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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 MONDAY, 10 OCTOBER, 2011

AT 10.10AM

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

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Commissioner, you will recall that on Friday we were hearing evidence from Mr Lapham. Mr Lapham will be returning tomorrow to complete his evidence - - -

THE COMMISSIONER: Yes.

10 MR CAMPBELL: - - - so I propose to hold the evidence relating to Ballina Shire Council in abeyance until then - - -

THE COMMISSIONER: Yes.

MR CAMPBELL: - - - and this morning I intend to proceed with evidence relating to Lithgow City Council.

20 THE COMMISSIONER: Yes. And, Mr Campbell, as I previously indicated, we will be - we will adjourn at 11.15 but we will also adjourn at 12.45 today and return at 2.15.

MR CAMPBELL: If it please the court. Subject to any matters from my learned friends - - -

MR CLAY: May it please the Commission I seek leave to appear for Lithgow City Council.

THE COMMISSIONER: Yes, I thought you have leave, Mr Clay?

30 MR CLAY: I'm sorry?

THE COMMISSIONER: I thought you had leave or is this a different council?

MR CLAY: No, it was Orange I'd sought separately.

THE COMMISSIONER: Orange, so this is Lithgow as well.

MR CLAY: Lithgow is added to the treasury.

40 MR CAMPBELL: Commissioner, I call Peter Ashley Bradford.

THE COMMISSIONER: Ms McGlinchey, you appear for Mr Ashley?

MS McGLINCHEY: Yes, Commissioner.

THE COMMISSIONER: Yes, you have leave.

MS McGLINCHEY: Thank you.

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

MS McGLINCHEY: Yes, Commissioner, and - - -

THE COMMISSIONER: Please sit down.

MS McGLINCHEY: - - - he's indicated he'd take an affirmation.

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

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

- 30 THE COMMISSIONER: Now, Mr Bradford, have you been here before?

MR BRADFORD: No.

THE COMMISSIONER: No. I must tell you 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. Do you understand that?

MR BRADFORD: Yeah.

- 40 THE COMMISSIONER: And I emphasise that because the penalty for giving false evidence in a public inquiry is a gaol term of up to five years so this is a serious occasion. Would you administer the affirmation, it was affirmation was it, Ms McGlinchey?

MS McGLINCHEY: Yes, Commissioner.

THE COMMISSIONER: Yes.

<PETER ASHLEY BRADFORD, affirmed

[10.11am]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Bradford, are you Peter Ashley Bradford?---Yes.

10 And are you employed by the Lithgow City Council?---Yes.

And have you been employed by that council for about 17 years?---Yes.

Are you, are you employed as the sewerage treatment plant operator at Wallerawang?---Yes.

Do you report to Mr Lee Warner?---Yes.

20 And to your knowledge is he employed as the supervisor of plants and pump stations at the council?---Yes.

At the - in 2010 and early 2011 was the system for ordering necessary supplies for your plant at Wallerawang that you would talk to Mr Warner who had the relevant delegation and he would order the items on your behalf?---Yes.

30 And during the course of your work at the sewerage and treatment plant did you come to know a sales representative from a company you might know as Chemsearch?---Yes.

And was that a Mr Ramachandran?---Yes.

All right. Now, at the time you started with the council did you undergo an induction process?---I can't recall, I may have, I think it's a policy.

All right. But from the time you started were you aware that council had a policy in respect of the receipt of personal gifts and benefits by employees? ---Yes.

40 And what was that policy?---You must report it to your supervisor, general manager if you received any benefits, any gifts.

Was it along these lines, that you were entitled to receive token gifts, things like caps and beanies and pens?---Yeah.

Is that correct?---Yes.

Was the policy that you were required to refuse all gifts of value?---Yes.

If for some reason it wasn't possible to receive - I'm sorry, for some reason it wasn't possible to refuse to accept it was your obligation to report the gift to the general manager's office?---Yes.

Is that right, sir?---Yes.

And that it was up to that, up to the administration to work out whether or not you should be entitled to receive the gift?---Yes.

10

Do you understand that according to records that the Commission has uncovered during its investigation called Operation Jarek that, that we have evidence that you received two gifts from Chemsearch?---Yes.

The first gift was an iPod. Did you get that gift?---Yes.

And do you agree with me that you received that gift on 9 December, 2010?---Yeah, yes.

20 That sounds right?---Around Christmas, before Christmas, so, yep.

And it was delivered to your home. Is that right?---No. I had to go and pick it up.

You had to go and pick it up?---Yes.

All right.

30 THE COMMISSIONER: From where?---There was a slip in the mail to go to - - -

The post office?---No. A courier service in Lithgow. I live out of town a little bit and that was in, in town, yes.

MR CAMPBELL: You got that slip at your home address. Is that correct? ---Yes, that's right.

And you went to the courier company and picked up the iPod. Is that correct?---Yes.

40

Now you understand that we also have evidence that you received a, a dozen bottles of wine. Do you accept, I'll withdraw that. Do you admit receiving that dozen bottles of wine?---Yes.

All right. Now when you were first asked about that by one of the Commission officers you denied that did you not, sir?---Yes, that's right.

Why did you do that?---I wasn't aware of it.

What do you mean you weren't aware of it?---I wasn't, I didn't, I personally did not receive them.

I see.

THE COMMISSIONER: I don't understand that evidence in light of your earlier evidence that you did receive it, you admit receiving them?---Yes, I found out about the wine when I was first interviewed from - - -

10

What do you mean you found out about it?---That's when I - - -

Had it been given to you or not?---It wasn't given to me, it did arrive at my address, yes.

Sorry, I beg your pardon, I didn't hear what you said?---It arrived at my address but I did not actually receive the wine.

20

So what happened to it when it arrived at your address?---Well I didn't know what happened, but apparently it was taken and thrown out.

MR CAMPBELL: Was that by your wife?---Yes.

Right. But you accept don't you that a dozen bottles of wine were delivered to your home address on behalf of Chemsearch after you'd placed an order with Mr Ramachandran through Mr Warner?---Yes.

30

THE COMMISSIONER: Why did she throw it out?---I'm not allowed to have alcohol at my house.

I beg your pardon?---I'm not allowed to have alcohol at my house.

MR CAMPBELL: Did she tell you she'd done that?---No, not until I asked later on.

I see. So with this iPod did Mr Ramachandran show you a sheet of paper or a brochure having personal gifts on it?---No.

40

Were you asked to choose a personal gift?---No.

Did he tell you that something would be coming after you'd placed the order?---No.

You've told us that a slip was left at your home address telling you about the iPod?---Yes.

How did, how did Mr Ramachandran get your personal address?---I'm not quite sure. When we first met we were talking real estate and he was looking

to buy an investment property and places to see around town and also the new resort that was being built. And I happen to say that I live nearby and as far as I know that's how it's come about.

Well you must have given him your personal address don't you think?

---Yes, I must have given it, yes.

And did you accept in your evidence today that the wine was delivered to your home do you not?---Yes.

10

Now - - -

THE COMMISSIONER: Did you know it was going to be delivered?---No.

MR CAMPBELL: Are you sure about these details Mr Bradford?---Yes.

You had a meeting with Mr Ramachandran when he first introduced himself to you did you not?---Yes.

20

I think he took you to lunch at a Thai restaurant with some other co-workers. Is that correct?---No.

No?---No.

Did you got to a Thai restaurant and have lunch with him?---Yes, I did.

Just you and him?---No.

Who else was there?---Another two co-workers.

30

That's what I asked you the last time. Anyway?---(not transcribable)

I thought that's what I just asked you. But he took you to lunch with some co-workers?---Yes.

And, and at that time did he, did he explain that there was a promotion item available according to how much product was ordered from him?---No.

40

In any event you also received from him, I think, minor things like a fishing knife and a torch, is that right?---Yes. And torch, yes.

Yes. And now - I withdraw that, Commissioner. You accept, don't you, Mr Bradford, that you should not have received those benefits?---Yes.

That the things - I'm leaving aside the fishing knife and the torch, I'm asking you about the iPod and the wine?---Yes.

That if those matters – I withdraw that. If a gift like that had been offered to you you knew it had to be refused?---Yes.

And there would've been no reason why you couldn't have told Mr Ramachandran if he'd mentioned it to you anyway that you weren't allowed to receive those things?---Yes.

10 And now, sitting there in the witness box today do you say that you didn't know they were coming before they arrived at your home?---Yes, that's right.

I see. And that – well, the iPod you certainly knew you'd received, did you not?---Yes.

Yes. And you opened the package?---Yes.

Looked at it?---Yes.

20 You didn't report that to anybody did you?---No.

You didn't send it back did you?---No.

THE COMMISSIONER: Did you use it?---No.

MR CAMPBELL: Did you try and use it?---No, I didn't.

Well, you opened it up and had a look at it didn't you?---I actually didn't open the case but it was opened.

30 I didn't hear you, sir?---I didn't open the case.

THE COMMISSIONER: But it was opened?---It was opened later on.

By whom?---By a family member I'd say, sir.

And did they use it?---No.

Where is it?---That was taken.

40 MR CAMPBELL: It's in the possession of the Commission, Commissioner. You accept that what you did was wrong?---Yes.

Have you spoken to any of your superiors at work about this?---I've been disciplined about it at work.

And what did the discipline consist of?---I was suspended from work and put on my final warning.

How long did the suspension take?---It was one and a half week I think, sir.

Was it with or without pay?---Without pay.

That must've hurt?---It did big time, yes.

I have no further questions, Commissioner.

10 THE COMMISSIONER: Yes, thank you. Does anyone have questions for Mr Bradford?

MR CLAY: No, thank you.]

THE COMMISSIONER: Ms McGlinchey? Thank you, Mr Bradford, for your evidence, you may be excused?---Thank you.

THE WITNESS WITHDREW

[10.22 am]

20

MR CAMPBELL: Pardon me, Commissioner, I call Mr Lee Warner.

THE COMMISSIONER: Mr Naylor, you appear?

MR NAYLOR: I do, yes, Commissioner.

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

30

MR NAYLOR: Thank you, Commissioner.

THE COMMISSIONER: Please sit down, Mr Warner.

Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr Warner 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 WARNER 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: Now, Mr Warner, you're obliged to answer all questions asked of you and it's a serious criminal offence either to refuse to answer or to give false answers. I'm sure you understand that?

MR WARNER: Yes.

10

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

MR WARNER: Affirmation.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Warner, are you Lee Warner?---Yes, yes, I am.

10 And are you employed by the Liverpool City Council?---Lithgow City Council.

I do beg your pardon, Lithgow City Council. And approximately when did you start there?---February '05 I believe.

And as at 2010 and the early part of 2007 you were employed as the Supervisor of Plants and Pump Stations, is that correct? Last year and the early part of this year?---Yes.

20 And I think you're a mechanic by trade, is that correct?---That's correct, sir, yes.

Mr Peter Bradford from whom we've just heard works under you at Wallerawang, is that correct?---Yes.

And a Mr Steve McMurtrie works under you at the Portland Treatment Works, is that correct?---Yes.

30 As part of your job you had the responsibility for placing orders for necessary supplies in the plant and pump station section. Is that correct? ---Yes, yes.

And indeed you had a delegation of over \$20,000. Is that correct?---I believe it was only 20, 000 flat.

20,000 flat?---Yep.

As far as you can recall?---Well that's been my knowledge from when I started at works, 20,000.

40 All right. There is some other evidence about that, Commissioner, but, all right now you understand don't you that the Commissioner's inquiring into the receipt of gifts and benefits by you in the course of your work at the Lithgow City Council?---Yes.

And you've, you've been interviewed by Commission officers in regard to that?---Yes.

And you've made certain admissions in relation to the receipt of those items. Is that correct?---Yes.

Now would you agree with me, and if you can't remember precisely tell me, that you personally received five items on behalf of Chemsearch between 24 January, 2011 and 25 February, 2011?---I thought it was over a wider period, to be honest. I didn't think it was that close.

10 Commissioner, could I ask that, I'll withdraw that. What period did you think it was, Mr Warner?---I thought it was sort of December into about April, end of April, perhaps.

Well can I ask you whether or not that's when the order, I'll withdraw that. The orders were placed last year, I'm sorry, Commissioner, could the witness be shown folder 15 and tab 80. Now do you see that document? ---Yes. Yep.

20 You probably haven't seen that before have you or have you?---Yes, when I, when I received his statement, sir.

This was, this was provided to you?---Yes.

All right. And you understand don't you that that's a list of, that's a list of products provided to you that we obtained from the records - - -?---Yes.

- - - of Chemsearch?---Yes.

Looking at that list do you accept that accuracy of it?---No, I don't.

30 You don't?---No.

Which ones do you question?---The, when the investigator - - -

Mr Warner - - -?--- - - - spoke to us - - -

Mr Warner, I don't want to interrupt you, but I'd just like you to answer my question. There's five items on that list, which of them do you question? ---Well I'm pretty sure I question the whole lot as in the dates.

40 All right. What about the receipt of the items themselves?---Oh, no, no. Okay.

THE COMMISSIONER: So when you say no, you mean you accept that you received them?---Yes.

MR CAMPBELL: Okay. Your recollection is that it didn't, it didn't come over the period of one month?---No.

You think they came over a period of a number of months?---Yeah.

But each of those items on the list was received by you? I want to make that you're telling us that. Is that correct?---Yes.

Now it doesn't say on the list, but will you accept from me that the total value of those items according to the amounts on the list is \$1,961?---It would add up to that I would say, yeah.

10 Now, the person you dealt with at Chemsearch was a Mr Ramachandran. Is that correct?---Yes, that's correct.

All right. Before – and – I'll withdraw that. The five items on that list are materials that you ordered in your own name on behalf of Lithgow City Council. That's correct isn't it?---I don't understand.

Well I'll withdraw that question. Apart from – because you're the supervisor you have responsibility for placing orders. That's correct isn't it?---Yes.

20

If Mr Bradford or Mr McMurtrie need some product for their particular plant, as at the earlier part of this year, they needed to contact you to ask you to order it for them. That's correct isn't it?---Yes, they need to speak to the supervisor.

Who was you?---At, yeah, from just December on and November on, yeah.

30 But the five items there relate to orders you'd placed on behalf of your responsibilities as the supervisor, they don't relate to orders you placed for Mr Bradford or Mr McMurtrie, that's correct isn't it?---No, I, I place all orders on behalf of the operators.

No, I understand that but there are additional orders and additional benefits in respect of orders that those men initiated is what I'm asking you apart from the five down there that you received?---No, I've, I get instruction off the operators at the plants to what they want to order and then I order it.

40 THE COMMISSIONER: Sometimes you order on your own initiative don't you?---No, I can't just order the stuff and, and get things sent.

So you can never order unless one of those men ask you to order for them? ---I, I've got to have - how can I put it? We've, we've got to need something, an item at one the plants or the plumbers or something like that for me to, to order it because I've got to justify ordering it and I can't just order it.

But you can make that decision yourself?---Only if the stuff's needed, sir.

No, no. Assume the stuff is needed, sorry?---If I think - - -

You can decide whether the stuff is needed or not?---If I'm asked to order something, if I don't think we need it, no, I don't have to order it.

Yes. But you don't, you can decide without anyone asking you to?---Yeah, but it's got to be used because I can't - - -

10 Yes, I understand?---Like I, I just can't order a, a shovel or (not transcribable)

No one is saying that (not transcribable)?---That's what I don't understand.

All right?---That's, that's what I don't understand.

MR CAMPBELL: Thank you, Commissioner.

20 All we're asking you, no, no, we're not saying you ordered things that weren't required, do you understand that? We are not saying that?---Yeah.

All right. But all we're saying is that sometimes you work out for yourself that some product is short and you make the order off your own bat?---Only if it's been brought to my attention.

I see?---I'm, I'm in the office and I go to plant and they'll say to me, look, this is down, can we order it? Yes, I go back and order it but I can't just walk in and have a look and something's down and then order it.

30 THE COMMISSIONER: Why not?---Well, it may be down for a reason, it might be low for a reason.

MR CAMPBELL: Could you look at tab 82. Have you got it open, sir? ---Is that the statement?

No, it's not the statement. Tab 82, the grey tabs have numbers on them? ---Yeah.

40 And do you see that there's a, that there are, there are another five items there which have another person's name on it, do you see?---Yes.

Now, that other person is one of your subordinates, that's correct, isn't it? ---Yes.

And although his name is on those items he didn't have authority to order anything, did he?---No.

So those things relate to orders you placed because he particularly asked you to get those supplies, is that correct?---Yes.

And could I ask you please to look at, look behind grey tab 84?---Yeah.

Those are, again, that has the name of one of your subordinates on it, do you see that?---Yes.

And those items relate to orders you placed at that person's request. Is that correct?---Yes.

10 Now, if I can take you back to tab 80 you, when you started with the council, Mr Warner, you underwent an induction process. That's correct, is it not?---Yes.

And part of that induction policy related to what's called a Code of Conduct, do you remember that?---Yes, yeah, this Code of Conduct in here I think.

I beg your pardon?---I think there's a Code of Conduct in it, yes.

20 And, and part of the Code of Conduct related to the receipt of personal benefits and gifts does it not?---I don't, honestly do not recall seeing that part in it.

I see?---I do not recall. I have since, since, since the, the investigators come up, I actually asked for a copy of it.

30 You were aware anyway weren't you at the time that you received these items behind tab 80 that it was not permissible for council employees to receive valuable gifts?---To be honest I wasn't a hundred per cent sure what to do, to be honest.

Well I'll ask you that in a second. That's a different question. You certainly knew that council employees weren't entitled to receive any money for doing the job from anybody but the council. That's correct isn't it?---You shouldn't get that anywhere.

Well that's a fair comment. But you're agreeing with me are you not?---Just general, yeah, you just don't accept it, yeah.

40 And you understood, have you ever heard of a gifts and benefits register? ---No, no, I definitely, I hadn't heard of that. Again, after the investigators had been I'd been up and asked about that and found the forms for it.

And the, you accept now don't you that it was wrong to receive these benefits from Chemsearch?---Oh in hindsight, yeah, yes, for sure.

Do you accept that if you'd given it a moments thought at the time the gifts came in that you would have come to the same conclusion?---To be honest,

I didn't know what to do with it. I've been quite ill for the last twelve months and I just didn't know what to do with it. That's where I left them in the box, 'cause I just, I didn't know what to do with them.

They all came to your home didn't they?---No.

They didn't all come to your home?---No.

10 The laptop came through at work?---Yes. And I'm not, I'm not 100 per cent sure about the wine, I'm not 100 per cent sure whether it come to work or home.

THE COMMISSIONER: That delivery address shown, is that your home address?---Well actually none of them are.
Do you know what addresses those are?---Well if you, if you correct the spelling in it - - -

Yes?--- - - - the bottom, the bottom two are my address.

20 At home?---Yes. If you correct the spelling in it. The top two, the top two are next door neighbours or the next one up.

MR CAMPBELL: Well did the next door neighbour bring them down the fan to your place if it got delivered to his place?---Yeah, he sent it back down, so, yeah.

And likewise a dozen bottles of wine. Is that right?---Like I said I wasn't sure whether that went home or to work. I still can't remember.

30 Well - - -?---But it did end up at home, yes.

Can I, Commissioner, I wonder if, if volume 15 could be returned to the Commission and if volume 9 could be given to Mr Warner. If it could be opened at tab 45, page 286.

THE COMMISSIONER: Tab, sorry Mr Campbell - - -

MR CAMPBELL: Tab 45, page 286.

40 MR NAYLOR: Excuse me, Commissioner, sorry to interrupt, could you just inform the Commission that Mr Warner has a vision impediment which makes it difficult to read sometimes. He's had corneal transplants so some of the close (not transcribable) might be a bit difficult to read.

THE COMMISSIONER: Yes, thank you Mr Naylor.

MR CAMPBELL: I wasn't aware of that, but I've asked, pardon me, Commissioner. It should have been, I'm sorry, page 287. Now that's a list

of deliveries that the Commission has obtained from the person who did the deliveries. Do you understand?---Yes, yep.

O.K. You will see won't you that on page 287 there is, your name is there?
---Yes.

And what somebody thought was your address is beside it?---Yes.

That's the mistake you told us about earlier on?---Yes.

10

Certainly you'd accept, wouldn't you – I'll withdraw that, Commissioner. Looking at that document would you accept that that wine was supposed to be delivered to your home address?---Yes, by the look of that, yes.

Yes?---Yes.

And was it one of those cases where your neighbour brought it down to you?---No, he actually, he actually said that apparently he sent the delivery driver down, he actually, he didn't bring it down.

20

So he redirected the delivery driver and it did in fact show up at your place, is that correct?---Yes, according to this, yes.

Now, I'd like you to go to tab – before I ask you to do that just wait for a moment. We know that, because, from the list I've asked you about before that the laptop was delivered at work, is that correct?---Yes.

30

We've seen the laptop. Did you ever open the laptop?---I lifted the lid of the box up because it was, the seal was broken and I lifted it up and had a look because I didn't know what a notebook was. I've heard of a laptop computer but I didn't know what a notebook was.

And you took that item home with you didn't you?---Yes.

In the end you didn't end up using it, is that correct?---I haven't used any of them so, yes.

Mr Ramachandran was the man that you dealt with, is that correct?---Yes.

40

And did Mr Ramachandran ever talk to you about these gifts coming to you?---The only, only conversation we had about it I believe is very early in the piece, he showed me an A4 page that had been photocopied and you could barely read the print on it or anything like that and he said that there was a reward scheme that they were going to run and at that stage I did say to him that we're only ordering off you because the products are worth using, I don't mean intending to buy it.

Well, in any event what did he say to that?---He, he basically just said look, it's, it's a promotion for the, it's, it's a promotion, a thank you to say thanks for buying the stuff. I forgot – I shouldn't say stuff, the chemicals and things.

And when he said that to you you agreed to go along with it, is that correct?--Well, I still did say to him at that stage that – I did not say no, I did say to him at that stage though, I still said to him we really don't need any incentives to buy your products.

10

Well, - - -?---But I didn't say no.

I withdraw that. Well, that's what I'm asking you. You didn't say no, in fact, you went along with them, that's correct isn't it?---I suppose so, yes.

THE COMMISSIONER: When the goods arrived did you phone Mr Ramachandran and say look, I don't want these?---With, with, with the - - -

Did you or didn't you?---No.

20

MR CAMPBELL: Now, would you look at tab 46 and go to page 351. Tab 46 of volume 9. You see at page 351 and page 352 are colour photocopies of what looks like a brochure relating to Chemsearch promotions?---Yes.

Is that the document he showed you that you've told us about a moment ago?---No.

It was something else was it?---Yes.

30

Look over at page 352. Have you seen that before?---No.

Right. You see, at some stage, Mr Warner, in about February of 2011 Mr Ramachandran told you that the system in relation to promotions was going to change didn't he?---No.

Didn't he tell you that from February 2011 that they wouldn't be permitted, that is, Chemsearch sales reps wouldn't be permitted to send the promotional items as they're called to your home address?---No.

40

And that they would have to come to your work address?---No, the only, the only time he said anything similar to that was when he said the laptop was coming and he said it had to go to your work address and he said it would be addressed to you.

See, at that time he also told you, didn't he, in relation to that laptop that it would have to appear on the invoice for the goods, that's correct isn't it?---Honestly, I've thought about this and I cannot remember, I can't – the only

conversation I had with him was that he was – it would come to the place of work and it would be addressed to me.

Are you aware of the evidence that's been given in the Commission last week about these matters?---I have heard some of it, yes.

You've been here haven't you?---Yes, I was there Friday.

10 Yes. And were you here at all when Mr Ramachandran was giving his evidence?---No.

Right. Now, I'm not criticising anybody but has anyone passed on to you the evidence of Mr Ramachandran or what he said?---No.

You see, - - -?---I'm sorry, I read some on the transcript website.

Yes, you went to the Commission's website and there you found - - -?---
Yes, I (not transcribable), yes.

20 We shouldn't talk over each other, it becomes impossible to record it?
---Sorry.

So you've gone to the Commission's website and you've read Mr Ramachandran's transcript, that's correct?---Some of it.

Yes. I suppose you were looking at things he might've said about you, is that correct?---No, I was, I was just curious to see what was happening.

30 I see. In any event you know, don't you, from reading that transcript that around February of 2011 Chemsearch made a change to the way to order these promotional products, you know that don't you?---I found out, I found that out on Friday. I was sitting up the back there on Friday, yes.

40 Right. And that the – I withdraw that. You see, you knew, didn't you, that from now, from February 2011 that the promotional product that had been provided to the individual in your position was going to show up on the product invoice that was sent with the goods to your employer, that's correct isn't it?---Honestly I don't know what time it was but the only reference was to the laptop and I don't, there was nothing that said, I'm nearly 100 per cent sure there was nothing said about it appearing on any invoices or anything, he just said it would be delivered directly to me at work.

Well, I suggest to you that he did tell you that it had to show up on the product invoice. Now, I want you to tell me whether you accept that or don't accept it or say you can't remember, which is it?---I honestly can't remember. I honestly can't remember.

You can't remember, then you can't say one way or another whether the proposition I'm putting to you is correct can you?---I suppose if I can't remember, yes.

I want to suggest to you, sir, - I withdraw that. Would you have a look at tab 46 in volume 9 at page 298. And please tell me, Mr Warner, whether you have trouble reading the part I will direct your attention to because if you do I'll read it out to you?---No, I think I can make it out.

10 Make it out, okay. Look at the last entry on that page and look at the – you'll see that that's a reference to you, do you see that?---Yes.

And if you read the material in the box in the bottom right-hand corner and let me know when you're finished?---Yes, read it.

All right. Well, you can see, can't you, that – I withdraw that. I want you to assume that Mr – that's a message from Mr Ramachandran to his superiors making arrangements for the delivery of the laptop to you, do you see that?--Yes.

20

You accept that don't you?---Yes.

And you'll see what it says, "Please send a separate invoice for the promotional equipment." Do you see that?---Yes.

That's because that's something you asked him to do, is it not?---Honestly, like I said, I cannot remember asking for it.

30 And you'll see that he added some emphasis in the last sentence in that entry, "Do you not include promo on product invoice." Do you see that?---Yes.

That's something you asked him to do isn't it?---I just said I honestly can't – I'm not trying to lie, I honestly cannot remember.

40 You see, if that is true, and we've heard Mr Ramachandran's evidence about it, then you'd accept, wouldn't you, that the reason why you made that – the reason why a person would make that request is to avoid the gift being detected at work, that's correct isn't it?---Yes, to a degree because the invoices would still have to attend the council chambers.

You accept, Mr Warner, I want to make sure you've understood my question?---Yes, I do understand your question, yeah.

A person who asked for that to be sent to the supplier would want to avoid detection, that's correct, isn't it?---It would be, yeah.

Now, whether or not you were familiar with the policy that your employer had at the relevant time you knew it was wrong for you to accept these gifts, did you not?---Well, as I said earlier I wasn't 100 per cent sure on what to do.

THE COMMISSIONER: All right. Well, what was your state of mind about these gifts?---I was lost with it basically.

Well, why didn't you give it back?---I don't know.

10

Why didn't you tell the council?---I'd already been chipped a couple of times about different things that I hadn't deliberately done, it's stuff that I hadn't been shown and I was working through with work and I, I suppose I just panicked, I didn't - 'cause we, we had a meeting about the chemical that was ordered and they checked it all and all the order numbers were right, it had been ordered right, everything was done right but when you're sitting and reading across the desk from your general manager and your manager I'm thinking to meself do I say something about these gifts, do I leave them all in their boxes in the corner, what do I do and I just, I panicked, I thought I don't know what to do with it and they basically said you can't, don't order any more product unless you've got authorisation to and that's exactly what I did and I thought to meself this is a really good way of not having to get more stuff from Chemsearch.

20

But you still kept them?---Yes, I kept them at home, yeah, until I was asked, as soon as I was asked I produced them, the articles.

MR CAMPBELL: What about the wine?---I didn't know about that until I was shown that document. I'd forgotten all about it because when Cherie actually - - -

30

THE COMMISSIONER: Where is the wine?--It's, it's sitting at home in the cupboard.

MR CAMPBELL: What, what, bottle ageing?---No, that's, that's what I was trying to say when you were saying. When he turned up, he turned up very early. Mr Ramachandran said to me when he asked me about it, he said do you want a, a box of wine and I said no, I don't drink and he said well, it's free, it's not for ordering anything, you get it and it turned up at home. It was sitting in the road and me wife put it in the bottom of the cupboard, I'd forgotten all about it. When the other stuff started to turn up I said it over in the corner, left it there and then when this, when this come out I handed the camera in that's not on the list and I'd forgotten about the wine but as soon as it was brought to my attention, my wife was actually with at the time, it got brought to my attention and she turned around and she said if that's a case it's sitting in the cupboard so it's, it's there to come back as well but I'd forgotten all about it.

40

You see, if you go back, Mr Warner, the wine wasn't for nothing was it? The wine related to an order that you'd made for products from Mr Ramachandran, didn't it?---Well, to my knowledge it wasn't. To my knowledge it wasn't for an order.

THE COMMISSIONER: What was it for?---Well, that's what I just said, he just said it was like a promotional gift, you can have this - I suppose it's to butter you up so you're going to order some more stuff I suppose but to my knowledge it wasn't replacing an order.

10

MR CAMPBELL: Every time one of these things came Mr Ramachandran rang you to make sure you'd got it, didn't he?---Not normally, no.

Wasn't that his practice?---No, he'd sometimes - he'd ask me like the next time he come around.

Well, if he asked you even once about that why didn't you say to him I just don't want these things?---Well, it seemed like you were going to get it regardless. It seemed like it was going to turn up regardless 'cause I was never shown something to say that I had to order X amount of product to gain points to order or to get a value to order anything else.

20

Mr Warner, it would have been a very easy thing for you to have said to him please don't send me these things anymore, you're putting me in a difficult position and I don't know what to do if that was your state of mind?---In - -

That's correct, isn't it?---In hindsight, yes, you're very correct.

Well, even, even if you'd given it a moment's foresight at the time I'd still be correct, wouldn't I?---Yes.

30

All right. Now, you had this meeting with the general manager you've told the Commissioner about and one of the things that came up at the meeting with the general manager was that you had ordered \$105,000 worth of product in a very, what, what they regarded as a very short space of time? ---Yes.

Well, do you think the fact that those orders had been placed in a very short space of time according to the general manager might well have been related to the fact that you and some of your subordinates were getting these promotional items from Chemsearch?---Well, I didn't know that the people were getting the, the gifts, I had no idea, no one had ever said anything and I was only ordering as per what come in.

40

Do you want to answer my question, is it a yes or a no? Was the \$105,000 that you blew out your budget on in a short space of time related to the fact

you got these promotional items from Chemsearch?---It is related to it, yes, but not - I didn't order it for that reason.

Now, after this blew up did you have another talk to the general manager about it?---I don't think so. I think there was only that one.

Are you, are you permitted to order materials for your section now?--- Yes.

To what value?---To 20,000 I still believe.

10

You still have the same, you still have the same delegation?---Yes.

We heard Mr Bradford say that he was suspended for a week and a half? ---Yes, I was, I was suspended as well.

For how long?---Three or four weeks.

On pay or without pay?---Without pay.

20

And didn't you tell the Commission's investigators that, that when this blew up that the council took your responsibility for placing orders away from you and reduced your delegation to \$1,000?---No, I, I said I asked for that.

Well, did it happen?---No, not to my knowledge, no. No, I, I asked, I, I requested could it be dropped down.

30

So you're still responsible for, for ordering the \$20,000 of product when, if and when required. Is that correct?---Yes, because it was found that we were using the product, the product was working and it was, it was cleaning the wells, it was helping the maintenance level and all that, it was found that it wasn't not ordered to do its job.

You appreciate, don't you, there's a difference between the question of whether the product's any good and the proper way of doing business with the council? You appreciate that, don't you?---Yeah.

No further questions, Commissioner.

40

THE COMMISSIONER: Are there any witnesses who wish to question Mr Warner?

MR CLAY: Yes.

THE COMMISSIONER: Mr Clay.

MR CLAY: Thanks.

Mr Warner, I appear for your employer, the council, Lithgow City Council, do you understand that?---(NO AUDIBLE REPLY)

Yes. You started with the council in 2005 and it was a few months after you commenced that you had your induction course or however you'd describe it. Would that fit in with your recollection?---I knew I had it when I started, I don't know whether it was a couple of weeks or - - -

10 Records produced to the Commission but the council suggest that there was a Code of Conduct training session in March 2007 that you attended. Do you recall that session?---No, I didn't but I do believe that there was there, yes, but I didn't recall actually doing it, no.

Sorry, forgive me, I don't understand?---Sorry I (not transcribable)

THE COMMISSIONER: Do you, do you accept that you were there but say that you don't recall what happened?---Yes.

20 MR CLAY: Yes, thank you, Commissioner.

Do you recall that there was a PowerPoint presentation, screens up on, projected up on something?---No.

You don't have any recollection at all about what occurred?---No.

All right. Were you listening carefully?---Obviously not, obviously I wasn't.

30 Thank you, Commissioner.

THE COMMISSIONER: Any other questions? Mr Naylor.

MR NAYLOR: Thank you, Commissioner.

Mr Warner, do you still have volume 9 or folder 9 with you?---Yes.

And could I ask you to turn to tab 46, page 298 and that was the schedule as you recall Mr Campbell was asking you some questions about?---Yes.

40 Do you see the third entry from the top and it has a date 15 December, 2010 in the order date column?---Yes.

And in the column on the right under comments, it says, please provide one JVS socket set, 46 piece code to Lee Warner from promo, to Lee Warner? ---Yep.

Do you have any memory of having received such a socket set?---No. No. I even, I went around and asked the family members that, that did come out

to my place and they haven't seen it either. So no one's picked it up and moved it or anything.

THE COMMISSIONER: When did you do that?---When council asked me about it.

And sir, you were asked some questions by Mr Campbell in relation to a conversation that you'd had with the general manager. What if any disciplinary action has been taken against you by the council in relation to this matter?---I had three weeks suspension without pay.

Yes?---Three, three or four weeks, I'm not sure. I got demoted back down to entry level on the step grade.

When you say the step grade what, what do you mean by that?---It's your wage level system. If you start, it's basically base pay and then as you complete your competencies, you can step up further. I went to entry level on that. And I got a third and final warning and - - -

20 Which meant what, I'm sorry?---You get, it's third and final warning, anything else goes wrong that's the end of your job.

You're out the door?---Yeah. There's no second chance. And I was basically put on notice that I'd be checked on at any time or monitored basically to make sure I wasn't doing anything wrong.

And since this matter arose in relation to you and the general manager and you and the council generally, have you attended any further training at all? ---I had to go to order training, to do the, to help me with the orders.

30 Orders, yes?---I was scheduled down for Code of Conduct training and I can't remember what the other one was. But that was when we were on suspension, so I believe that, nobody that was, anybody that was suspended at the time actually went to it because it was on while we were off.

I see. When were you on suspension, as best as you can recall?---I think it was the Monday, I think it was Monday morning after the investigation with Mr Grainger and that, they called us up and said we were going to be suspended. And they, the group manager actually asked, the group manager and manager, I can't remember if both of them asked would I work 3.00 till lunch time to tidy up the loose ends and stuff that was there before I actually went home on suspension rather than just going at, I think it was 10 o'clock or something like that.

40 All right. And you told Mr Campbell that when asked, you produced the goods, the promotional items that have been referred to in your evidence already, how did that occur?

THE COMMISSIONER: Well all of them except the wine.

MR NAYLOR: Yes, sorry, Commissioner, apart from the wine?---Oh, you can have it back now, sir, if you want it.

THE COMMISSIONER: No, no.

MR CAMPBELL: No.

10 MR NAYLOR: What did you do with them when asked?---Well I only got asked about them, they didn't say that I had to have them returned or anything, they just asked about it and I think it was, I think it was the very first thing, yeah, as soon as I went home I had them packed at home and I went, when I finished at lunchtime I went home and got them and come back to town hall and took them to the general manager's office.

Yes, thank you, Commissioner.

THE COMMISSIONER: Mr Campbell.

20

MR CAMPBELL: Thank you, Commissioner. Sir, you said you never got the socket set. Is that right?---Yes, sir.

Could the witness be shown folder 15 again, Commissioner. And perhaps we can have the return of folder 9. Would you turn to tab 86, page 113.

THE COMMISSIONER: You're referring to folder 15?

30 MR CAMPBELL: I'm referring to, yes, I'm sorry, Commissioner, I'm referring to folder 15, tab 86, page 113. Do you have it open there, sir? Can you read it?---Yes.

You'll see that, that that's a delivery document that relates to a socket set. Do you see that?---Yep.

And you'll see the, can you read that it's addressed to Lee Warner?---Yes, up in the top corner.

Yes?---Yep.

40

Well that's in the top corner of the, of the sticker that's photocopied there. Is that correct?---Yes.

THE COMMISSIONER: With your address. Do you see your address? ---Yeah, well spelt wrong, but it's, yeah, yeah.

MR CAMPBELL: It's obviously your address though isn't it?---Yep.

And you'll see that the courier said he left it on the back veranda. Do you see that?---Ah hmm. Yes.

Well do you still say you didn't get the socket set?---Yeah, I haven't got it. One, one of the articles in there I've noticed it says it was left on the back veranda, but it was at the front gate. My mother-in-law picked it up and she took it up to the house.

10 Was that the water purifier?---Yes. No, the fan.

The fan. Well let's look at page 112. You got the water purifier didn't you?---Yes.

Look at page 112. See that, that relates to the water purifier?---Yep. Yes.

And it's got your address and your name, got the same spelling in the address. Do you see that?---Yep.

20 And that was left on the table back veranda wasn't it?---Yes, yep.

You got that one?---Yes.

Well I suggest that you got the socket set. Would that be correct?---I just said, I haven't received a socket set. Otherwise, otherwise I would have brought it in with the rest of the stuff. It's the least value (not transcribable)

You know that I suppose do you?---Only because I'm a mechanic, that's why I know what the socket set is worth.

30 THE COMMISSIONER: So it's the least valuable?---Yes, I believe so, yeah.

MR CAMPBELL: Did you order that socket set from Mr Ramachandran? ---No, I can't remember ordering it. That's, that's the only one I can't remember talking to him about.

40 So you remember talking about all the rest of them do you?---Only when he, he brought it up, it was like, there was only one or two items that were at that time. And he asked which one, would you like this or that and that's what I said to him, I don't really need - - -

THE COMMISSIONER: So you chose which ones he was going to send? ---Pretty much, yeah.

I have no further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Warner, you're excused from giving further evidence. You may leave the witness box?---Thank you.

THE WITNESS EXCUSED

[11:08pm]

THE COMMISSIONER: Perhaps we should - - -

MR CAMPBELL: That's what I was thinking, Commissioner.

10 THE COMMISSIONER: - - - adjourn now for 11.25.

MR CAMPBELL: Thank you, Commissioner.

SHORT ADJOURNMENT

[11.08pm]

THE COMMISSIONER: Mr Campbell.

20 MR CAMPBELL: I call Steven McMurtrie.

THE COMMISSIONER: Mr McMurtrie, are you legally represented?

MR McMURTRIE: No.

THE COMMISSIONER: No. Please sit down.

30 MR CLAY: Excuse me, Commissioner. I don't represent the witness but he has sought some assistance and advice from me and I understand he will wish to answer his questions under protection.

THE COMMISSIONER: I beg your pardon?

MR CLAY: He will wish to take the benefit of answering his questions under - - -

40 THE COMMISSIONER: I see, thank you very much. Mr McMurtrie, I understand that you wish me to make an order by which you would give evidence under objection and are afforded protection against the use of the evidence that you give in criminal or civil proceedings or disciplinary proceedings?

MR McMURTRIE: Yes.

THE COMMISSIONER: You do understand that that doesn't give you any protection if the evidence you give is not true?

MR McMURTRIE: Yes.

THE COMMISSIONER: Very well. Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr McMurtrie 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 you to make objection in respect of any particular answer given or document produced.

10

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT ALL ANSWERS GIVEN BY MR MCMURTRIE 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 YOU TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.

20

THE COMMISSIONER: Mr McMurtrie, 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. Do you understand that?

MR McMURTRIE: Yes.

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

30

MR McMURTRIE: Affirm.

<STEVEN McMURTRIE, affirmed

[11.30 am]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr McMurtrie, are you Steven McMurtrie?---Yes, sir.

Is that Steven with a V?---Yes.

10

And the McMurtrie M-C-M-U-R-T-R-I-E?---Yes.

And are you employed by the Lithgow City Council as a Plant Operator at its sewer treatment plant at Portland?---Not anymore.

Where are you now?---Not doing anything, unemployed now.

20

When did you cease to be employed by the Lithgow City Council?---I'm not sure on the exact date but it wasn't long after I was, I had the interview with the officers.

From the Commission?---Yes.

Was that, did you resign or was your employment terminated?---I resigned.

It was a choice you made?---Yes.

30

You were up until that time employed by the Council and you'd been there for about four years, is that correct?---Yes.

You started with them through what's called a Group Apprentice Scheme? ---Yes.

And for how long were you at the sewer treatment plant at Portland? ---Roughly two or so years.

And in that position did you work under Mr Lee Warner who's given evidence here this morning?---Yes.

40

Now, at the time you commenced work with the Council did you undergo an induction process?---Yes.

And as part of that induction process were you given some instruction in relation to what's called the Code of Conduct?---I can't really remember but I, in the Code of Conduct I think, yes, there would've been.

Well, did you know that the Council had a policy in relation to the receipt of gifts or benefits by employees?---A rough idea.

Well, what was your rough idea?---Well, I mean, I didn't really like look at a lot of the policies and things like that, like really, you know, maybe the first time when I was a trainee that might've been read to me but other than that I didn't really look at anything.

Did you have any – as at December 2010 and February 2011 did you have any awareness whatsoever whether Council had any policy in relation to the receipt of gifts by employees?---Yes.

10

What was your awareness of that policy? What did it say?---That you weren't allowed to get gifts as far as I know.

And that you weren't allowed to keep gifts for yourself, that's right isn't it? ---I wasn't sure about that.

I see.

20 THE COMMISSIONER: If you weren't allowed to get gifts - - -?---Yes, well, I, yes, well, yes.

- - - then you couldn't keep them for yourself could you?---No.

MR CAMPBELL: In any event you were the person who was responsible for running the sewer treatment plant at Portland, is that right?---Yes.

And one of the jobs you had was to maintain the necessary supplies of chemicals and the like for the smooth operation of the plant?---Yes.

30 And you had to – I withdraw that. The system was that if you detected that you were low on some product you had to place an order through your superior Mr Lee Warner, is that correct?---Yes.

And that you – did you have any delegation at all that enabled you to put an order or place an order in your own name?---No.

And you became familiar with a person called Mr Ramachandran, is that correct?---Yes.

40 And you understood him to be a salesman from a company who traded under the name, I'm sorry, Chemsearch. Is that right?--- Yes.

And when did you first meet Mr Ramachandran?---I'm not sure, the first time I had actually met him would have been when we went to lunch at the Thai restaurant.

Oh, right, and that was a Thai restaurant in Lithgow?---Yeah.

Who was at the lunch?---Ah, me, Mr - - -

Ramachandran?---Ramachandran, Peter Bradford and Anthony Boza.

Mr Warner wasn't there?---No.

And did - the other person, Anthony Boza, was he also a person who was in charge of a particular - - -?---No.

10 - - - treatment plant?---No.

No?---No.

All right. In any event, did Mr Ramachandran talk to you about the products he had to sell?---Yes.

Had you'd been using Chemsearch's products before?---I think in the whole time I've been an operator I think I've only ever made two orders so - but I have seen Chemsearch things at the plant.

20

When, is this up until the time of the luncheon you only ever made two orders before then, is that what you're saying?---I don't think I've made any orders before that.

I see?---For chemicals, I, I might have, I - - -

Did Mr Ramachandran explain to you that if you placed orders through Mr Warner that there were promotional items that were available to the people responsible for putting the order in?---No.

30

I see. Well, did he ever explain that to you?---No.

Did you ever hear of that at some stage?---No. After there was an order gone through he told me that there was a promotion, a special promotion and that he'll be sending something through.

What did he say he'd be sending through?---An iPod.

What's an iPod?---You play music on it.

40

What else can you do with it?---I'm not sure.

You're not sure?---I've never owned one.

I see. They're called an MP3 player aren't they, by you young people? ---I'm not sure, as I said, I don't own one.

I see, entirely ignorant of that sort of technology are you?---Yeah, I don't use them.

Okay. Well, do you know, do you know whether they're useful for any other purpose?---No, I'm not sure.

Have you got a mobile phone?---I do.

10 Does it have a number of other functions apart from making and receiving telephone calls?---Not really, it only cost \$20 so - - -

I see. You don't have a camera in your phone for instance?---No.

I see, I see. In any event, so you got, you got the iPod, what, what, what was, what colour was the iPod?---I don't recall.

I see. But when you got it did you, did it come to your home address?
---Yes.

20 How did Mr Ramachandran get your home address?---I can't remember, I'm not sure.

Well, did you give it to him when you had lunch with him at the Thai restaurant?---I'm not sure.

THE COMMISSIONER: You must have given it to him?---Well, I'm really not sure.

30 How else could he have got your address?---I don't know, maybe the phone book. I don't recall giving it to him.

MR CAMPBELL: Mr McMurtrie, you're - - -?---To the best of me knowledge I'm not sure.

Mr McMurtrie, you're here?---Ah hmm.

You've made a solemn promise to tell the truth about these matters, that's correct?---Yeah, I honestly don't remember.

40 I see. So - - -?---But it did come to me house though.

You don't remember one way or another whether you came Mr Ramachandran your address, is that correct?---Yes.

And so I suppose if he, if, if - one of the possibilities you'd have to accept is that you gave it to him because he asked you for an address, is that correct?
---I may have but I don't remember.

You keep saying that but you may have you accept, is that correct?---Well, I accept I may have.

Yeah. And did you give it to him in the context where he said to you that if you place orders with me through Mr Warner of a certain value I, I can send you what we call a promotional item?---No.

Did he say that to you?---No.

10 And did he ask you that whether he could have your home address so he could send such things to you at home?---I, as I said I can't remember that bit.

Can't remember one way or another, is that right?---Well, it was a long time ago.

All right. Well, you got - the first thing you got you say was the iPod?
---Yes.

20 All right. And when you got it you had no doubt it had come from Chemsearch did you?---Well he said that was the special promotion and, so, yes.

THE COMMISSIONER: Did you choose the iPod?---No, he just said that's what was coming.

MR CAMPBELL: When did he, when did he say that to you?---I think on the telephone.

30 When you spoke to him about the order that you placed?---I'm not sure. It was on the telephone.

Well did he ring you or did you ring him?---He rung me.

I see. And what did he ask you when he rang you?---He just said will youse be needing anything, I think.

Meaning will you be needing any products that I can sell you?---Yes.

40 And as it turned out you were needing something. Is that correct?---Yes.

And did you talk to him about, about the order that might be placed?
---Briefly I think I told him I needed some acids and things like that.

Well a number of different products was it?---Yes.

And did you know what, what did it add up to?---I, nothing had a price on it, I've never seen a price for anything.

I see, I see. So after you told him that over the telephone he said well you'll be getting, there'll be an iPod coming your way or something like that?---He said, well after the order was made I think he said that there was a special promotion and this will be coming with the order.

THE COMMISSIONER: What the iPod?---Yes.

What he used that word?---What?

10

iPod?---Sorry, yes.

MR CAMPBELL: Well he didn't say it would be coming with the order did he?---He said with the order that will be coming.

Well it didn't come with the order did it?---No.

It came separately to your private residence. That's right isn't it?---Yes.

20

Well did you give him your home address at that time when he mentioned to you he was going to send you the iPod?---I'm not sure.

You may well have done I suggest to you?---I'm not sure.

I see, I see. Now - - -

THE COMMISSIONER: Did you want it to come to your home?---No. Well I wasn't sure really, I, it wouldn't, it wouldn't have mattered to me if it come with the, the order or not. Like to the actual depot where the
30 chemicals went.

Did the chemicals come to, directly to the plant at Portland? Is that where they get delivered?---No. Usually to the depot.

And where's that?---In Lithgow.

I see. Well when you had this conversation with him and he said there was this iPod coming, you understood that the iPod was, was coming to you personally didn't you?---Well no, he said it was part of the special
40 promotion and when I got it I took it back out and used it as work, like for work, but took it home and put songs on it.

When I got it I took it out and I used it for work?---Yes.

Well what work purpose did you use it for?---For listening to music.

I see. Something to make the day go more pleasantly. Is that correct?
---Yeah, well we're a fair way out and we don't have a radio or anything.

But it came to your home, so you opened up the box. Is that right?---There was no box.

It was in a packet or something?---Yeah, it was just like an envelope and some bubble wrap.

Right. So you unwrapped it?---No, I didn't unwrap it.

10 Who unwrapped it?---My girlfriend.

I see. And – well address to you though wasn't it?---Yes.

You open each others mail. Is that your arrangement?---Yeah, I don't really mind.

All right. So she's opened it when she got home, did she still have the package on it, the package available for you to look at?---I'm not sure.

20 In any event you knew that it must be the iPod that Mr Ramachandran said was coming your way?---Yes.

Now – so when he had that conversation with you and before it arrived you didn't say to him, look I've been trained by the Lithgow City Council and I'm not allowed to receive gifts from suppliers did you?---No.

No. But you knew that was your obligation as an employee didn't you?---I -
- -

30 Mr McMurtrie, would you answer my question. You knew that it was your obligation as an employee didn't you?---Yes.

Now – so apart from, apart from taking it to work so you could listen to music, did you use it, I think you told me that you, that you took it home as well and - - -?---Yes.

- - - fiddled around with it at home. Is that correct?---Yes.

Well, I beg your pardon, Commissioner.

40

THE COMMISSIONER: Sorry, when you took it to work to listen to music, somebody must have put the music on it?---Yes.

Who did that?---Me.

MR CAMPBELL: And you did that at home?---Yes.

Did you use it for anything else at home?---I'm not sure.

I see. All right.

THE COMMISSIONER: You listened to it at home I take it?---No.

You put the music on and you never listened to it at home? You put the music on at home but you never listened to the music at home?---Yeah, I don't really listen to a lot of music, but at work it, you know, it's, there's a lot of quiet times at work so - - -

10

MR CAMPBELL: I just want to ask you again, did you use it for any personal purpose at home apart from the purpose of recording the music you told us about?---I may have.

Well what might you have used it for at home?---A picture.

I see, it's got other functions has it?---As far as I could tell, yeah.

20 When I asked you that question earlier today, you, you told us you didn't really know how they work and you didn't know if it had any other functions. Remember telling me that?---Oh, but didn't know how to use it properly.

And I suggest to you sir, that what you told me was that you didn't know if it had any other functions. Do you remember giving that evidence?---I, I - - -

Do you remember giving that evidence? It's a yes or a no?---Yes.

30 Thank you. And that evidence you gave about not knowing whether it had any other functions was untrue wasn't it?---I didn't understand that's what you meant.

Well are you being sincere in giving that answer, sir?---Yes.

I see. You know what a function is don't you?---Yes.

One function is to record music isn't it?---Yes.

40 Another function is to take photographs on the camera isn't it?---Yes.

And indeed you took a lot of photographs over, I'll withdraw that. You took a number of photographs over the period of four days after the iPod arrived didn't you?---I may have.

I mean you used it as your personal thing when you got it didn't you?---Yes.

Well why didn't you tell us that earlier when I was asking you about it?---I didn't understand, I'm trying to tell you everything I know.

Don't you think it'd be better simply to fess up and tell the Commissioner the truth about these matters?---I am telling you what I know.

Apparently not about the functions of the iPod. You'd agree with that wouldn't you?---No. As I said I'm not really good with things like that, so I don't know a lot about them.

10

Look Mr McMurtrie, you knew you could take photographs on an iPod didn't you? You worked that out?---Yes, not all iPods.

On the one that you got you could couldn't you?---Yes.

Because you worked it out didn't you?---I guess so.

Well you don't guess so, you know so don't you?---Yes.

20 Thank you. And you, and you took a number of personal photographs with it after you got it didn't you?---Yes.

Nothing to do with listening to music at work those photographs were they?---No.

30 No. Commissioner, could Mr McMurtrie be shown folder 15. Now it's got some tabs, Mr McMurtrie, you've been in court today, you've seen me ask people about this. Would you got to tab 82. You'll have to turn it around so you can see it. Now this is a schedule of material that's been extracted from information provided to the Commission by the company NCH Australia Pty Limited who trade as Chemsearch. Okay?---Yes.

You accept that from me?---Yes.

I just want to ask you about the first item on 17 December, 2010, do you see that there?---Yes.

It talks about a socket set. See that item there?---Yes.

40 Now did you receive that socket set?---No.

Did anyone, do you know if anyone at work, I'll withdraw that. Did anyone at work tell you whether they had received a socket set from Mr Ramachandran?---No.

No.

THE COMMISSIONER: That delivery address is that your home address or is it some other address?---It was me home address, yeah.

MR CAMPBELL: Commissioner, the schedule may be an error, having regard to the material we looked at this morning in relation to the consignment note and delivery document from, from the courier company. And I will be submitting to you that it was sent to Mr Warner and not to Mr McMurtrie.

10 THE COMMISSIONER: That's the socket set.

MR CAMPBELL: The socket set. The socket set only. Now look at the other four items. Each of those other items is an item received by you at your home address after you'd placed an order with Mr Ramachandran. That's correct isn't it?---No.

Which one do you deny?---The DVD player.

20 Which DVD player do you say you didn't receive?---The one second from the top.

That's the first one?---Yes.

All right. Well, I'm suggesting to you, Mr McMurtrie, that you received each and every one of those remaining four items after we exclude the socket set, you understand that, don't you?---I understand that I didn't.

THE COMMISSIONER: So did you receive three?---Yes.

30 MR CAMPBELL: Well, make that - thank you, Commissioner.

So you received, you received the Apple iPod on about 10 January, 2011 or thereabouts, is that right?---Yes.

The second mentioned DVD player on 31 January or thereabouts, is that right?---I'm not sure on the dates but yes, I got that.

40 And then, then, then the high pressure hose, a Karachi or something, is that - Karcher, is that right?---Yes.

And that's about, some time around the beginning of February, you said that?---I'm not sure about the dates but it did come.

It looks like - well, if that schedule is otherwise accurate it looks like you're admitting to having received three gifts through Mr Ramachandran over the space of about a month, that's right, isn't it?---I wasn't sure that they were that close but - or what the dates are but yes, those three things come.

Yeah. And you accept, don't you, that it may well have been over the space of a month only, is that right?---I really don't think it would have been that close.

Well, you don't think so, sir, but can you tell us when it was that you otherwise received them?---No, I can't.

10 No. No, I'll take you to some other records in a moment. Now, you've told the Commissioner that up until the time that you've, that these promotions started coming and you had lunch with Mr Ramachandran, you'd never ordered anything on behalf of Lithgow City Council?---I - - -

That's correct, isn't it?---I may have but not through, not through them.

Not through them?---I don't, as far as I can recall unless I, youse'd have to have a look at - - -

20 Well, who usually did the ordering for your place at work at Portland?
---Before me there was another person there.

After you started who did the ordering if the ordering was required?---I'd just tell me supervisor if we needed anything.

That was Mr Warner?---Yes, if he was, 'cause I had a few different supervisors at the time.

30 All right. But so leaving aside the first two items for the time being your pattern of work changed quite a bit then in January and February 2011 if those dates are accurate, didn't it?---Well (not transcribable)

Yeah, you were making three orders in the case of a, place of a, I'm sorry, three orders in the space of a month if those dates are accurate. That's correct, isn't it?---I can only recall making two but - - -

You might be wrong though I suppose, is that fair?---Well, I only remember doing two.

40 Well, you've already told me that there's some details you can't remember, haven't you?---I have told you that.

That could, that could be an item about which your recollection is faulty, would you agree with that or disagree with it?---I'm not sure what you mean.

Well, you might have forgotten making those at least three orders, is that correct?---Well, I may have. I thought there was two but - - -

Well, I'm suggesting to you, you understand, that you made four orders, that's so, isn't it?---I really don't think I made four.

Well, we know you made three don't we because you got the water hose. Right?---I didn't even know the water hose, he never even mentioned anything about that.

Well you accept that you received it don't you?---It turned up in my shed.

10 In your shed?---Mmm.

At home?---Yes.

All right.

THE COMMISSIONER: How did it get into your shed?---The shed's open like a carport outside of the yard. I never signed for anything.

20 MR CAMPBELL: So what you call the shed is an open carport at the front of your house. Is that right?---Yes.

So someone delivered it there?---Yes.

Is that what you mean?---Yes.

It wasn't as though someone had gone down the backyard and opened your garden shed and hid it away in your shed was it?---No.

30 No. It was delivered to your place and left in the carport?---Yes.

All right. What about – and that was after you made an order with an Mr Ramachandran wasn't it?---I'm not sure about the high pressure washer.

And you – the second DVD player mentioned, that came after you made an order with him. That's right, through Mr Warner?---Yes.

And also the iPod. Correct?---Yes.

40 Now could you please, in volume 15 to go tab 86 and turn it up. Now go to page 112 and look at the foot of the page, you'll see won't you that that's a consignment note in respect of a DVD player delivered to your address. Do you see that?---Yes.

And I won't to ask you to name, name her, but that's signed for by your girlfriend. Correct?---No.

No. That's her name isn't it?---Oh, sorry, I'm on the wrong page.

Page 112, sir. Got it now?---Yes.

That's your girlfriends name isn't it?---Well does it say what it is?

Just - - -

THE COMMISSIONER: On the bottom right hand side?---Yes.

That's your girlfriend's name?---Yes.

10

MR CAMPBELL: And her signature?---Yes.

And she's signing for a DVD player on 15 February, 2011. That's right isn't it?---Yes.

And that would probably tally up with what we've called the second DVD player. Do you agree?---I never received the second DVD player.

But sir, you keep saying that?---Yes.

20

But your girlfriend signed for that one in February didn't she?---It says it, it says so, yes.

Well you'd accept the truth of that document wouldn't you?---Yes.

Okay. Now you, you by mistake turned up page 113 when I was asking you about this didn't you?---Yes.

30

And you, and you saw your own signature on the consignment note at the bottom of page 113 didn't you?---Yes.

And you were quite happy to say that's the one DVD I got weren't you? ---No.

I see. Well that's your name isn't it?---Yes, but that's not my writing.

I see. It's your address isn't it?---(NO AUDIBLE REPLY)

40

It's your address sir, isn't it?---I'm just trying to - - -

Would you mind - - -

THE COMMISSIONER: On the left hand side at the bottom?---Yes.

MR CAMPBELL: And it's 12 January you'll see that your name has been written down?---Yes.

And somebody's put a mark above the word signature. Do you see that?

---Which part, sorry?

If you look at customer to complete on the right hand side of the consignment. Do you see that?

THE COMMISSIONER: Under TNT?---Yes.

MR CAMPBELL: Somebody's signed for it and said it was you haven't they?---Yes.

10

Well that's your signature isn't it?---Oh, vaguely. It's not - - -

You don't – you recognise it as a form of your signature do you not?---Yeah well, not really, like the last part's like fairly different.

You accept don't you that that's a consignment note that says the DVD was delivered to your place on 12 January, 2011. That's correct isn't it?
---That's what it says.

20 And I suggest to you no reason to deny that that occurred have you?---Yes I do, because that's not my, that's not even my print.

Well someone else might have written those details down but what I'm suggesting to you is that that was a delivery at your place on 12 January. Now that's correct isn't it?---There was no DVD player delivered.

Is this another detail you might have forgotten about, sir?---No. There was only three things that come to me house.

30 THE COMMISSIONER: Does this look like your signature or at least partially like your signature, Mr McMurtrie?---The one on this form here?

Yes, at page 113?---Oh, very vaguely, like the last bit's very different, like the last name, it's really, really different.

But the first bit?---Vaguely, yes.

40 MR CAMPBELL: You don't even remember this apparently it could have been a signature you placed on there - - -?---That's not my print, why would I do that and then print like this, I don't even write like that.

Well, nobody's suggesting that it's your writing, sir, we're just asking who wrote the signature. That could've been put on there by let's say the courier who delivered it as a record of who it was he delivered it to. Do you accept that?---I didn't write it.

Well, that may be so, but - - -?---I didn't get this DVD player.

Well, I'm suggesting it was delivered to your home on 12 January, 2011?
---And I'm telling you it wasn't.

I see?---And if it was it wasn't to me and I didn't get it.

Well, you live in a fairly remote location don't you?---No.

How many houses are around where you are?---A whole town. A lot of houses.

10

You live in the main township of Lithgow, is that what you're telling me?
---Yes.

All right. So you're suggesting that somebody stole it from your place?
---I'm not suggesting that, I'm just suggesting that I didn't sign this and I didn't receive this DVD player.

THE COMMISSIONER: Yes, there is a suppression order in relation to the name of Mr McMurtrie's girlfriend and her address.

20

MR CAMPBELL: Thank you, Commissioner. Now, in any event you're prepared to – I withdraw that. The DVD player that you are admitting to was delivered to your home, correct?---Yes.

And it was something that you put to use in your own home, that's right isn't it?---No.

I see. What did you do with it?---I did try it but then just took it to work and it was in the drawer.

30

I see, just took it to work again?---I already own a DVD player.

Well, most people do I suppose, a lot of people do, but you received it?
---Yes.

You tried it to see if you liked it, is that correct?---To see if it worked.

And it did work I suppose?---Yes.

40

And then you decided that you weren't going to keep it at home because you didn't need it, is that right?---Yes.

So you decided what to do with it which was just take it to work and put it in the drawer, is that what you're saying?---I took it to work so we could use it there if we needed.

Did you ever use it at work for any purpose?---No, no, didn't have a TV.

So it wasn't much use at work without a TV I suppose?---No, no, if we got one it would've been as the other treatment plants have one.

I suppose if you thought that you needed one at your treatment plant, there was a TV and a DVD player for different purposes you could've asked Council if they would be prepared to supply one to you, that's so isn't it?
---They wouldn't.

You say that but did you ever ask them?---Yes.

10

When did you ask them to supply you with a TV and a DVD at work?
---Well, I've heard other people, because the Lithgow treatment plant has one down there so I – I never like officially asked.

No. So the answer to my question did you ever ask them to supply you with it was no, that's correct isn't it?---Supply me with?

When I asked you did you ever ask the Council to supply you with a TV and a DVD for you to use at work the answer to that question was no, wasn't it?
---I'm not - - -

20

Mr McMurtrie, it's a simple question?---I know, but I'm starting to get pretty confused.

The answer to my question was no, you've never asked the Council to provide you with a TV and an DVD at work have you?---Not the, not officially.

You've never asked them at all have you?---Well, I may have said it to, you know, supervisors and things like that before.

30

You might've said – who to, Mr Warner, are you telling us?---No, as I said I've been there for four years so we've, you know, we've asked for a lot of things, we asked for beds and that as well but we never got them.

When you were in charge of the plant you never put in a requisition to Council - - -?---No.

- - - for a TV or a DVD did you?---No.

40

No. And it would be wrong to suggest that you did wouldn't it?---Yes.

Now, you accept, don't you, that it was wrong of you to accept the gifts that you did receive?---Yes.

Now, after the Commission made its inquiries at the Council did you face any disciplinary action?---Yes.

What happened?---I was suspended.

For how long?---Until, it was indefinitely until they decided what to do.

Well, how long were you suspended for before you resigned?---About a week.

I see. And was that suspension without pay was it?---Yes.

10 So you didn't wait to find out what they were going to do in relation to reinstating you or not?---No.

You've been unemployed since then?---I work as a bartender so not very often though. I'm mostly unemployed.

I have no further questions may it please the Commission.

THE COMMISSIONER: Yes, thank you.

20 MR CAMPBELL: Pardon me, pardon me. Pardon me, Commissioner. I may have another question.

Have you still got that folder 9 in front of you?---Yes.

Folder 15, I'm sorry. Have you got folder 15 there?---Yes.

Go to tab 87, page 159?---Yes.

30 This is an attendance list of attendance at a Code of Conduct discussion on 12 April 2007, do you see that? Can you see that at the top of the page, sir? ---I'm just looking.

Well, don't look, answer my question. Do you see page 159?---No. No, not yet.

Well, get to page 159, thank you?---Yes.

That's a Code of Conduct attendance list, do you see that?---Yes.

40 And you see that your name is the second name on the list?---Yes.

And your signature appears beside it?---Yes.

I suggest to you that's very similar to the way you've marked the TNT delivery docket on 12 January 2011?---Well, it looks different to me.

Both are your signature, are they not?---That one is, the other one isn't.

You see, the way you've written it there on the 159 you've got what looks like a bit like an S and a T for your first name, that's right, isn't it?---Yes.

And then you've got a flourish at the start to represent the M and then bit of a squiggle concluding in a T, that's right, isn't it?---Yes.

That's what you can make of it anyway. That's correct, isn't it?---Yes.

10 If you go back to page 113, look at the bottom consignment note?---Is it what?

113, it's tab 86?---86.

You see, your first name is represented in the same way with a couple of squiggles representing an S and a T for the Steve, that's right, isn't it? ---Yes.

20 And then it's not quite as pronounced a flourish but you start with a flourish to represent the M?---It looks different to me.

Well, I'm suggesting to you, sir, that this signature was written by you and is effectively the same as the signature on page 159?---I wouldn't lie, if I got it I would tell you, I've got nothing to hide now, that's not mine, I didn't get it.

Well, you see, you already had an interview with the Commission officers didn't you?---Yes, which I told them I didn't get it either.

30 And you were told at the start of that interview that it was an offence to lie to them weren't you?---Yes.

And you told them you understood that didn't you?---Yes.

So you say today you wouldn't lie but a reason why you might lie, sir, and don't you agree, is to present a consistent story because you don't want to be in trouble for having lied to the Commission officers in the first place, that's right isn't it?---No. No, I did not get it, if I got it I would've told them.

40 I have nothing further, Commissioner.

THE COMMISSIONER: Yes, thank you. Any questions of Mr McMurtrie?

MR CLAY: No questions.

MR NAYLOR: Yes, Commissioner.

THE COMMISSIONER: Yes.

MR NAYLOR: (not transcribable)?---Pardon, sir.

Sir, I appear for Mr Warner and a number of other local Council employees. Just a couple of questions to clarify what you've already told the Commission. Remember you were answering some questions from Mr Campbell in relation to a conversation that you had had with Mr Ramachandran - - -?---Yes.

10

- - - which resulted in an order being made?---Yes.

Yes. And Mr Ramachandran told you that you would be receiving a promotional item, you subsequently received the Apple iPod, that's right isn't it?---Yes.

And who was your supervisor at the time?---Lee Warner.

20

And so the order was placed was it not through Mr Warner?---Yes.

And did you tell Mr Warner, did you relate to him what you had been told by Mr Ramachandran that you would be receiving a promotional item? ---No.

Yes, thank you, Commissioner.

THE COMMISSIONER: Mr Campbell?

30

MR CAMPBELL: Might the witness be excused, Commissioner?

THE COMMISSIONER: You may be, you're excused from giving further evidence and may leave the witness box, Mr McMurtrie?---Does that mean I can go or- - -

I beg your pardon?---Do I have to stay here or can I leave all together?

No, you're free to go.

40

THE WITNESS EXCUSED

[12.10pm]

MR CAMPBELL: Commissioner, before I call my next witness could I just point out to the Commissioner that as part of the tender bundle we have behind volume 15, tab 87, a statement of the general manager of the Lithgow City Council dated 1 September, 2011. It commences at page 117. At this stage, Commissioner, I just wanted to point out, I tender the statement in its entirety.

THE COMMISSIONER: Yes. Well, you don't, you don't have to give it separately.

MR CAMPBELL: No, no. Quite, quite.

THE COMMISSIONER: It really has been tendered- - -

MR CAMPBELL: Yeah.

10

THE COMMISSIONER: - - -as part of the tender bundle.

MR CAMPBELL: Yes, Commissioner. The, you will see that at page 120 at paragraph 14, Mr Bailey says that Messrs Warner, McMurtrie and Bradford all received a copy of the Code of Conduct although they can't locate Mr Bradford's certificate, and it says at 15, Commissioner, that council has had a gifts and benefits policy and register in place since approximately 2008. I'm drawing that to your attention because my learned friend, Mr Clay, has provided us with some documents which show that they had a Code of Conduct in place quite some time before that, I think from the early, 2004 I think, Commissioner.

20

MR CLAY: The earliest version I provided, may I explain, Commissioner, the general manager commenced appointment with the council in 2008. The documents attached to his statement made to the Commission were the, would seem to be the current documents. He wasn't asked to provide documents which were in existence at the time of the inductions of the three relevant employees and when I was asked to look after them on Friday or Thursday evening I realised those dates and asked for production of any earlier policies which were in place when they had their induction. They were provided electronically on Friday night and copies provided to the Commission today. So either I seek leave I suppose or I invite Mr Campbell to tender what we provided as the bundle of three documents, a Code of Conduct from 2005, a Gifts and Benefits Policy 2006 and a printout of a PowerPoint presentation which is undated on its face but I am told, Mr (not transcribable) told was created in 2007 as part of the Code of Conduct training. If necessary I can separately prove that with a supplementary statement from the general manager.

30

THE COMMISSIONER: Yes. And what about the gifts and benefits register that was in force prior to 2008, is there such a document?

40

MR CLAY: It commenced on 16 October, 2006.

THE COMMISSIONER: And are you tendering, is that going to be - - -

MR CLAY: That's in the bundle.

THE COMMISSIONER: - - -tendered as well?

MR CLAY: That's in the bundle, yes.

THE COMMISSIONER: It's already been tendered? In which bundle, Mr Clay?

MR CLAY: Sorry, the bundle that I provided to the Commission.

10

THE COMMISSIONER: The register is part of that?

MR CLAY: Sorry, the policy, not the register. I have not, the register from a certain date is otherwise in the Commission's bundle but I haven't produced any further documents in relation to a register.

THE COMMISSIONER: Well, what I'm trying to find out is, is the register that was in force since 2006, that being the date that you mentioned, is that part of the tendered documents or not?

20

MR CLAY: No. Commissioner, you've used the word register as distinct from policy.

THE COMMISSIONER: Yes.

MR CLAY: But what is in the documents I provided to the Commission is the policy which- - -

30

THE COMMISSIONER: No, I understand, Mr Lewis, but I asked you about the register.

MR CLAY: No, I have not produced any additional documents like the register.

40

THE COMMISSIONER: Well, in the light of, in paragraph 16 of, of Mr Bailey's statement he says that there are no entries on council's gifts and benefits register in respect of Messrs Warner, McMurtrie and Bradford. In light of what you've said to me, Mr Clay, it seems that Mr Bailey's evidence really is only effective as from 2008. That's how I understand what you've told me. Therefore it would be helpful to know what has happened, what, what the gifts and benefits register prior to 2008 shows in relation to these three gentlemen.

MR CLAY: I'll have those inquiries made.

THE COMMISSIONER: Thank you.

MR CAMPBELL: Commissioner- - -

THE COMMISSIONER: And do we now, the documents that Mr Clay has provided, are they to be tendered?

MR CAMPBELL: Yes, Commissioner. I tender the bundle of documents provided by my learned friend, consisting of the Code of Conduct adopted on 27, 24 January, 2005, the Lithgow City Council Gifts and Benefits Policy, which is undated on its face.

10 MR CLAY: Go to the last page.

MR CAMPBELL: Last page. Thank you, Mr Clay. Which bears an effective date, 16 October, 2006, and the, and the PowerPoint presentation for staff Code of Conduct training, which is undated.

THE COMMISSIONER: So does that make four documents?

MR CAMPBELL: It makes three, Commissioner.

20 THE COMMISSIONER: Three documents. All right. Well, I think it's sufficient if I say that Exhibit 39 is a bundle of three documents supplied by Mr Clay on behalf of the Lithgow City Council to the Commission.

#EXHIBIT 39 - BUNDLE OF DOCUMENTS PRODUCED BY LITHGOW CITY COUNCIL

30 THE COMMISSIONER: And if, if Mr Clay is able to locate the register we'll just put it in Exhibit 39.

MR CAMPBELL: Yes, Commissioner. Commissioner, just for what it's worth, and it's worth something, at volume 15, tab 87, page 139, it's paragraph 8, is the current policy in relation to the receipt of gifts and benefits at Lithgow City Council, which sets out the matters I've been cross-examining these witnesses about.

THE COMMISSIONER: Yes. Thank you.

40 MR CAMPBELL: That concludes the evidence in relation to Lithgow City council.

THE COMMISSIONER: Yes.

MR CAMPBELL: We are now going to have some evidence about the Walgett Shire Council, Commissioner. And I call Mark Ward, who is legally represented.

THE COMMISSIONER: I'm sorry, before- - -

MR CAMPBELL: Yes, Commissioner?

THE COMMISSIONER: Mr Campbell, I'm just looking at page 14. Where is the prohibition against gifts and benefits?

MR CAMPBELL: Give me a minute while I get my reference back again.

10 THE COMMISSIONER: It's page 139.

MR CAMPBELL: Thank you.

THE COMMISSIONER: I think it's 8.3.

MR CAMPBELL: Yes, yes. It's, "You must not- - -

THE COMMISSIONER: Yes, I see it. All right.

20 MR CAMPBELL: - - -seek gifts or benefits, accept any gift, gift or benefit." It's subparagraphs B and C.

THE COMMISSIONER: Yes. Yes, thank you.

MR CAMPBELL: Okay. And then- - -

THE COMMISSIONER: And 8.4.

MR CAMPBELL: 8.4, Commissioner. Page 165, 166.

30 THE COMMISSIONER: Sorry, 165?

MR CAMPBELL: These are additional things. This is the, this is the Gifts and Benefits Policy, Commissioner, which is also in the Commission's evidence. This is a version, a more recent version than the one in Exhibit 39, one adopted on 21 October, 2008, but it starts at page 164.

THE COMMISSIONER: Yes.

40 MR CAMPBELL: And it contains what I think is, if not identical in substance, the same material at the foot of page 165 and over to 166.

THE COMMISSIONER: Yes, thank you. That's not Exhibit 39, I don't think, that's just- - -

MR CAMPBELL: No, what's in folder 15, Commissioner, is the current version of it which dates till 2008.

THE COMMISSIONER: Yes, it's the page, at the pages to which Mr Clay referred.

MR CAMPBELL: Yes, yes.

THE COMMISSIONER: Yes, thank you. Mr Ward, who represents Mr Ward?

MR CAMPBELL: Mr Ward is represented by Ms McGlinchey.

10

THE COMMISSIONER: Mr Ward, take a seat please.

MS McGLINCHEY: I seek leave from the Commissioner to represent this witness, Mr Ward.

THE COMMISSIONER: Did he want a section 38 order?

MS McGLINCHEY: Yes, Commissioner.

20

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

30

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

THE COMMISSIONER: Mr Ward, you're obliged to answer all questions asked of you.

MR WARD: Yes.

THE COMMISSIONER: And it is a serious criminal offence either to refuse to answer or to give false answers and you understand that?

MR WARD: Yes.

THE COMMISSIONER: Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence? It's a matter for you, it has no legal effect, you do one or the other, which do you want to do?

MR WARD: It was the oath I think.

THE COMMISSIONER: All right.

10 MS McGLINCHEY: He has given me instructions, he will take the evidence under oath.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Ward, are you Mark Ward?---Yes.

10 And are you an employee of the Walgett Shire Council?---Yes.

And have you been employed by that council since 20 January in 1997?
---Yes.

Now, I think that - I withdraw that. You, you are employed as a, as a supply officer, is that correct?---Yes.

20 And in that capacity you have the council's authority to purchase necessary supplies required for its ordinary operations?---Yes.

And what is the - as at 2010 what was the amount of your delegation?
---20,000.

THE COMMISSIONER: I beg your pardon?---20,000.

MR CAMPBELL: \$20,000, Commissioner.

30 And have you held the position of supply officer since 14 November, 2002, does that sound right?---I'm not sure about that.

It's hard to remember that date?---Yeah.

We have other evidence about that, Commissioner.

Now, at the time that you were - or shortly thereafter that you got the job as supply officer you were sent off to Orange to - - -?---Yes.

- - - undertake some training in, in proper methods of procurement?---Yes.

40 And I think that, that you, you are aware of Walgett Shire Council's Code of Conduct, is that correct?---Yes.

And what does the Code of Conduct say about council officers receiving gifts and benefits?---We're not supposed to.

Okay. Now, I think that you have, you have told the Commission, haven't you, sir, that, that between 9 May, 2007 and 16 June, 2010 you received a

large number, my word large number, of Momar Coles Myer vouchers, that is to say the supplier Momar Australia - - -?---Yes.

- - - sent to you a large number of Coles Myer vouchers?---Yes.

You probably haven't added them up over the years, Mr Ward?---No, I haven't.

10 No, do you accept that the Commission has calculated that the total amount of vouchers you received over those, that three-year period I asked you about was \$3,650 in vouchers?---Yes.

Now, can you just tell us how did it come about that, that you, that you started to receive those vouchers?---I just placed an order with Momar one day, that's how, through Jody Parker.

Is that Jody Parker?---Jody Parker, yeah.

20 Thank you?---Yes, he's the sale rep for Momar.

Yes. And when you placed the order did he say something to you about the gift vouchers?---He actually did.

What did he say to you about that?---He just asked, well, actually he said that there was some gift vouchers coming your way.

When he - - -

30 THE COMMISSIONER: Did he say that after you placed the orders or before?---No, it was after.

MR CAMPBELL: And the, I think - I withdraw that. Is it far to say that the first voucher you received was actually a \$50 fuel voucher?---Yes.

And did that come to you one Christmas?---Yes.

Without mentioning what the post office, post box address is, I think your family's got a post box address?---Yes, yes.

40 And did that \$50 gift, that \$50 fuel voucher go to your post box address? ---I'm pretty sure it did.

And how did, how did Mr Parker get that?---I gave it to him.

Did he ask you for it?---Yeah, he actually did.

And - - -

THE COMMISSIONER: Did he give you the option of sending it to you at work or at home or did you just simply - did he simply say to you what's your home address?---I'm not sure about that.

MR CAMPBELL: You can't remember, is that what you mean?---No, I can't remember, yeah.

All right. You see, when you - how much - all of these things from Momar came through Mr Parker, is that correct?---Yes.

10

Because he was the only salesman you dealt with from Momar, is that right? ---Yes, yes, in my time there.

All right. Now, did he - apart from those first discussions you've told the Commissioner about did he discuss with you from time to time about whether you'd received the vouchers or that sort of thing?---No, I can't remember.

You can't remember?---I can't recall, yeah.

20

All right. Well, I mean he was sending them to you for - I withdraw that. Are you still getting them?---No, I'm not.

All right. How did you put a stop to it?---Oh, I didn't.

Pardon, sir?---I didn't.

You didn't?---No.

30 He just stopped sending them?---As far as I know, yeah.

All right. All right. But - okay. Now, what, when you got these vouchers how many would you receive at a time?---Maybe four, maybe five.

And what was each one worth?---\$50.

So you might receive as many as \$200 or \$250 worth at any one time? ---Yeah, yeah.

40 And I suppose this is a very obvious question with an obvious answer, Mr Ward, but what did you do with them?---Used them up.

What, going to shops to buy goods?---Yeah, yeah.

And the - now as part of the Code of Conduct did you, did you know that or was it your belief that you were not supposed to receive anything from any sales rep?---Yes.

Was that your understanding of it?---Yes.

All right. Well, how do you feel about having done the wrong thing?---Oh, pretty bad.

And you, you accept, don't you, that not only was it contrary to the council's policy but also it was just plain wrong - - -?---Yes.

- - - and, and you acknowledge that?---Yes.

10

And for the point of view - I just need to ask you this sorry, do you accept that, that what you engaged in might well be regarded by ordinary members of the community as being corrupt?---(NO AUDIBLE REPLY)

Do you accept that?---Yes.

Now the, pardon me, Commissioner. Does the Walgett Shire Council have a, have a, a gifts and benefits register?---Yes, they do.

20 And - pardon me, Commissioner. Is Mr Ramsland the, the general manager of the council?---Yes.

Now, Mr, Mr Ramsland has made a statement to the Commission which is in evidence before the Commissioner - Commissioner, this is volume 16, it's, it's tab 90 and it's page 52, it's paragraph 11 of the statement.

THE COMMISSIONER: Yes, thank you.

30 MR CAMPBELL: Thank you. Mr, Mr Ramsland's statement says that quite apart from the things that came directly to your home that from time to time some suppliers sent vouchers marked to your attention, that is marked attention Mark Ward to the council's human resources manager?---Yeah.

Do you know anything about those sir? You'll see it up there on paragraph 11. Do you remember those or not?---Oh, the BP one, the top one.

Is that fuel one you're telling me about?---That's, that's one I remember. And one from Reliance Australia.

40 Okay. I don't need you to go through all of the list with us?---Yep.

What I want to ask you about is did the, did the Human Resources manager pass those vouchers on to you?---Someone did.

Some were passed on to you?---Someone passed or they'd put it in the stores box, in (not transcribable) box.

Okay. So those ones you were allowed to receive and keep?---I didn't keep them.

I'm sorry?---I didn't keep them.

No, what did you do with them?---I didn't, didn't see them.

Oh, I see. Well that's my question, did you get any of these?---No, I never.

10 No, no. So you don't know what the council did with them. Is that right?]
---No, I don't.

THE COMMISSIONER: I'm sorry, Mr Campbell, it's not clear to me at the moment whether the, whether these cards were sent by Mr Parker or not and whether these cards include the kind about which you've asked Mr Ward already, previously.

MR CAMPBELL: I'm going to clear that up, Commissioner. It's not clear to me either, but the, from what I've elicited. What I want to ask you is this,
20 do you remember I asked you about the ones you'd received in the mail?
---Yep.

And it your personal post office box?---Yep. Yep.

And I asked you about the fact that the Commission had calculated that they totalled \$3,650?---Yep.

Now that total you accept don't you, represents all the ones that you received in your post office box?---Yes.

30 And they're the ones that you got from Mr Parker?---Yes.

And they're the ones that you, that you spent in the shops - - -?---Yes.

- - - in the way that Mr Parker intended you to do so?---Yes.

All right. These ones on page 11, I'm sorry paragraph 11 at page 52 that we're looking at on the screen?---Yes.

40 Are you telling me that those are vouchers some of which you remember coming, being received in the store?---No. Come through head office.

Come through head office?---Yes.

Now my question is did head office, when you say head office you mean the Shire Council head office?---The Shire Council office.

Did head office pass any of these additional vouchers on to you - - -?---No.

THE COMMISSIONER: I beg your pardon? Did they - - -?---No, they never.

So these gift cards in paragraph 11 were not sent to you at your home address?---No, they weren't.

MR CAMPBELL: They were ones that were received at the council's offices?---Yes.

10

And you're telling the Commissioner that the council didn't give you these?---No, they never.

No.

THE COMMISSIONER: Did they tell you about it?---Oh, I can't remember.

MR CAMPBELL: You'll see at paragraph 12, Commissioner.

20

THE COMMISSIONER: Yes. But what about paragraph 10, that one entry. That one entry in paragraph 10, Mr Ward, about the football tipping competition?---Yes.

Was that sent to your home?---That was sent to the council.

As well?---Yes.

30 So that also, that's not a gift card, none of this has to do, sorry, let me start again, the gift cards mentioned in paragraph 10 and 11 were not gift cards sent to you by Mr Parker?---No.

MR CAMPBELL: When you won the football tipping competition were you allowed to keep that one?---Yes.

Okay?---After some time.

After some time?---Yep.

40 All right. Okay. And was that something that was run through the council staff or was it run outside council?---No, outside council.

Sorry?---Outside of council.

Right. Okay.

THE COMMISSIONER: So another question, please Mr Ward, these cards mentioned in paragraph 11 - - -?---Yes.

- - - were they as it were intercepted by, they were addressed to you but, but
- - -?---Addressed to me care of the council.

And they were opened by the council without your knowledge?---Yeah, by
the council staff, yes.

And then the council kept them?---As far as I know they did.

10 MR CAMPBELL: Paragraph 12 seems to say they did, Commissioner.

THE COMMISSIONER: Yes.

MR CAMPBELL: Yes. All right. Now how have you felt with all of this
process, Mr Ward?---Which one?

Well the fact you've been dragged along to the Commission today and had
to answer these questions in public, how has that made you feel?---No good.

20 And what do you reckon about what you did?---It's pretty bad. It's real bad
actually.

Have you had – have you spoken to the general manager or any of your
superiors at work about this, about this matter?---After the investigators I
spoke to the general manager that afternoon.

Yeah. And did you suffer any discipline because of what happened?---That
week, one week after.

30 What did they do, suspend you?---Suspend.

Without pay?---With pay.

With pay?---Yes.

For how long?---One week.

One week. And then since then you've been back at your usual job?---Yes.
And I'm currently on holidays.

40 What, you're currently on holidays at the moment?---Yes.

But I think that the Commissioner officers only saw you, saw you back in
March. Is that right?---Yes.

Okay. So you haven't been on holidays since March, have you?---No, I
haven't.

No. So, but when you're not on holidays, are you, are you still doing your usual job?---Yes.

Still the supply officer?---Yes.

And have you still got the same delegation?---As far as I know I have. I'll be talking to the GM when I go back home when I start work next week about it all.

10 All right. All right. Now, could I ask you this. Do you think you've learned something from, from all of this?---I definitely did.

Yeah. What do you think you've learned?---Not to take anything from anyone.

Ah hmm. And see you knew that the council had this policy you couldn't take gifts?---Yes.

20 Well, what else could the council do to stop you breaching the policy?
---They could sack me.

No, no. What else could they have done? Not in the future?---I have no idea, to be honest.

All right. Right. I have no further question for Mr Ward, Commissioner.

THE COMMISSIONER: Mr Ward?---Yes.

30 How many, there's \$3,500-odd worth of gift cards that Mr Ward received,
how many are they and over what period, Mr Campbell?

MR CAMPBELL: I can tell you, Commissioner. The period, the period of time, Commissioner, is, I'm sorry, I'll just get my notes again so I get it accurately. The period of time is 9 May, 2007 to 16 June, 2010. And that's been put together from the books.

THE COMMISSIONER: Yes. And how many?

40 MR CAMPBELL: They are, it's a bit difficult to tell, Commissioner, may I say with respect, I'm not going to answer your question. We have got behind tab 88, and I haven't shown this to Mr Ward yet, but a series of dates. You'll see it's a seven-page, it's page 1 of volume 16, it's tab 88 and, sorry, Amanda, for the Commissioner. I'm working on the assumption, Mr Ward, that the dates on which you received these various vouchers are too numerous for you to accurately recall?---Yes.

Is that fair?---Yes.

It's tab, it's the first tab, Commissioner, tab 88.

THE COMMISSIONER: Yeah, thanks.

MR CAMPBELL: And it's the first seven pages. One thing that I admit to not being entirely clear about is that there are some duplications of the dates. Does that mean you received more than one?---(NO AUDIBLE REPLY)

10 Yes. See, the system which we've used to compile that is that if, if, is that if, if, if there are two entries for one date, then two were sent on that date.

THE COMMISSIONER: So we're looking at about seven.

MR CAMPBELL: Well, much more, Commissioner, because if you look over, it's pages 1 to 7 and it goes- - -

THE COMMISSIONER: I see, yes. There are many on a page.

20 MR CAMPBELL: Yes.

THE COMMISSIONER: So this, you received what, so it looks like, something like, in the vicinity of between 35 and 60 gift cards. Would that be right?---Oh, probably close to it, yes.

Yes. So you must've gradually become aware that as long as you ordered a certain amount you'd get a gift card?---No, not every time.

Most times?---Most times.

30

And the more you ordered the bigger the gift card?---No, it wasn't like that.

Well, the more you ordered the more gift cards?---No.

So are you saying that - - -?---Not every time I done a big order that I received something.

Most times?---Most times I did.

40 Did you always get one gift card only for an order?---No, no.

Sometimes more than one?---Yes.

Like how many?---Maybe four.

And whether you got four or one did that depend on the amount of the order?---That I'm not sure of.

MR CAMPBELL: There's a – I'm sorry, Commissioner. But just (not transcribable) the Commissioner's question did it seem to you that there was a relationship between the amount that you'd ordered and the size of the voucher?---It looks that way.

Does it look that way to you?---Yes.

Yes. And did that encourage you to keep dealing with Mr Parker?---No, it didn't.

10

It didn't, I see. Commissioner, could I – I must say – I withdraw that. It must've come in handy when you got them?---It did.

An extra 200 or \$250 a week over your wages?---Yes.

It was handy?---It was handy.

20 Yes. I can imagine. Commissioner, at tab 90 which was the statement of Mr Ramsland of folder 16 you will see at page 55 the total amount of the invoices rendered by Momar between 12 February 2007 and 3 August 2011 that goes beyond the period during which we can prove that Mr Ward was receiving these things and he said he has stopped now, but you can see that there's \$179,861.86 so if I may use the word I've been using the kickback of \$3,650 is a drop in the bucket.

THE COMMISSIONER: Yes. What's your monthly earning, Mr Ward? What's it been over this period that you've been getting the gift cards?---I'm not sure.

30 About?---Fifteen hundred a month.

So 200 to \$250 is a significant – what, are you getting that a week or a month?

MR CAMPBELL: Well, over the period it varied but you'd get some every month I think, would you say?---Yes.

Yes.

40 THE COMMISSIONER: So that must've been a real incentive to keep buying from Momar?---No, it wasn't.

Why do you say that?---It looked like that way.

Do you acknowledge that it looks like it?---It looks like that way, yes.

Why isn't it that way?---Well, the products they got are pretty good.

No one else got products like that?---Some people have but not superior to Momar.

So because they're not superior you prefer Momar?---The products work pretty well.

So if they were equal you prefer Momar?---If they were equal I'd, yes, go either way.

10 Are you serious?---Yes.

Are you telling the truth?---Yes.

Why would you go, would the other people who you buy from give you presents?---No.

So why would you go to people who don't give you presents?---No idea.

20 If the products were equal why would you go to the ones who don't give you presents?---I've got no idea.

Did you ever?---I did go towards people that sell the same products as Momar.

You bought from them?---No, bought from other suppliers same, similar products what Momar got.

But was Momar your favourite supplier?---They was.

30 Did you buy substantially more from Momar than anyone else?---Yes, I did.

MR CAMPBELL: You must've had a pretty good relationship with Mr Parker over the years?---Yes.

So would you accept this – sorry. You'd understand wouldn't you, sir, that receiving these vouchers was like receiving a kickback for dealing with Momar?---Yes.

40 Yes. And if the products were equal from another competitor one of the things which might influence a person to continue to deal with Momar was the fact that there was this kickback, do you not agree?---Yes.

And whether you wanted to or not do you accept that must've influenced your thinking?---I'd say it would've.

THE COMMISSIONER: Yes, thank you, Mr Campbell.

MR CAMPBELL: There was just one final point, Commissioner, and Mr Ward can go. I think you've told Ms McGlinchey that apart from the cash vouchers I've been asking you about you also got – Mr Parker also gave you a pressure cleaner, is that right?---Yes. Yes.

At one time also you got a GPS unit?---Yes.

Did you use the GPS unit in your car?---Only around, around town just to work out how it goes because first time I ever seen one.

10

How big is Walgett?---It's not, it's big enough but - - -

Does it work okay out there?---Yes, it did.

And you also got a fishing rod and tackle box?---Yes.

Have you used that?---Yes.

Was it okay?---Well, the fish took the rod so - - -

20

Thank you, Mr Ward. I have no further questions.

THE COMMISSIONER: Yes, thank you. Any questions for Mr Ward?

MR NAYLOR: No, Commissioner.

THE COMMISSIONER: Ms McGlinchey?

MS McGLINCHEY: No, no, thank you, Commissioner.

30

THE COMMISSIONER: You may be excused, you're free to go?---That's it? Thank you.

<THE WITNESS WITHDREW

[12.46 pm]

THE COMMISSIONER: Yes. The Commission will adjourn till 2.15.

40

LUNCHEON ADJOURNMENT

[12.46 pm]