissioner, I call Mr Peter La-Vite.

MR GOODMAN: Commissioner, my name is Goodman. I seek your leave to appear on behalf of Mr La-Vite.

THE COMMISSIONER: Yes, Mr Goodman.

MR GOODMAN: Thank you.

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

MR GOODMAN: I do, Commissioner.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr La-Vite 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
10 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.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR LA-VITE 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
20 OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM
TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR
ANSWER GIVEN OR DOCUMENT PRODUCED.**

THE COMMISSIONER: Mr La-Vite, I'm sure you've heard me say this many times if you've been in the hearing room, and I think you have, 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. And I'm sure you understand that.
30

MR LA-VITE: I understand.

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

MR LA-VITE: Under oath, please.

THE COMMISSIONER: Would you swear Mr La-Vite in, please.

40

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr La-Vite, would you please state your full name?---Peter La-Vite.

And are you an officer of NCH Australia Pty Limited?---I am.

10

What is your position in the company, sir?---I am the general manager of NCH Australia and vice president of operations.

And the title vice president of operations is, is that for a larger entity?---It's a, it's for NCH International.

Oh, all right. That was the purpose of my question.

THE COMMISSIONER: Does your job involve sales at all and

20

management of sales, supervision of sales?---I manage three sales people directly in Australia.

And indirectly?---Indirectly of course with my division managers I, I work with my division managers in Australia.

So what I'm really trying to find out, Mr La-Vite, is whether sales falls under your jurisdiction?---Yes, it does.

Thank you.

30

MR CAMPBELL: If I can put it this way, Mr La-Vite, you're the chief in Australia?---Yes, it is.

I won't be (not transcribable) Commissioner. Mr La-Vite, the three sales reps that you've referred to, are they people directly in the field?---Yes, they are.

And, and when they, and they, they bypass Mr Epps and Mr Wong when he was doing the job?---Yes, they do.

40

Are they in some specialist field or some such thing?---They are established reps that I had a relationship when I was here as operations manager back in 1993 and it was wise, it was felt that at that time it would be better if they reported directly to me.

And we've heard from Mr Ramachandran and the others who are, who have been reps, do the people that you control directly do the same type of work that they do?---Yes, they do.

And so that that is that they've been in field selling the company's products to, inter alia, the public sector?---Yes.

And - - -?---Two of the reps don't sell to the public sector, one does.

And never have?---Never have.

- 10 All right. And one, one does. And does that, the promotional programmes when they were in place applied equally across the board, did they not? ---Yes, they did.

All right. So that each of those three salespeople who you directly control would have been applying the company's promotional policy in their dealings with all customers?---Correct.

And can I say this, Mr La-Vite, every sales agent would be expected by the company to institute company policy, would they not?---Yes, they would.

- 20 And, and when these promotional programmes were in place they're in place because the management or leadership group thought they were, were a good marketing strategy, that's so, isn't it?---We believe so, yes.

Yeah. I'm going to ask you about details as you'll no doubt well appreciate?---Yeah.

Now, just - you were here in Australia you said back in the nineties?---I started with Australia in 1978 - - -

- 30 Right?---- as their finance manager and then I was the operations manager until 1993, then I was transferred to Thailand - - -

Yes?---- and I spent 15 years in Thailand as the regional vice president, I was also country manager of China, India and Taiwan.

A big, a big region?---A hard job.

And then when did you return to Australia?---2007/2008 through a transition period.

- 40 Oh, right. And we've heard that, that head office of the global company is in Dallas, Texas, is that correct?---That's correct.

And as part of your senior role over all those years I suppose from time to time you'd, you'd go to Dallas for meetings with, with your superiors? ---Yes, I would.

And, and that you'd be privy to general matters decided in terms of NCH International's image in Dallas?---Yes, I would.

All right. Now, I'll come straight to, to the, to the February, 9 February, 2011 email and I'll ask the Commission's associate to show it to you to refresh your memory about it. It's volume 9, tab 46, page 291?---I have that email.

10 Thank you. This is an email from you to your sales leadership team?---Yes, it is.

And also Mr Pavan who's part of the senior leadership group?---Mr Pavan's the operations manager.

20 Yeah, thank you. Now, can I ask you, sir, when did you first hear of the Dallas Legal directive of 17 January, 2003?---If my memory serves me right I do remember seeing a directive like that being sent out in the region. At the time I was in Thailand to be honest with you we didn't have that promotionals in any of my countries and so I may have read it but I, to be honest I didn't recall it and didn't take note of it - - -

Yes?---- so when it was sent to me in February and I read it it did ring a bell that I had seen that document at some time, yes.

THE COMMISSIONER: And how did you know it was set up on 17 January, 2003?---Dallas, apparently the email was sent to the country manager in 2003.

30 Well, did - is that what Dallas Legal told you?---Yes.

They wrote and told you that?---Well, it says that the letter came from Dallas that this directive was sent - - -

I see?---- to the country manager in 2003.

MR CAMPBELL: All right. And from, from your answers to the Commissioner's questions this is NCH International global policy, is that correct?---That's my understanding, yes.

40 And it has been global policy at least since January 2003?---Yes.

THE COMMISSIONER: Mr La-Vite - sorry, Mr Campbell.

MR CAMPBELL: Of course, Commissioner.

THE COMMISSIONER: Can you please tell us how it came about that Dallas Legal started communicating with you, starting communicating with you on this issue?---Yes. In January there was a concern raised about the

programme and we initiated an internal investigation on the programme to find out if the programme was in effect appropriate.

Is that because of this - the - - -?---No.

- - - this Commission's investigation?---Totally different - we didn't even know about ICAC until March or April I believe.

I see?---This was - - -

10

What initiated it? What caused you to think about it?---It was a, the finance group basically communicated with Dallas saying that they felt that the programme may not be appropriate and so Dallas and I agreed to have the whole programme investigated.

I see. And just to satisfy my curiosity if you don't mind, do you think there's any difference in business, in business ethics between the public sector and the private sector?---I don't think so.

20 No.

MR CAMPBELL: And indeed on any reading of the, of the Dallas directive it doesn't make any such distinction does it?---No, no it doesn't.

And - all right. Now, when you say that the finance team raised concerns was that your finance team here in Australia?---Our finance team in Australia.

Right. Okay.

30

THE COMMISSIONER: Well, congratulations to them.

40

MR CAMPBELL: If I can just test the Commissioner's patience a little can I ask you a couple of questions that I asked of Mr Epps because I think you might be well qualified to answer these. Put yourself in the position of the chief financial officer of the Lithgow City Council. We know that for instance one of their officers, someone your sales rep would have called a buyer got a computer which was said to have been acquired by Paula M Promotions for a price of \$895 on a \$10,000 order. Now, which would you prefer your reputable supplier to do - give you an 8.95 per cent rebate on the price or give one of your officers a computer for him to do with as he wished?---Could I elaborate on that?

Well, can you give me - is there, is it, is it not a clear choice between the two options?---I would as a finance manager would say this laptop, what is it going to be used for, is it going to be utilised in the workplace? Are you going to MSDS sheets, are you going to use it as a tool in your workplace, do you need a laptop that I would then have to go out and buy through my

funds or are we getting a special price because of this promotion and maybe the laptop is cheaper than if I have to go out and buy you a laptop. I mean, they're, they're the sort of questions I would ask before I would answer that question.

Well, I think you've circumvented some of the assumptions I asked you to make was that you were giving the laptop, that is you're a reputable supplier, otherwise reputable supplier, was giving the laptop to one of your employees for him to do with as he wished, so if you make that assumption,
10 that I asked you to make, which option would you prefer?---Well, if he was going to do as he wished I, I, as a financial manager of course the answer is I would like a discount but I would hope that he wouldn't do as he wished but used it in the company (not transcribable)

Well, you see, a policy which, which, which equates the buyer with the customer and which permits the buyer to choose from a range of consumer items- - -

THE COMMISSIONER: For himself.

20 MR CAMPBELL: For himself, and to have them delivered to his home address, whether or not, I withdraw that. To have them delivered to his home address if he chooses, puts him in the position where he can, he can make his own choice and can succumb to the temptation if, if, if he's so minded. That's correct, isn't it?---Temptation is out there all the time and it's up to the individual how strong he is to resist that temptation I'd say.

THE COMMISSIONER: Well, it takes somebody to provide the apple, doesn't it, Mr La-Vite?---Commissioner, it does.

30 And NCH was providing the apple?---But every day we are all tempted in some way. I know that I am tempted by many suppliers on a daily basis to accept rewards or accept benefits.

All right. Anyway, I'm not going to enter into a philosophical discussion with you?---No, I understand.

MR CAMPBELL: Commissioner, and the apple was an Apple iPad?

40 THE COMMISSIONER: Mr Campbell, you're too clever.

MR CAMPBELL: You heard me ask the question about Adam and Eve earlier today?---Correct.

Do you, do you remember what God did in relation to Adam and Eve?
---Correct.

THE COMMISSIONER: Mr- - -

THE WITNESS: Is that what you want to do?

THE COMMISSIONER: I don't think that that's appropriate.

MR CAMPBELL: Well, I'll make it, I'll make it relevant, Commissioner. What he did was, he sent them both out of the garden, didn't he?

10 THE COMMISSIONER: There are a number of assumptions in that question. I won't allow it.

MR CAMPBELL: But the idea is, you can't, the tempter and the tempted both may be morally reprehensible. Do you not agree?---I agree, but can I also say that to paint the whole program as being corrupt and inappropriate, I think that's not correct either. I think you have to take instances where these promotions were valuable to the customer and to the employees. Can I give an example, if I may?

20 THE COMMISSIONER: I don't think that's disputed?---All I'm saying is
- - -

The point is, Mr La Vite, there were a number of instances, many many instances which led to inappropriate behaviour on the part of the buyer. You've listened to that?---I agree.

30 MR CAMPBELL: And it was, and you see, may I say with respect, sir, that one may well understand why someone in your position may seek to justify the policy but you'd have to concede, wouldn't you, that it was directly contrary to your company's global policy?---In, in hindsight I would agree with that. In hindsight we erred and my biggest error was not putting those item on an invoice and had we put those items on an invoice then our policy would have been perfect, but unfortunately that's, in hindsight and looking back at it, this whole issue could have been solved by putting those items on an invoice so that what you call the customer and what we call the buyer would then have been totally aware of what was happening.

40 THE COMMISSIONER: I'm not sure if that's right, Mr La-Vite. If you could put yourself in the position of the finance manager as Mr Campbell has asked you to do on other occasions, you're told, if you receive information from a supplier that the supplier has made a, given a substantial present to one of your buyers simply for placing a large order, you may not like that?---I may not like it and I would investigate and ask that person why he accepted that promotion.

I know, but whatever it is, that shows that it, you do not overcome the problem simply by requiring the customer to be informed. It goes some of the way but it doesn't go all the way, does it?---It doesn't.

MR CAMPBELL: You'd agree, wouldn't you, I withdraw that. The reason why you say it should have been on the invoice is so that the person who pays the bill knows what was going on?---Correct.

And if something wrong was going on then the buyer's employer could hold the buyer to account?---Correct.

Because you'd agree, wouldn't you, that for the buyer to take the valuable goods home and use them as part of his home arrangement is wrong?

10 ---Correct.

THE COMMISSIONER: But there's more to it than that, isn't there? By doing this the buyer is put in a position where he may be tempted to place the order with your company, with the seller for goods when his employer, the true customer, could have acquired the goods for a cheaper price from somebody else?---Products?

Yes?---That's always available. I mean, I also- - -

20 The notion, what, I assume that you accept that the notion that it's permissible for a seller of goods to obtain orders by making presents to the employee who buys them thereby persuading the employee to buy them when there are cheaper goods of the same quality on the market is reprehensible?---I don't think there's any cheaper products in the market.

Well, that's, you may be right. Let's just deal with the hypothetical proposition that I put to you?---I, I, I guess I would have to agree on that point, yes, but if there are cheaper equal products in the market.

30 That's always a matter of opinion?---And I totally agree with that.

I think it's very rare for somebody who is proud of his company and proud of the goods that are sold to admit that anything else is its equal?---I don't think there is anything else equal in the marketplace than NCH products.

Yeah.

40 MR CAMPBELL: I asked you the question and you agreed that it would be wrong for the, for the employee to take the goods home to use for his personal domestic use. In fact saying it was wrong, you'd agree, wouldn't you, that so far as it's relevant for what you think with respect that it was corrupt conduct on the part of the employee. Would you agree?---I would, it could be corrupt if he's contravening some internal policy that he should be following.

THE COMMISSIONER: I really don't think this is a helpful debate.

MR CAMPBELL: May it please the court. I need to put one thing though to Mr, Mr La-Vite in terms of his position as the, as the general manager of the Australian company. And I want to suggest to you, sir, that, that the promotion, the supply end of this equation we're discussing is conduct liable to allow, encourage or cause the occurrence of corrupt conduct. Do you agree with that?---I guess you could, yes, agree with that.

10 THE COMMISSIONER: Mr Campbell, I might have been wrong to have stopped you there because I think it is helpful, this evidence is helpful to establish what the general belief is or what the belief is of senior officers of suppliers in the market.

MR CAMPBELL: Yes, Commissioner. Yes. Point taken.

THE COMMISSIONER: So I should not have stopped you, I'm sorry.

20 MR CAMPBELL: May it please the Commission. Inherent in that question and answer that, that, that, that, that you've just given to me, Mr La-Vite, is, is the answer to the question the Commissioner sopped me asking, and that is to say you would accept that for the employee to take it home and to put it to his own personal domestic use was corrupt conduct?---I think I answered that question.

THE COMMISSIONER: Your said no?---I think I said if it contravenes a policy.

Yes, if it contravened- - -?---If it contravenes a policy, an internal- - -

30 So without a policy you don't think it's corrupt?---I don't think the person has any guidelines to go by to make it corrupt.

Except his upbringing?---That's the public sector but in the private - - -

No, I'm talking about generally?---Generally, I mean - - -

I mean, you don't need a written document to tell you that if you're buying something for your boss and the seller gives you a present, that you could take it home and use it for yourself, you don't need that in writing do you to know that that's corrupt?---I honestly would say that's a matter for the 40 individual to be gauge. I know maybe I wouldn't do it but I don't know that it's corrupt.

MR CAMPBELL: We, we can, we can go through a couple of examples as, as - you've been all week I think, Mr La-Vite, have you not?---Yes, I have.

And you've heard the tenor of questions I've asked other people working for suppliers about these matters. You'd agree, wouldn't you, that, that if -

let's talk about, let's talk - we won't call him Mr Warner we'll call him Mr Smith, just - - -

THE COMMISSIONER: Perhaps we shouldn't call him Mr Smith either.

MR CAMPBELL: Oh, perhaps you're right there. You're probably right, Commissioner. We'll call him Mr X, we'll call him Mr X, right. This Mr X works at the sewerage treatment works at Back of Bourke Shire Council, right. Okay. And a supplier comes in from Acme Chemicals and, and says
10 we've got great products, we can deliver them to you reliably, here they are, look at this. Mr X says they're terrific, can I order some and the, the sales rep says, Can you ever. So, so that they're talking away and it just turns out let's say to start with that Mr X puts in an order for \$10,000 worth of Acme Chemicals' product. Do you follow me?---Right.

The sales rep says, Well, you'll be happy with these products, I'm sure you will be but we've got this promotions campaign going on at the moment and because you've ordered \$10,000 here's \$895 in cash for you. Okay. You'd, you'd identify that straightaway as being corrupt conduct yes?---Cash, yes.
20

Okay. Let's suppose he says, This is terrific, you've, you've, you've got this \$10,000 order. Here are \$895 worth of vouchers redeemable Big Chain Store Pty Limited's store. Right. You'd regard that as corrupt, wouldn't you?---Gift vouchers in my opinion are corrupt.

Because it's just like cash?---It is.

That's right. Well, what if he says \$10,000, that's terrific. Look at this brochure, here's a whole range of desirable consumer products that you can
30 choose from and have delivered to your home, what's the difference?---Put that way probably not but I don't think our people put it that way.

Well, but that is the substantial effect of what they did put, isn't it?---No, I think what they were saying is here's \$895 worth of goods that can be used in the workplace to improve your efficiency or to improve the morale of your company employees.

THE COMMISSIONER: And what did they say about the dozen bottles of red wine, Mr La-Vite?---Maybe not the public sector but in the private
40 sector the wine is considered to be a great boost to morale because it's used on Friday afternoon board meetings, it's during staff parties.

You must think I'm naïve?---No, I don't, Commissioner, I really don't but I do think that the wine has a place, maybe not in the public sector I agree, but in the private sector it does have - at times has a place.

MR CAMPBELL: Do you think that the, the Australian general manager of Big Insurance Company International Pty Limited would be really pleased if

his procurement officer had accepted a dozen bottles of premium red wine that he was going to deal with as he wished?---I would hope that that officer would have given the wine to the general manager to stock up his wine cabinet.

To use for Saturday afternoon drinks for the staff?---Why not?

But that's a pious hope, isn't it?---It could be but it does happen.

10 THE COMMISSIONER: What happens if it's a dozen bottles of Grange?
---Well - - -

Are you going to give it to the manager for Friday afternoon drinks are you?
---But this is not, you know, I mean, these wines are not Grange, I mean, they're - - -

Well, I don't know what they are?---They're just generic wine.

20 What's a generic wine?---They're just what they call lot, excess lots that they send out and they discount.

MR CAMPBELL: You represent they're premium?---Of course we would.

Well, that's right but that's a, when, when someone talks of a premium wine you're talking about something which the, the first the consumer might think would be pretty good to drink, aren't you?---Well, to be honest it is pretty good.

But you're, you're agreeing with me are you not?---Yeah.

30 I have no further questions, Commissioner.

THE COMMISSIONER: Yes. Does anybody wish to question, Mr La-Vite?

40 MR CAMPBELL: Sorry, pardon me, pardon me, Commissioner, I'm sorry, I'm getting some instructions. I need to ask a couple of questions (not transcribable) as I asked of your colleagues, Mr La-Vite. To your knowledge has, has a public sector customer ever communicated to the company the fact it did have standards of conduct for staff dealing with suppliers?---No. The only contact I've received was a letter from Lithgow City Council telling us what people to see in future, that's the only directive I've had from any public sector in the past four years.

So they've, they've specified people you can deal with?---Correct.

Rather than your salesman sussing out who might be the relevant person to deal with?---Well, the directive was they shouldn't be contacting the people they had been contacting to direct all their inquiries to these people.

If, if, I mean, let's, let's suppose that the local corporate memory as appears to be the case had forgotten the Dallas directive, what could the public service have done to help you?---I think as Mr Wong said if the public service was to give us clear directive on who, what procedures are in place I'm pretty sure that we would follow those, in fact, I'm confident we would 10 follow those. We have computer programmes that we can input this information to, we have memorandums we can send to our sales force that they would act on.

Nothing further, Commissioner.

THE COMMISSIONER: Yes. Did I see you stand, Mr Naylor?

MR NAYLOR: You did, Commissioner.

20 Mr La-Vite, you're probably aware by now I appear for a number of local council employees who purchased products from your company. There's just one issue that I'm curious about and it relates to the Dallas directive and both the Commission and Counsel Assisting and Counsel Assisting have asked you some questions about that already. Your evidence as I recall was that you were reminded about or you had a memory of the Dallas directive when - after you commenced some investigations earlier this year?---No. I came - it reminded when Dallas sent me the directive, I remembered seeing something like that four years previously.

30 And I think your evidence was that you were in Thailand at the time?
---Correct.

When you commenced working here in Australia in I think 2007/2008 you became responsible, did you not, in a, in a general overseeing sense for sales within your company?---Yes.

And part of what you knew the salespeople were, were doing was giving these promotional items away as part of the sales process. Did, did that fact remind you about the Dallas directive that you had seen or you have a 40 memory of having seen some years before?---No, to be honest it didn't. In hindsight once I read the message and saw that it was to Paula, to Paula Fodgeman my only thought was that maybe she and Dallas had spoken about this and came to some arrangement or agreement that it was okay not to follow that policy. I'm not sure.

Because your evidence was before, as I recall, correct me if I'm wrong, that, that when you saw the Dallas directive or a document to that effect in, when you were in Thailand, it, it related did it not to the giving away of

promotional goods?---In, in Asia we did not have this policy at all, we don't give out promotions. In, in that time when I was in Asia no other country had this sort of policy, only in Australia.

You didn't, you didn't consider that that policy directive which you had seen at that time applied to you - - -?---Correct.

- - - because you, you weren't involved at that time in giving away promotional goods as part of the sales process?---Correct.

10

But you did become involved in giving away through your sales representatives and through your sales managers the giving away of promotional goods when you commenced work here in Australia in 2007/2008?---Correct.

And you were not reminded when you commenced doing that about the directive you'd seen some years before?---Correct.

Thank you, Commissioner.

20

THE COMMISSIONER: Thank you. Are there any other persons who wish to question Mr La-Vite? Mr Wigney?

MR WIGNEY: Commissioner, just one comment I want to make the Commission in relation to Mr La-Vite's evidence in a moment. But perhaps I can await the conclusion of his evidence and, it's really a query I have of the Commission rather than - - -

THE COMMISSIONER: Very well. No questions Mr Clay?

30

MR CLAY: No questions, your Honour.

THE COMMISSIONER: Mr Goodman, do you wish - - -

MR GOODMAN: No, Commissioner.

MR CAMPBELL: No re-examination.

40

THE COMMISSIONER: No re-examination. All right. Mr Wigney, I'm about to excuse Mr La-Vite, do you wish me to do so?

MR WIGNEY: Yes.

THE COMMISSIONER: Yes. You're excused. Thank you for your evidence Mr La-Vite?---Thank you.

MR GOODMAN: Might I be excused, Commissioner?

THE COMMISSIONER: Yes, certainly.

THE WITNESS EXCUSED

[12:41pm]

10 MR WIGNEY: Commissioner, the query that I had was you raised with me an inquiry as to whether the Dallas Legal communicated, if I can put it that way, had been communicated prior to February 2011. That was addressed to a certain extent - - -

THE COMMISSIONER: No, no, sorry there must have been a misunderstanding. What I'm asking for is the, is the document.

MR WIGNEY: Yes, well, oh I see, well we'll certainly, I'm sure that - - -

THE COMMISSIONER: I don't know whether you have it, you may not, you don't know whether you have it.

20 MR WIGNEY: I don't.

THE COMMISSIONER: But I'm just asking you if you wouldn't mind causing a search to be made for it - - -

MR WIGNEY: Absolutely.

THE COMMISSIONER: - - - so that if it is there we can look at it.

MR WIGNEY: Absolutely. I expect - - -

30 THE COMMISSIONER: Thank you. That's what I meant to ask for.

MR WIGNEY: I see. That's what I wanted to seek clarification on.

THE COMMISSIONER: Yes.

40 MR WIGNEY: Well Commissioner, can I just indicate that so far as my instructions are concerned, they were to appear during the course of the evidence of each of the NCH Australia employees, with that in mind, unless something specific arises can I seek to be excused?

THE COMMISSIONER: Yes, certainly. Thank you.

MR WIGNEY: Thank you, Commissioner. Mr Campbell.

MR CAMPBELL: Commissioner, do you wish me to start another witness now or - - -

THE COMMISSIONER: Well it's up to you.

MR CAMPBELL: Well I'm happy to start, Commissioner. I call Mr Michael Howard. I don't think anyone appears for Mr Howard, Commissioner.

THE COMMISSIONER: I beg your pardon?

MR CAMPBELL: He's not represented.

10

THE COMMISSIONER: I see. Take a seat Mr Howard. Now Mr Howard, as a witness appearing before the Commission, you are required to answer all questions and produce any document which you are required to produce and you must do this even though your answer or the production may incriminate you or tend to incriminate you. But there is a, the law offers you a protection to some substantial degree against this. Under the relevant legislation your answer or the document produced cannot be used against you in any civil or criminal proceedings or in any disciplinary proceedings. Do you understand that?

20

MR HOWARD: (NO AUDIBLE REPLY)

THE COMMISSIONER: This protection does not prevent you from being prosecuted for giving false or misleading evidence or for other offences under the Independent Commission Against Corruption Act. Do you understand that?

MR HOWARD: Yeah.

30

THE COMMISSIONER: Now the way in which you get this, a helpful way in which you get this protection is if I make a general order to the effect that all the evidence you give is to be regarded as having been given under objection and once that order is made then you become entitled to that protection, that is to say that all the evidence you give cannot be used against you in criminal or civil proceedings or in disciplinary proceedings save to the extent that it may not be true, in which case it can be used against you or if your evidence is misleading or for other offences under the ICAC Act which are at the moment somewhat remote. Now what I need to find out whether you wish me to make a declaration of that kind so that you get that protection.

40

MR HOWARD: Yes, please.

THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Howard 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.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR HOWARD AND ALL
DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE
COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO
10 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.**

THE COMMISSIONER: Now Mr Howard, under the legislation you are obliged to answer all questions asked of you. That means that there is really virtually no relevant privilege that's available to you. And it is a serious criminal offence either to refuse to answer or to give false answers. And
20 you've been sitting here I think for a while have you?

MR HOWARD: Yes.

THE COMMISSIONER: You understand all that?

MR HOWARD: Yes, I do.

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

30 MR HOWARD: Affirm the truth if I may.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Howard, my name is Steve Campbell. I'm counsel assisting the Commission in this inquiry. I have a number of questions for you?---Yep.

10 Firstly would you please state your full name?---Michael John Howard.

And by whom are you currently employed?---Ballina Shire Council.

And for how long have you been with that council?---Since January 2009.

And in what capacity are you currently employed?---Water and sewer officer.

And where's your place of work?---Ballina Shire Council in Ballina.

20 Oh, right. Is there a particular depot?---Oh yes, the depot is on Southern Cross Drive.

All right. Is it 45 Southern Cross Drive?---It could be right, I don't know the number.

Now - - -

THE COMMISSIONER: Sorry Mr Campbell, can I interrupt you.

30 MR CAMPBELL: Of course, Commissioner.

THE COMMISSIONER: Mr Howard, there's something I forgot to tell you or say to you rather. It's what I say to people who are not represented, so it's no reflection on you, it's just something I say as a matter of routine. The way in which this Commissions works under the legislation is that we don't have to tell you what information we have?---I understand that.

40 So you don't know what we have when you give your evidence?---That's right.

So it's really best to tell the truth, because if we do have material and you don't tell the truth, it can suddenly be produced?---All right.

Do you understand that?---Yes, sir.

Yes, thank you Mr Campbell.

MR CAMPBELL: Thank you, Commissioner, thank you.

I may have asked before, I haven't asked this, before you started with the council where did you work?---New South Wales Fire Brigade.

And for how long were you in the service?---32 years.

And you were a fireman?---A station officer.

10 A station officer?---Yeah.

Okay. Could I ask you, well Mr Howard, during the time that you were in the fire brigade, of course you would have become familiar with Codes of Conduct in relation to public service employees?---That's correct.

A station officer is a fairly high ranking officer is it not?---Well he looks after a fire station.

And you'd have a unit of firemen under your command?---That's correct.

20 And you'd be the responsible officer for, for them knowing what they should know about Codes of Conduct?---That's correct.

And it's been for many, many years, do you agree, very common in the government sector for Codes of Conduct to include policies about the receipt of gifts and benefits?---Yes, I do.

30 And has it been your experience that, that generally the policy is that, that expect what may truly be called token gifts, all gifts and benefits should be refused?---Correct.

The only lone exception is when it would be unreasonable to refuse the benefit, it may be accepted. Is that correct?---Yes.

But in those circumstances the receipt of the gift or benefit must be reported to your superior. Is that correct?---Yes.

And it's the superior's decision as to what should happen with the gift or benefit. Is that correct?---Yes.

40 Is it also the case that in the event that a superior decides that you may retain the gift or a benefit for your own use, that there's usually a register of gifts and benefits. Is that correct?---I believe so. May I say something?

Of course?---In my time in the fire brigade it works completely different to council where you can use different people. We only ordered through one company they had and everything was ordered through them, so there was never anything ever offered as whatever.

So you're- -?---But I understand what you're saying.

No, what I'm asking you, sir, and please, it's always a good idea not to try and get ahead of yourself. Just take each of my questions as they come. But what I'm asking you is, that even when you were in the fire brigade, those things I've asked you were familiar with as- -?---Yeah, I was.

10 - - -the content of a Code of Conduct that a government organisation would adopt?---Yes.

And before I ask you about your particular experience, can I ask the question I was going to ask and that is to say that in circumstances where your superior decided that you could retain, you didn't have that experience is what you're telling me- -?---Yes.

- - -but did the policy that you were familiar with provide that in circumstances where the superior decided that the gift or benefit could be retained it had to be recorded in a register?---Yes.

20 Right. And what you wanted to tell me is that you had no practical experience of the operation of the policy when you were in the fire brigade because no one had offered you a gift or a benefit?---No.

No. Now, when you started work at Ballina Council, it's fair to say, isn't it, that there was an induction process?---Yes.

30 Is it the case that, that having been a long-serving officer of the fire brigade that you took retirement, early retirement, a voluntary redundancy or something?---I had a medical retirement.

I see. Thank you, sir. And but you moved to the coast I think from Armidale?---Yes.

And you were looking for some work to keep you occupied- - -?---That's correct.

- - -in your retirement. Is that right?---Yes.

40 Yeah. And you applied for the job at the council?---Yes.

And you, when you got the job you went through what is called an induction process?---Yes, I did.

And who was the officer at the council who carried that out?---I believe it was Yasmin Zerk I think at the time. That was her name, yes.

And were you given a copy of, of, of councils Code of Conduct?---Yes, I was.

And were you asked by the induction officer to read the Code of Conduct?---Yes, we went through it, there and then we read through it.

All right. And, and she took you through the policy in relation to gifts and benefits. Is that correct?---She would have done, yes.

10 Yeah. And to your recollection, it's consistent, its contents were consistent with the propositions I've put to you- -?---Yes.

- - -just a moment ago?---Yes, similar to the fire brigade, yes.

Yeah. All right. Okay. Now, so your, your initial job in relation to Ballina Shire Council was, was that you were sent to the water and sewerage depot. Is that right?---Yes.

20 And when you went there, did you initially work under Mr Lapham or did that come later?---No, he and, he and I both started on the same day.

I see. And literally on the same day?---Exactly on the same day.

Did, did you have your induction at the same time?---Yes.

All right. And he was present while, while the officer went through those matters you and I have discussed?---Yes.

30 Now, the, all right. Now, I think that, that your expertise as a, as a fire station officer was called upon to, to form a unit to be used in response to emergencies that might be of concern to the water and sewerage department?---That's correct, yes.

There had been a tornado in Lennox Head not so long before which caused a major spillage. Is that correct?---Ah, no, that came later on.

Did it?---In, what happened was- - -

40 No, I'm wrong, I won't press it. But they asked you to form the special response unit. Is that correct?---Yes.

And for that purpose it was necessary for you to acquire or look into acquiring suitable products that could be used to clean up any major spillage that might occur within the area of obligation of the water and sewerage department. Is that correct?---Yes.

And a van was designated and had to be fitted out. Is that so?---We built a trailer.

Built a trailer?---Yeah.

Now, did Mr Lapham assist you in that, in that endeavour?---In, in, as, you mean getting the trailer?

Getting the trailer ready, getting the response unit organised?---No. He gave me the responsibility of designing the trailer, coordinating with the workshops and in the building of it.

10

Yes. All right. And I should establish this, that although you started on the same day, he became your supervisor. Is that correct?---That's right, my team leader.

Team leader. All right. He had, to your knowledge experience in local government in Queensland. Is that correct?---I'm lead to believe that, yes.

20

All right. Now it's, in the second half of 2010, were you actually working in the water and sewerage department or you were seconded to a different role? At some stage you worked in the store?---Yes, yes, I did.

And when - - -?---I can't remember the exact date because there was two separate times. I went in there at one time, then I was taken out and then put back. But I can't remember the exact dates, I'm afraid.

At the time you were working in the store, did you still retain your responsibility for the response unit?---For the trailer, yes.

30

All right?---It was a very long process in getting it built and fitted out.

All right. Now with your experience with the fire brigade there are absorbent chemicals that can be obtained to help contain hazards?---That's correct, yes.

And you had, you had qualifications through the fire brigade in hazardous chemicals. Is that - - -?---Yes.

And their containment?---Yes.

40

All right. Now at some stage did Mr Lapham talk to you about obtaining the necessary chemicals that you would need for use in your trailer?---I believe so, yes.

Well was one of the things that you were looking at an absorbent?---Yes.

And did, did you have a discussion with him or did he have a discussion with you about someone he knew who could supply what might be a suitable compound?---No. No, that's not correct.

What happened?---Again I looked into it. In the New South Wales Fire Brigade, we used a, a particular absorbent called Sphag Sorb. I got in contact with that particular country, ah, company and in obtaining some. I got the information from it and we got a sample of the, of the product, which I got from the Rural Fire Service.

All right. But did you buy the Sphag Sorb?---No, we just got one bale of it to, to try.

10

Did you, ultimately did you, did you decide that was the right product for what you wanted?---Not at the time, no.

Okay. Was there - now, were you introduced to somebody from a chemical company by Mr Lapham who might have had a product that would interest you?---Yes.

Okay. And when was that?---Around about that time when we were looking for an absorbent.

20

Can you tell me what year it was?---Oh, gosh, it must have been 2010 - - -

All right?--- - - - because I, I don't - - -

That's all right, that's your best, best recollection?---Yes, yes.

Okay. That's good. You only have to give me your best recollection?
---Righto.

30

Okay. Now, who were - and did he introduce you to somebody from a company?---I don't know exactly how it happened but that, the, the person in, that we're talking about came to the depot one day and yes, I was introduced to her by Mr Lapham.

Oh, right. And can you remember the person's name?---Jacqui.

And do you, do you remember her surname?---Yeah, Verdelyn, I think that's how you pronounce it, Verdelyn.

40

All right. And did - all right. So Mr Lapham introduce you to her?---I believe so, yes.

And did you have a, did you have a discussion with her about some products that the, that she was a sales rep for?---Yes. I knew she, that she worked for Chemsearch.

THE COMMISSIONER: How did you know that?---Because she was introduced to me. In actual fact what - my first introduction with, with, with her was via telephone, I was given her card.

MR CAMPBELL: By whom?---Mr Lapham.

Thank you?---And I contacted her. I didn't get on to her then she rang me back later on that day to say that she'd up here on such and such a day and that I could speak to her then.

10

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

MR CAMPBELL: It is thank you, Commissioner.

THE COMMISSIONER: We'll adjourn till 2.00pm.

LUNCHEON ADJOURNMENT

[1.00pm]