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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

Reference: Operation E08/2469

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY, 11 OCTOBER, 2011

AT 10.30AM

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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, on 5 October, last, I informed the Commission that full particulars of the evidence implicating officials of the 95 public sector organisations, not the subject of oral evidence would be provided by Friday, the 7th. I wish to confirm that that has been done. As I said at the time, the purpose of providing these particulars was to provide the opportunity to each organisation to answer that material if it wished.

10

May I say that it's my expectation that any organisation wishing to respond would first look into the evidence for itself to ascertain what action, if any, it ought to take. I repeat what I have previously said, it is impossible for this inquiry to examine all of the evidence that has been gathered.

Commissioner, to enable any one of those 95 - - -

THE COMMISSIONER: Because it would take several months.

20 MR CAMPBELL: Well - - -

THE COMMISSIONER: If not longer.

MR CAMPBELL: As a conservative estimate, Commissioner, indeed, as we can see from our experience just over the last week or so that we've been engaged in these public hearings restricted to 15 only. However, to enable any organisation that wishes to look into the matters affecting it, I am asking for a variation of the suppression order which will allow them to make inquiries and to take, if they consider it necessary legal advice about the matters we've referred.

30

THE COMMISSIONER: That's the suppression order relating to the employees of the council who is, who are identified in the evidence as being persons to whom according to allegations made by various suppliers, vouchers and other gifts were sent.

MR CAMPBELL: Exactly, Commissioner.

40 THE COMMISSIONER: Well a variation is made to the suppression order to the extent necessary to allow each council or other agency being part of the 95 named who are not the subject of oral evidence to investigate those allegations and to take whatever steps they wish in connection with them.

A VARIATION IS MADE TO THE SUPPRESSION ORDER TO THE EXTENT NECESSARY TO ALLOW EACH COUNCIL OR OTHER AGENCY BEING PART OF THE 95 NAMED WHO ARE NOT THE SUBJECT OF ORAL EVIDENCE TO INVESTIGATE THOSE

**ALLEGATIONS AND TO TAKE WHATEVER STEPS THEY WISH
IN CONNECTION WITH THEM.**

MR CAMPBELL: Thank you, Commissioner.

Thank you, Commissioner. May I also say this, that some of the evidence that we've drawn to the attention of the organisation concerned may point to infringements that many would regard as minor. For instance, the records
10 of R&R Tape indicate that someone who was said to be an employment of Richmond River County Council received one Drizabone coat back in 2001. I should interpolate the evidence does indicate that according to Mr Slade, an employee of R&R Tape that currently those coats are purchased by them for \$65 and have a higher retail value. But having said that may I say that information like that has been passed on to each organisation by the Commission in good faith. Now, if it turns out upon looking into the matter the organisation decides that a particular piece of material passed on isn't borne out by further investigation well, so be it. For instance, in that particular case that I have mentioned the Richmond River County Council
20 have, have said that their inquiries so far indicate that at the time the person named was not one of their employees.

THE COMMISSIONER: Well, that's just contrary to the allegation made on oath to this Commission. We're, we're not in a position to resolve which one is telling the truth but have determined to leave that to the councils concerned in those particular instances to make their own decision.

MR CAMPBELL: Yes, Commissioner, that's exactly - and that's exactly the purpose of passing on the material and I was, I was going to say that if I
30 could echo what - the remarks that have just fallen from you, Commissioner, that we are relying upon those organisations to ascertain from their own inquiries whether the, whether the information or the evidence is correct.

THE COMMISSIONER: Yes. But that's for their purposes, not for the purposes of the Commission.

MR CAMPBELL: Yes. It would be, it would be remiss of the Commission not to pass this information on when, when we've received it and particular
40 when, when we find ourselves unable to, because of the great volume of material, do the investigation for ourselves.

THE COMMISSIONER: Yes.

MR CAMPBELL: Could I say this in relation to the opportunity that has been provided to, to, to respond to the material, that I would hope that any organisation wishing to answer the particulars provided would first, as I've said, make their own inquiries, form their own conclusions and if, having,

having done that they consider that something should be drawn to the Commission's attention that they do so in a considered formal response and before the due date of 20 October, 2011. If, if they wish to take the opportunity it would be inappropriate, I respectfully submit, that they should do so by way of informal transmission like emails or telephone calls or the like. If there's something they wish to say and wish to have us take into account, then I'd ask them to do it in that formal way that I've outlined.

THE COMMISSIONER: Yes.

10

MR CAMPBELL: But having said that, I should not be taken as suggesting that the Commission is expecting formal responses. At, at the risk of being repetitive, I made clear when I made this announcement last week that I will not be seeking any formal finding of corrupt conduct against the individuals whose names have been passed on, nor will I be suggesting that the organisations themselves are guilty of any corrupt conduct or nor will I be seeking any other sort of criticism or adverse finding in relation to those individuals and those organisations not the subject of the oral evidence at this inquiry.

20

THE COMMISSIONER: Yes, so that neither in the submissions that you will make, nor in the report of the Commission, will the particular individuals be named.

MR CAMPBELL: Indeed, Commissioner, indeed and I would hope that, that those concerned would take from this exchange that the Commission is relying upon the good judgment of each organisation in deciding what to do in respect of each case referred. Now, as I've said, if they having made inquiries decide that the information doesn't justify any further action well, that's a matter for them to decide for themselves.

30

THE COMMISSIONER: Yes.

MR CAMPBELL: And if they decide or it is of concern, as no doubt many would, then they should take their own action to remedy the situation revealed by it.

THE COMMISSIONER: Well, as you explained in your opening submissions, Mr Campbell, that the whole point of mentioning the 95 councils and the incidents alleged to have occurred in relation to each of those 95 was to demonstrate the pervasive conduct involved in this state concerning the distribution of gift vouchers and so-called presents to persons who are involved in making purchases for and on behalf of government agencies.

40

MR CAMPBELL: Indeed, Commissioner, indeed, and that evidence remains important for that purpose, particularly having regard to the

Commission's obligations in relation to future corruption prevention and making recommendations.

THE COMMISSIONER: Yes. Nothing you've said should downgrade the importance of that evidence relating to the 95 councils - - -

MR CAMPBELL: Indeed not.

10 THE COMMISSIONER: - - - but they should, rest assured that there will be no corrupt conduct findings made against them in connection with those matters.

MR CAMPBELL: Yes, Commissioner, and I hope that what we have said today will better inform them as to what the purpose was of passing on the information.

THE COMMISSIONER: Yes, thank you, Mr Campbell.

20 MR McILWAINE: Commissioner, McIlwaine, can I just raise something in regard to what my friend has said. I act, apart from the persons who Mr Naylor has announced appearances, for a number of officers of those organisations who have received statutory notices from the Commission.

THE COMMISSIONER: What, of the 95?

30 MR McILWAINE: Employees of those 95, some 20 or so other persons. All I would be asking, Commissioner, is that variation of the non-publication order allow for me to seek access, to provide that information to those persons if they contact me, they may, for example, be contacted by - - -

THE COMMISSIONER: Yes, certainly, Mr McIlwaine. There will be a variation of the suppression order to enable you to advise those persons of the statements made by Mr Campbell but the point is that this, the exchange between Mr Campbell and myself will be on the internet.

MR McILWAINE: No. Perhaps I haven't made myself clear, Commissioner.

40 THE COMMISSIONER: Are you talking - - -

MR McILWAINE: As I understand material was going to be provided to the councils for them to consider and take appropriate action.

THE COMMISSIONER: Well, it has been done already.

MR McILWAINE: Those councils may then contact their employees, nothing to do with the Commission but, for example, in disciplinary

proceedings and those persons may well seek our assistance to provide them with access to, for example, the documents from Momar which I think are subject to a non-publication order at the moment which would prevent me from providing that information to those particular individuals.

THE COMMISSIONER: Well, I don't think they are subject to those but I – there is nothing – no orders have been made which are intended to prevent the legal representatives of any of the persons that are named in the evidence involved in the 95 agencies from explaining to them what their rights are and assisting them in the defence of any matters raised against them. Does that satisfy you, Mr McIlwaine?

MR McILWAINE: I think that will cover it.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: Commissioner, in the evidence today I first will be calling evidence in relation to matters concerning the Council of the City of Sydney and I call Mr Robert Nies. I think my learned friend Mr Naylor has been given leave to represent him.

THE COMMISSIONER: Yes. You wish me to make a section 38 order, Mr Naylor?

MR NAYLOR: Yes, thank you.

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

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

THE COMMISSIONER: Mr Nies, you're obliged to answer all questions asked of you and it is a serious criminal offence either to refuse to answer or

to give false answers. I'm sure you understand that. Mr Nies, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR NIES: Under oath.

THE COMMISSIONER: All right. Would you swear Mr Nies in, please.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Commissioner, the material relating to Mr Nies is in volume 17, tabs 93 and 94. Mr Nies, are you Robert Nies?---I am.

10 And are you an employee of the Council of the City of Sydney?---Yes.

And have you been employed by the council since 11 September of 1995?
---Correct.

All right. And are you currently employed as a handyman and storeman at the Bay Street depot?---Correct.

20 All right. And do you understand that you've come along to give evidence today in relation to the receipt by you of certain benefits provided firstly by a company called Momar Australia?---Yeah.

And, and also some alleged benefits provided by a company called NCH Australia. Do you understand that?---I understand that.

30 Thank you. Now I think that, and this is at tab 93, Commissioner, I'll withdraw that, tab 94. I think that in relation to this matter, you provided information in response to a notice you received from the Commission under section 21 of the Independent Commission Against Corruption Act. Is that correct?---Yes.

And if you look at page 19 of the folder you've been given behind tab 94, is that a, I'll withdraw that. Page 20, behind tab 94, is that a copy of the statement that you made in relation to this matter?---Yes, it is.

All right. Now I take, no, I'll withdraw that. May I take it from, from the statement that you are unsure of how many vouchers were provided to you by Momar?---Yeah, that's correct.

40 All right. But you say at page 20, paragraph 7 that you have received what you've called gift cards. Is that correct?---Yeah, that's correct.

And that the sales representative involved was, was Mr Paul Goldin?
---That's correct.

And for how long have you known Mr Goldin?---I would not be sure, I'd say probably six, seven years.

All right. And in your capacity as a storeman, do you have authority in relation to placing orders? You've said in paragraph 4, I can raise purchase

orders as long as they're approved by a manager. Is that correct?---That's correct, yeah.

All right. So what sort of things can you raise, in respect of what type of goods do you raise purchase orders?---Anything that's required for the maintenance depot at Bay Street.

And what sort of maintenance do they do out at Bay Street? Is it road maintenance or - - -?---It's roads maintenance, the stone yard and trades.

10

Oh, right. O.K. So is it the situation that, that the way things have operated in relation to placing orders with Momar, that Mr Goldin gets access to you at your place of work. Is that right?---Yeah, that's correct.

And he can talk to you about how the products are going. Is that correct?---That's correct.

Whether there's any shortfall. Is that right?---That's correct, yes.

20

Does, does he help you compile orders for submission to your manager?---No, I go through existing stock and replenish what's needed.

Oh, right. Is he ever present when you're actually writing the orders up, Mr Nies?---Yes, he writes his order up for the company and he gives me the prices and I raise the purchase order.

Right. So, so to that extent he, he assists you to compile your paperwork that goes to your manager for approval. Is that correct?---No, that's correct. He gives me the prices and I put it into my computer system to raise an order.

30

Oh, right, oh, right. Well, you, well, you have to rely upon him to say how much is this, how much is that?---Yeah, that's correct.

All right. Now, just before I ask you about the particular matters the, it's, it's - I withdraw that. Have you - you've received, have you not, training in relation to the council's gifts and benefits policy from time to time?---That's correct. They give us a Code of Conduct course which includes that.

40

And, and how often, how often have you been given such a course?---I'd say from memory annually.

Oh, right. And is it in the form of a seminar?---It's done at the depot with a group.

All right. Do you, do you, does a person come to speak to you or do you do it on line?---No, a person comes and speaks to the group at the depot.

And that's someone from, from HR or something is it?---HR, yeah.

And - - -?---Each unit themselves trades (not transcribable) and maintenance.

And they take you through the information?---Yes.

And what's your understanding of, of council's policy in relation to the receipt of gifts and benefits by a person in a purchasing role?---Taboo.

10

And has that always been your understanding of the policy?---Yes. The policy says you can accept \$50 but I feel that being a purchasing officer it does compromise you.

Well, can I just ask you this to make it quite clear, is it not the case that - and perhaps I'll take you through it in a moment but is it not the case that whatever the policy says about token gifts or nominal gifts or gifts of value, different categories referred to, if you're in a purchasing role you're not allowed to accept any gift. Is that correct? Do you know or not?---I would not be certain on that.

20

All right. Now, could I just - could you just go back in the folder and would you please have a look at tab 93 and you will see, sir, that we have compiled a broadsheet that runs from page 11 to page 15 that indicates the dates upon which Momar's records say that you received one of these gift vouchers. There's (not transcribable) all of them, just have a, a look at them?---It seems a bit excessive to me.

Well, it doesn't accord with your recollection you say, is that right?---That's correct.

30

But I suppose you would say that you didn't keep any record of it?---No, I gave the, the cards when they arrived, my, my wife took possession of them.

We've heard that so many times, Mr Nies?---Well, it's the truth.

No, I'm not suggesting it wasn't. I'll move on. Can the - I withdraw that. You haven't kept a record for yourself, that's correct isn't it?---No.

40

THE COMMISSIONER: Had your wife kept a record?---No, but I quizzed her on it and she told me it'd been, wouldn't be any more than 20 or maybe just over 20.

MR CAMPBELL: Were they usually of \$50 value?---Most times, there were a couple of instances were 100 and there was one for 150.

When you got one for 100 or 150 were you given two or three \$50 vouchers as the case may be?---From my recollection it was all \$50 vouchers.

Okay. And initially did, did Mr Goldin hand these to you at work?---No, never.

Always came in the post?---Always came in the post.

And always to your home address?---Always to my home address.

10 And he must have at some stage then asked you for your home address?
---He certainly did.

And did he say why he wanted it?---He initially offered me the gift vouchers and I said I wasn't interested, I said it's not worth it and his reply was that I'll send them to your home address and no one will ever find out.

So why did you say, sir, to him, I'm not interested, it's not worth it?---Well I knew it was wrong.

20 Because, am I right about this, and I'm asking you, I'm not telling you, that a \$50 gift voucher for Coles Myer is just like a \$50 note isn't it, in effect?
---I suppose so in effect, yeah.

Because Coles Myer is a big group of companies that have a lot of shops. That's so isn't it?---Yeah, that's correct, yeah.

You can buy anything you want for your household in, and this is not an advertisement, in a Coles Myer shop can't you?---Yes.

30 And the, so you knew – and you knew right from the start that that was wrong?---Yes, I did.

THE COMMISSIONER: So you were tempted really?---I was tempted, yes.

40 Just how, can you just expand on that, just to explain how this, how this, start from the beginning, you were first offered, he first said to you, Mr Goldin said to you as I understand it, you've given your home address, if you buy so many, did he say if you buy so much you'll get a gift voucher?
---Never ever did he pressure me like that.

What did he say?---He said that, that, what did he call it, company loyalty programme.

Yes. What did he say in that connection?---That he give me a \$50 voucher.

For what?---For the company loyalty.

For nothing? You didn't have to do anything?---Oh, because of the orders I placed.

Did he explain, did he refer ever to the amount of the orders?---No, because I would not be pressured like that.

So what did you say first, at first?---I really don't follow the question.

10 Well he said, I'll send you vouchers as part of the loyalty programme. Is that what he said?---Yes, he offered to send - - -

And you said?---Initially I said I'm not interested in that sort of thing. And he said, we'll send it to your home address and no one will ever find out.

And did you then agree?---I did agree, yeah.

MR CAMPBELL: So in effect, your initial resistance was, your initial resistance was worn down by his persistence. Is that correct?---Yes.

20 And he told you it was a loyalty programme?---That's correct.

Now did that – did you understand that to mean that he would, he would continue to provide those vouchers for your continued loyalty to the company?---You would have to assume that, yeah.

THE COMMISSIONER: The loyalty is, the loyalty to his company?---Well to his company and the products they supply, yeah.

30 It's not a loyalty to your employer?---No.

MR CAMPBELL: You see whether his products were good, whether you found them efficient to use, whether they were always reliable in delivering orders, there were other products in the marketplace that could have been used in their stead. That's so isn't it?---I'd have to say yes.

And, and what the loyalty wanted, you understood from what he said was, please next time you want to place an order for this type of product choose us. That's correct isn't it?---Well now I'd have to say yes.

40 All right. Now can I take you back to the, to tab 93 and the records that we've prepared from the other evidence in the Commission. Now just so you understand this, sir, the way the spreadsheet works is that, and if you're just on page 12, I can show you easily. You see the first entry has got a date, 16 June, 2008?---Yep.

Do you see that?---Yes.

And there's only one entry for 16 June, 2008. So what we say the evidence shows is that on that date you were sent one voucher only. Do you see that?---Yes, I see that.

Do you understand that?---Yes.

If you look at the next entry, it's 25 July and there are two entries for that date. Do you see that?---Yes, I see that.

10 So we say that on that date you received two vouchers. Do you follow me?
---Follow.

Okay. And you'll see that on that page there, there are a number like that. And if there were, if there were three entries, for instance, then we'd be saying that you got three vouchers on, on that date that had those entries. For instance if you go to page 15 towards the back of, at the back of that tab, you'll see that there are three entries for 7 December, 2010. Do you see that?---Yeah, that's the one I mentioned before, the one 150.

20 Yes, that's the 150, you worked it out. Now, I understand that looking at these you were surprised to see how many vouchers are on the spreadsheet, you've told me that?---Certainly am, yes.

Yes. You've told me as well you haven't kept any records. Can I tell you that, and I want you to comment on this, that if you add up all those vouchers represented by those dates on that spreadsheet you come to a total of \$3,200 over the period over, well, two and a bit years. It's a lot of money?---I disagree with that.

30 Right. But can I suggest to you that your recollection is wrong about that and that's the amount of money you actually received piecemeal over that period of time?---No, going on what my wife told me I can say it's incorrect.

Well, you told the Commissioner your wife didn't keep a record either did she?---No, she did not.

And the - - -?---But she's adamant that she only received 50 on most occasions.

40 Is that an unusual thing for your wife to be adamant about something?---My wife, yes.

Yes. All right. And - - -?---She's not a liar.

I'm not suggesting she is, all I'm suggesting is that in the absence of a written record with these things coming in the post without any particular regularity it might be hard to keep track of them, do you agree with that?

---Yes.

All right. And were they used, I think you might've said this, did your wife use them for ordinary household purposes?---Primarily she used it to buy gifts for my grandchildren.

Well, it must've come in handy for that purpose, would that be fair?---I'd have to say yes.

10 All right. Now, could I just ask you, I will ask you just a couple of questions about Council's current policy because it has developed over the years, has it not?---Yes, it has.

All right. If you go to page, if you go to tab 100. I'm wrong. Tab 101 and page 259 and the page numbers are in the top right-hand corner of the bundle and I just want to ask you some questions about a document?---259 was it?

20 259, sir. I haven't asked you this question but you've said in your statement that you never recorded any of these gifts in the register, that's correct is it? ---That's correct.

All right. Now, you're at 259?---I'm on 260 actually.

Okay. Well, go back to 259, it's the title page and you'll see that there's a document that appears to emanate from the City of Sydney and it's entitled Gifts and Benefits Procedure, do you see that?---Yes, I see that.

30 And that's dated May 2010 and we understand that this is the current policy?---Yes, it is.

Yes. You've seen this document before?---Yes.

And this document was the subject of training you received at work? ---Would've been, yes.

40 Okay. Now, I won't take long to do this but if you wouldn't just bearing with me. Turn to page 261. You see there, there's a number of definitions, do you see that?---Yes.

Definition of Bribe, Corruption and Gift, see those things?---Yes.

Gift of Influence, do you see that? Gift of Gratitude, do you see that?---Yes.

Okay. Then there's something called a token gift and that's said to be small office or business accessories, pens, calendars?---Yes.

I suppose you get those from many different people?---Yes, you do.

Yes. All right. Then if you go over the page you will see there's a definition of Nominal Value, do you see that? And the monetary limit of nominal gifts for the purpose of this procedure has been set at \$50?---Yes, that's correct.

It's been set, I think, at least since 2008 as not exceeding \$50, that's so isn't it?---Yes, I think so, yes.

- 10 Yes. But that doesn't mean you can accept anything to the value of \$50 does it according to your understanding of it?---I suppose not, no.

Because if you go over the page to page 263 you will see, won't you, that – perhaps I'll stay on page 262 that you started with. You see the Principles. It says that sometimes – I'm paraphrasing, perhaps I shouldn't do that. There are occasions when it's appropriate for employees to accept gifts, do you see that?---Yes, I see that.

- 20 And, and it requires the employee to consider the appropriateness of acceptance on a given occasion, do you see that?---Yes.

And you see that one of the things you have to think about is the possibility of the perception of corrupt or fraudulent conduct. Do you see that?---Yes, I do.

Now, you, you'd have to say wouldn't you - I withdraw that. The next one is "Gifts and benefits will be recorded to increase transparency." You see that?---Yes.

- 30 And there's a requirement that employees must record all gifts and benefits other than those token gifts, do you see that?---Yes.

Now, it's, you'd have to, you'd agree with me, sir, wouldn't you, that Mr Goldin sending you cash vouchers to your home address is not transparent?---No, it's inappropriate.

And you'd agree with me, wouldn't you, that when these matters are uncovered it certainly creates the perception of corrupt or fraudulent conduct, do you not agree?---Yeah.

- 40 It creates the perception of?---Yes.

Now, can you go over the page to 263. You'll, you'll, you'll see here, will you not - if you go down the page to under the heading "Primary Obligations" you will see that it says, "Accepting gifts of money is strictly prohibited in all cases." Do you, do you see that? Have you got that? ---I'm just trying to find it, sorry, I've got it.

Yeah?---Yeah.

Well, I'm, I'm, I'm, I'm asking you that these vouchers are just like money aren't they?---Yes.

Now, can you go to - can you, can you go to page 265. You'll see the top of the page these nominal value gifts and that was the not exceeding \$50, do you remember that?---Yes, I do.

10 But even when it's nominal you're supposed to consider the intent of the gift or benefit being offered, do you see that?---Yes.

And you got this training, didn't you?---Yes.

And where the intent is inappropriate a gift or benefit should not be accepted. You'd, you'd agree wouldn't you that, that if you, if you had considered it at the time that Mr Goldin prevailed upon you to give him your home address that a loyalty programme which involved \$50 vouchers was inappropriate as you've said?---Yes.

20

And you, and you should have been firmed in your resolve to refuse it, that's so, isn't it?---In hindsight, yes.

Well, I'm asking you about when you sat there and had that conversation with him - - -?---Yes, I should have.

Yes. But even if there - now, pardon me for a moment, can you go to page 266. You see, even if someone could say it was okay to have a \$50 gift do you see the heading down at the foot of the page of "Accumulative Gifts"?
30 Do you see that?---Yes, I see it.

"If an employee receives a series of gifts from one individual or agency even if only of nominal value they must consider whether the receipt of those gifts is an attempt to influence their behaviour." Do you see that?---Yes, I see that.

Now, you'd, you'd, you'd have to agree with me that had you given the \$50 vouchers that sort of consideration and given consideration to the idea that they had been described as some sort of loyalty programme, that it was at
40 least an attempt to influence your behaviour, was it not?---Yes.

And the gift should have been refused?---Should have.

You see, sir, even if you say to the Commissioner as you no doubt do that well, they were pretty good products and I was happy to use them anyway, you understand what I'm saying?---Yes, I understand.

You were, and you, that's what you'd say to me if I asked you, is it not?

---Yes.

This, this whole process was inappropriate to use your words because a loyalty programme of that type was a clear and obvious attempt to influence your behaviour. That's so, isn't it?---Yes.

And with great respect, Mr Nies, all we have to go on in terms of whether or not we can work out whether it did influence your behaviour is your protestation that it didn't. That's so isn't it?---That's correct.

10 And it may well be that someone taking, you know, a calm and objective view could come to the conclusion well it must have. Do you understand what I'm putting to you?---Yeah, I understand.

And do you accept how someone could come to that calm and objective conclusion?---Yes.

All right. Now I'll just take you finally to page 267, a procurement, and you see here it says in accordance with the Code of Conduct procurement employees and employees involved in contract management are prohibited from receiving gifts or benefits. Do you see that?---Yes, I do.

20 Now I understand you've given evidence and I'm not challenging it, that your manager had to approve your, your purchases but you were, were you not involved in procurement?---Yes.

Now I think that, just something I finally should ask you about, evidence has been received during the course of the Commission, pardon me, about the fact that you have received some items from, I'll withdraw that. Do you know a Mr Ramachandran from NCH Australia?---I know, I don't know his surname, I know a bloke by the name of Sri from Chemsearch.

30 Okay. An Indian chap?---Yeah, he's got a long name, yeah.

Sorry?

THE COMMISSIONER: He's got a long name?---Yes, yep.

MR CAMPBELL: And has he, do you buy some product from him from time to time?---I used to.

Yes. When did you stop?---2008.

40

Okay, in 2008. And during the time that, during 2007 did he give you some things he might have called promotional items when he came to visit you? ---I never accepted a thing from that man.

All right. Well for instance there's evidence before the Commission, if I can ask you about it so you can answer it, that, that, Commissioner, this will be in volume 9, but could I just ask about it and I'll take you to it later on?

THE COMMISSIONER: Yes.

MR CAMPBELL: There is, in 2007, that is on 20 November, 2007, they're not in any particular order here, that he gave you a duffel bag?---Incorrect.

10 On 9 January, 2008 he gave you a hand trolley?---Incorrect.

And on 24 April, 2008 he gave you two jackets, one called a Stealth jacket and the other called a Cooper jacket?---Was that 2008 he said?

2008?---Well the man's a liar because I was recovering from prostrate operation.

When were you off work for that?---I was off work for eight weeks from 10 April, I was operated on.

20

All right. And certainly when you came back to, supposing for instance he left those jackets at work, just for arguments sake, when you come back were those jackets there? Did you get them?---No, I never got nothing.

But certainly if his evidence is as we understood it, is saying he gave them to you on those dates, you say that's impossible?---It's impossible.

All right. Now has anything happened at work about these things that have been investigated by the Commission?---Not as yet, no.

30

Have you been told something about the possibilities?---I just assumed that that was going to happen, yeah.

What no one in management has spoken to you?---My manager has spoken to, yeah.

And what did he say to you?---He just asked me when he saw it in the press about Momar he come around and discussed it with me and I told him what had happened.

40

That's recently is it?---Well when the first press release - - -

A couple of weeks ago?---Yeah, when they mentioned the City of Sydney Council and Momar, the alarm bells rang with him.

All right. So you don't know what action, if any, might be taken against you in relation to these matters by your employer?---Well senior management, no, I don't know.

All right. I have no further questions, Commissioner.

THE COMMISSIONER: Mr Nies, can I ask, I want to ask you something about the procedure when you order. You decide what you need. Is that right?---Yeah, I go through the stock in my storeroom and I replenish the goods we need.

10 THE COMMISSIONER: And when you make a decision that you need a particular item what do you do?---I get Paul, Paul calls in and I ask him for the prices and I raise the order.

And who's he?---Paul Goldin the representative.

Paul, yes. And you raise the order and then, what do you mean by raising the order, what precisely do you do?---Well, I go into Finance 1 and electronically raise the order.

20 That means print it out?---No, no, no, I then send it electronically to my manager for approval.

Right. And your manager is?---Paul Smithson.

And then how does he approve, what does he do to approve?---Well, he electronically approves it and then it comes back to me to release the order.

30 So what, does he just put in a tick or does he type in approval or something like that?---No, with the system he just goes in and there's an icon there for him to accept.

And does he generally accept?---Yes.

Has he ever not accepted?---No.

So in effect he's a rubber stamp?---I would not say that, he'd check and if I was doing the right thing he would be straight on to me.

40 How would he check?---Well, just the volume of materials I was buying.

What about price?---No, he's never questioned it.

Does he know anything about market price of the goods you ordered?---I couldn't answer that honestly.

So the impression I get is that if you decide to buy the general rule is that the Council buys?---Yes.

Yes, thank you.

MR CAMPBELL: Yes. Just that Finance 1, that's the Council's procurement program, is that correct?---Yes, that's right, Finance 1 is where we raise orders and approve and pay the invoices on.

And also it has information about who are Council approved suppliers and the like, is that so?---Yes, they do have a list of approved suppliers.

10 And at the time we're talking about Momar were on that list as an approved supplier, is that so?---I'm not sure.

All right. Okay.

THE COMMISSIONER: Yes, thank you, Mr Campbell. Mr Naylor.

MR NAYLOR: No questions.

THE COMMISSIONER: No questions.

20

MR CAMPBELL: Mr Nies can be excused, Commissioner?

THE COMMISSIONER: Mr Nies, you may be excused, thank you for your evidence. You may leave the witness box?---Can I leave the court or - - -

Yes, whatever you prefer. You're welcome to stay, you can leave, whatever you wish?---Okay. Thank you very much.

30 **THE WITNESS WITHDREW** **[11.12 am]**

MR CAMPBELL: I see the time, Commissioner.

THE COMMISSIONER: Yes, we'll adjourn until 11.30.

MR CAMPBELL: If it please the court.

40 **SHORT ADJOURNMENT** **[11.12 am]**

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Commissioner, I call Jeff Duncum, D-U-N-C-U-M. Come forward please, sir. Mr Naylor appears, Commissioner.

MR NAYLOR: I appear, Commissioner, for Mr Duncum.

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

MR NAYLOR: Yes, thank you, Commissioner.

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

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

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

MR DUNCUM: Yes.

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

MR DUNCUM: Under oath.

THE COMMISSIONER: Swear Mr Duncum in, please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Duncum, would you please state your full name?---Jeffrey Peter Duncum.

10

And are you an employee of the Council of the City of Sydney?---Yes.

Have you been employed by the Council since 28 June, 1995?---No. I started employment with the city council, City of Sydney Council in 1987. There was a time when they had boundary changes were made and I went to South Sydney Council. I then actually had a year off in the year 2000 and worked in an Aboriginal community in the Kimberleys and I returned to South Sydney Council after that and then back to the City of Sydney Council when the boundary changes occurred again in 2004.

20

2004 were your last employment with - the commencement of your current employment with the Council of the City of Sydney?---Yeah, they, the, the employment was continuous, regarded as continuous but yeah, I came back officially under the City of Sydney banner in 2004.

Oh, right. And I think since 5 December, 2005 - and I hope I have this date correct, that you have been the parks supervisor for the eastern region? ---Yes, that's correct.

30

Oh, right. And as the, as the parks supervisor you have some responsibility for purchases, is that correct?---That's correct.

And what responsibility do you have?---For purchasing it's quite varied. With our division obviously being in the parks predominantly it's to do with plants and landscape materials but we also require cleaning products for bins and vehicles and all that kind of thing as well.

40

Do you have a delegation authorising you to make purchases in your own right?---I only ever raised requisitions and those are then approved by my manager.

All right.

THE COMMISSIONER: Who's your manager?---Mr Gary Barnett.

MR CAMPBELL: Commissioner, behind folder 96, I'm sorry, tab 96 of folder 17, commencing at page 29, is a statement that Mr Duncum made in

response to a section 21 notice. Mr Duncum, you say that the contents of your statement is true and correct. Is that so?---Yes, it was at the time, yes.

Is there anything, I know there is some additional information you want to provide and I will get to that. Is there anything you want to add to or subtract from the statement?---Nothing that hasn't been done by Mr Naylor, I believe.

10 All right. Okay. Now the, I think that we've – you've explained in your statement your relationship with Mr Paul Goldin of Momar Australia?
---Yes.

And do you understand that from the Commission's inquiries we have obtained records from Momar Australia and you heard me asking Mr Nies about these matters when he was here?---Yes.

20 And we've, we've totalled up what their records say you received. Now just before I ask you about that, could you look at page 95, tab 95, page 21 of that folder in front of you. And you'll see as I explained to Mr Nies, a spreadsheet that the Commission officers have prepared extrapolating information from Momar's records relevant to you and can I apologise for putting your name wrong, your name down wrongly, it says Jeff Duncan and it should be Duncum?---Yes.

But without stating your address, your address is subject to a suppression order, is that your correct address?---Yes.

30 All right. Now do you accept that, and as I explained to Mr Nies firstly, the way this sheet works is that for each voucher we enter a date on which it was dispatched by Momar Australia. Wherever there are two or more, such as for 16 October, 2008, we say that Momar's records indicate that you received two vouchers at that time. Do you understand that?---Yes.

And for instance if you look at page 22 you will see that there are, and 23, you will see that there are in fact I think from my recollection seven entries for 18 June, 2009 which indicates that the records say that you received seven \$50 vouchers for that date. Do you see that?---Yes, I can see that.

40 MR NAYLOR: It's not quite correct, there were eight entries.

THE COMMISSIONER: All right. It's been dealt with.

MR CAMPBELL: Oh, there are eight. Well my arithmetic is always suspect, Commissioner. It's, five, three for the 18th of the 6th, oh, I see, I beg your pardon, I do beg your pardon, it's my, I think it's the 4th and the 8th of the 6th and then three for the 18th. I'm grateful to Mr Naylor and to Mr Grainger for pointing that out to me. In any event there were occasions when you received multiple vouchers?---That's correct.

All right. And we calculate that the vouchers you received total \$1,250. Would you accept that figure?---No, I don't accept that.

What do you say that the total was?---\$900.

Okay. Did you keep a record of every voucher you received?---No, I didn't.

10 You'd agree with me wouldn't you that given that these were received over a period of in excess of two years, it would be hard to rely upon your precise recollection as to the amount of and number of them. You'd agree?---Yes.

But in any event your best calculation is 900?---Yes.

All right. The - I'm going to ask you about these things but were they sent to your home address?---I believe the first one was given to me personally - - -

20 Yeah?--- - - - and, and after that they were sent to my home address and towards the end via registered mail that I had to pick them up at a post office.

All right. And - - -

THE COMMISSIONER: Sorry, was it a post office? Was it your own postal address?---No, the ones that came to my home's my postal address.

Was it, was it your post box?---No.

30 Whose post box was it?---I just had a card left at - - -

I beg your pardon?---I just had a card left in the letterbox saying that I needed to pick up an item from a local post office.

All right.

40 MR CAMPBELL: Now, how - you've, you've explained some of this in your, in your, in your statement that I asked you about a moment ago but how did it come up that, that he, that Mr Goldin first handed you one of those vouchers?---After the initial order that I'd made, the first time I'd met him and the first time I'd ordered from him he had, had the card with him, the voucher with him and said this is, this is, he described it as a loyalty programme and handed it to me.

What did you say to him when he did that?---I was actually pretty surprised, pretty shocked. I did take it, I, I, yeah, I certainly wasn't expecting it and he hadn't said anything about you will get this if you order from me but I was shocked and I, and I did take it.

Yeah. When he called it a, a loyalty programme it obviously implied that he wanted repeat business from you?---Yeah.

And did you understand that there was an implication at that time that if he got the repeat business there might be more of those cards?---Oh, well, I came to that conclusion. I don't know whether I did straight there, there at the time but I did come to that conclusion, yes.

10 Now, like Mr Nies you'd probably say to us, and I'm not questioning your sincerity about this, that the product was, was a quality product and the supplier was reliable?---Yes.

However, you'd accept, wouldn't you, that that loyalty programme rather subverted the purchasing process?---Yes.

Because encouraging loyalty means from the company, the supplying company, don't shop around, just come to us. That's correct, isn't it?
---Yes, yes.

20

Now, I need to ask you this, from the time you became a supervisor you've told us in your statement that you'd had training in the Code of Conduct, yes?---Yes.

And in particular in relation to the gifts and benefits aspect of it?---Yes, there has been.

Now, you heard me read aspects of the current code to Mr Nies?---Yes.

30 You're familiar with that code?---I am, as I said I think in my written statement the first time I read that policy was after being contacted in February. I had had training where it was talked about but I had never read the policy.

Yes, I'll come to that, okay. But the training you'd had was - took the form of a seminar?---Yeah, it was usually in the lunch room with probably 40 to 50 people in there.

40 Someone from HR came along?---Initially there was an external trainer and they would do probably five, six policies in about an hour and a half and that's what they'd call their annual compliance training.

Yes. What you, what you're, what you're telling me is that it was a bit hard to resolve all of the specifics in that kind of format, is that so?---I mean, I'm not, I'm not trying to cover anything up. I certainly knew the basics of their Code of Conduct and everything but it was fairly brief, yes.

I will, I will, I will come, come, come back to, to what you thought about it. All, all I'm trying to get from you to understand your evidence is are you saying that that type of training covered a lot of ground in a short space of time?---Yes.

10 And, and, and that in that environment was it hard to absorb all of the detail that you had to absorb to be fully conversant with each and every policy discussed?---Yes, and I would usually have my phone on and would take phone calls through that as well and leave the room and come back so that was really how it worked.

Your supervisory duties meant you had to be available to your staff to get directions and the like?---Yes.

All right. But when Mr Goldin handed you the first voucher, I mean, did the training you'd received spring to mind?---Yes.

20 And as you said to the Commissioner very frankly, Mr Duncum, right at that point in time you knew it was wrong?---Yes, yes.

I'm going to ask you about how it developed but let me just ask you this question please. I mean, you'd agree with me wouldn't you, sir, that these vouchers for Coles Myer can be readily redeemed in a large number of shops?---Yes.

And really in effect it was as though he'd handed you a \$50 note?---Yes.

Yes. And you would accept that was just plain wrong - - -?---Totally.

30 - - - whatever the policy was?---Yes.

Yes. Why did you take it?---I've asked myself that many times. I don't, I don't know, I can't, I was - - -

THE COMMISSIONER: Did you need the money, Mr Duncum?---Who ever have enough money, but look, I wasn't taking it because I was in desperate need of money, no, Paul - - -

40 You were obviously tempted?---Yes, yes. Paul Goldin was, he was, you know, quite persuasive, very - - -

Persuasive about what?---Just with his whole nature, extremely friendly and wanting to get down to, you know, personal, I had photos of my kids on the walls so asking me about that and, you know, very, obviously trying to get to a very personal type connection.

MR CAMPBELL: Did you feel that he was building up a personal relationship with you rather than a purely business one?---I probably didn't at first but, yes, definitely that's what has happened.

Your Honour will recall the evidence about Gears of Selling.

THE COMMISSIONER: Yes.

10 MR CAMPBELL: Now, looking back on it did you think from that point of view that he subjected you to a process of grooming in relation to this?---I do, yes.

Now, in any event, and you've mentioned kids and you're married and I understand that you didn't take it because you felt you had a desperate need for the money but I guess an extra 50 or 100 or \$150 every now and then comes in handy to a family man?---Yes.

20 Now, the situation in relation to that was at some stage he got your address from you, is that so?---Yes.

Did he just ask you for it straight out?---Initially it was all, you know, in his friendly manner, "Where do you live?" "That's not far from me" and that sort of thing but then, yes, he did outright ask, he knew the road that I lived on when I just said I live in , and then he knew the road and he did ask me the number, yes.

Yes. All right. But you've told us that after a period of approximately 12 months you decided to speak to him about this - - -?---Yes.

30 - - - because you had never felt right about it?---That's correct.

So what did you say to him?---When he said, after I'd placed another order and he'd said that, you know, "I'll send some vouchers" and I've said, "I don't want them, I don't want them anymore, I'm not interested in them, I'm not buying the products for the vouchers." And his reply was along the lines of, "Don't be silly, this is, you know, this is how the company works, this is the loyalty program and everyone takes them, everyone gets them." You know, words to that sort of effect.

40 Yes. So he reassured you, tried to reassure you anyway?---Yes.

Yes. And he tried to persuade you what was happening was in no way wrong?---Yes.

Everyone does it, is that correct?---Pretty much, yes.

Yes. All right. Were you reassured by that?---No.

You've said in your statement at page 30 of folder 17 that after that conversation the vouchers seemed to dry up, is that so?---There was a period when they, they didn't come after, after I placed an order and no vouchers came, yes.

All right. And did you feel some sense of relief about that?---Yes.

But did they start again?---Yes.

10 Did you say anything that indicated to him that you'd be interested in receiving them again?---No, Paul actually asked me had I received any and I said no, I said, "I thought you had stopped sending them." And he said, "No, no, I sent them, they must've gone missing." And I said, "Well, you know, don't worry about sending them, I don't", you know, went through it again that I didn't want them.

And, and in fact they came didn't they?---Yes.

It started again?---Yes.

20

And, and you've said in your statement that, that, that - I withdraw that. They were still going to your home?---I think at that point after there was the period where some appeared to have gone missing that that's when it started getting sent via registered mail - - -

Post, yeah?--- - - - to the post office.

So you, you, you went and you, you went and collected those but you, but you took them into work, is that correct?---Yes.

30

And you kept them?---Yes.

And indeed when the, when the Commission came to talk to you you, you surrendered those 10 vouchers to the Commission's officers?---Yes.

Because you - now why did, why did you keep them in your drawer or wherever you kept them?---Oh, I kept them in a locker, a locker at work because I just, I didn't want to spend them, I knew that I shouldn't have spent the first ones and I didn't want to spend any further.

40

I can tell you, Commissioner, we, we have those 10 vouchers in our possession. Why, why didn't you speak up, Mr Duncum?---I felt that I'd obviously done the wrong thing and that I'd already spent some, speaking up would jeopardise my position. I was aware other people within the council used Paul. I had only assumed that they were probably getting the same sorts of things and that if I spoke up that would probably cause them to be found out as well so I, I was I guess not wanting to be the one that would make that happen.

You didn't want to be, to use an expression that's sometimes used in this context, the whistleblower?---Yes.

And did you feel trapped in the situation in which you were in?---Yes.

And quite apart from feeling you'd gone, from what you've said I gather the impression you're saying that personally you felt you'd gone too far down the track to turn back?---Yes.

10

Is that correct?---Yes.

But also in the - may I say with no disrespect in the, in the great Australian way you didn't want to dob in any of your mates by implication?---Yes.

Is that correct? So now when you were doing the procurement aspects of your work did you deal with companies apart from Momar?---Yes.

20

And did any other salespeople seek to engage with you in this way?---No.

And did it affect how you felt about their products?---About the other company?

Yeah, about the other companies?---No.

You see, I read some things - I withdraw that. One of the problems with this, you'd accept wouldn't you, Mr Duncum, is that it creates the perception of, of corruption?---Yes.

30

It creates the perception of fraudulent conduct. You understand that?---Yes, yes.

And that was part of your concern, was it not?---Yes.

And you, although - it's obvious from what you're telling us now, sir, that, that you obvious struggled with your conscience for a long time?---Yes.

40

And, and indeed, as you've, as you've said, you - would you say that keeping the vouchers was given the bind that you've told us you were in was the best you thought you could do to avoid going further down that path?---Yes.

THE COMMISSIONER: Mr Campbell, are you dealing with the electrical items?

MR CAMPBELL: I'm going to do it now, Commissioner. Now - but before I do that, Commissioner, could I - I mentioned at the outset,

Mr Duncum, that you have, that, that you have, you have made - you've provided some supplementary material to us, is that correct?---Yes.

And in particular your legal advisers have taken you through some of the material that's been tendered from the records of NCH Australia Pty Limited. Is that correct?---Yes.

10 Now, the - pardon me for a moment, Commissioner. You understand, well, I withdraw that. Apart from - before I get to NCH Australia could I just ask you this, this about, about Mr, Mr Goldin. Did he provide you with anything apart from the vouchers?---Yes.

What did he give to you?---The first item I think was a cordless screwdriver. There was a DVD, portable DVD player, a small portable DVD player. A car GPS and a Karcher small high pressure water cleaner type thing. And now I know that that's all that there was from him.

20 All right. And did, did you - what did you do with those items? You've told us at page 30 that he called these promotional items. Is that right? ---Yes.

THE COMMISSIONER: And were they sent to your home?---Some were, some were given personally, some were sent - - -

At work?---Yes. And some were sent to home.

30 MR CAMPBELL: What did you do with the ones that, well firstly, what, you've said this in your statement at page 30, having described the goods as you just have now, all these items are still in their packaging locked in the storeroom?---Yes.

Did you open any of them, sir?---I had opened some of the boxes and looked at the items, but, yeah, I just left them in their packaging and - - -

Why did you do that?---Why did I open them or - - -

No, why did you decide that you weren't going to use them?---Oh, I just, I knew that I shouldn't have them and I wasn't comfortable using them.

40 And when did you take them into work? Did you take them into work all at the one time?---No, they came at different times, so they went into work at different times.

And have they ever been used at work? You've said they're still in their packaging - - -?---No.

- - - just to make it clear, you've never even used them at work?---No.

And you've surrendered those to the Commission. Is that so?---Yes.

All right. Now can I ask you about NCH Australia Pty Limited. Did you, did you have much dealings with them?---I never knew them as NCH, I've only found that out in the last week or so. I only ever knew them as Chemsearch.

Chemsearch?---And possibly four to five orders from that company.

10 Do you remember the name of the salesman?---I know him to be Sri.

Sri, if I said the name Sri Ramachandran, would that ring any bells with you?---Yes, yes. I wasn't aware of his surname, but, yes, Sri.

All right. Your lawyers have shown you the information contained that folder 9, tab 46, page 299. It's okay, sir, it's not in front of you at the moment. But they've shown you a list of things said to have been given to you. Is that so?---They've talked to me about a list of things, yes.

20 All right. And you've, would you look at, you've provided them with – would you look at this letter that you'll be shown by the Commissioner's associate, and just look at points 1, 2, 3. Now have you read those?---Yes.

And the, they are, I'm sorry, I've lost my train of thought. Let me ask you the question, that's what you say about the matters said to have been give to you. Is that correct?---Yes, I never received items at point 1 and point 2.

You did receive the Sidchrome socket set?---Yes. That came with the, to the first order I ever did with that company.

30 Yes?---And after I had made the order Sri commented to the effect of, "That qualifies for a socket set" or something like that. And that was delivered to the depot and it's in the depot storeroom with the other tools.

All right. I suppose the Council of City of Sydney had socket sets?---We didn't actually have one that – it was only a very small one with all the, the smallest, I had bigger, larger ones but not, not one like that.

Okay. So it was in fact useful at work, is that so?---Yes. Yes.

40 All right. Okay. Yes, I tender the original of the letter of 10 October, 2011. It also, Commissioner, has attached to it a letter of 15 September, 2011 and a printout of an email exchange which I'll tender all at the one time if I may.

THE COMMISSIONER: Well, the letter of 10 October, 2011 from Mr McIlwaine to this Commission will be Exhibit 41A.

**#EXHIBIT 41A - LETTER FROM MR MCILWAIN TO ICAC
DATED 10 OCTOBER 2011**

THE COMMISSIONER: And the letter from Mr Lewis to the Commission of 15 September, 2011 will be Exhibit 41B.

10 **#EXHIBIT 41B - LETTER FROM MR LEWIS TO ICAC DATED 15
SEPTEMBER 2011**

THE COMMISSIONER: And the exchange of emails commencing with an email from Mr Duncum of 21 December, 2007 will be Exhibit 41C.

**#EXHIBIT 41C - EXCHANGE OF EMAILS COMMENCING WITH
EMAIL FROM MR JEFF DUNCUM DATED 21 DECEMBER 2007**

20

MR CAMPBELL: Yes, thank you. Commissioner, I have an electronic of the exchange of emails and I'd ask if your Associate could put that before Mr Duncum. Mr Duncum, you said at paragraph 6, page 29, tab 96, folder 17 that you have not made any entries in the Council of City Gift Register. You're anxious to be entirely frank with the Commission and so you've searched your recollection and found evidence of one entry you did make, is that so?---Yes. Yes.

30

And that's what that email exchange establishes?---Yes.

It's implicit in what you've said anyway that you were well aware of the existence of the register, is it not?---At that time in 2007?

Yes?---Yes, I knew there was a register, I never had anything to do with it, but I knew there was a register.

You'd appreciate, wouldn't you, that producing those emails could cast you in a bad light, don't you?---Yes. Yes.

40

Because it establishes that you made a decision on one occasion to register something, a carton of beer - - -?---Yes.

- - - but on all these other occasions you made a conscious decision not to?
---Yes.

Well, what do you say about that?---I just, I don't really know what to say, I, I know that by producing this it did show that obviously I had some knowledge of the process in the past and it was more that I knew I had said

no to the question 6 that was sent to me in February that I hadn't ever put anything on the register and then the more I sort of thought about this email I hadn't physically ever taken anything or signed any register but then in just remembering about this email made me wonder whether in fact that it had been put on which clearly it hadn't been put on on my behalf and I just wanted to straighten that point out, that was all.

You wanted to set the record straight?---Yes.

10 All right. You understand that the evidence about these gifts from Chemsearch is in?---Yes.

And I have to ask you this question, that is, are you sure that you're not mistaken about the delivery of those gifts?---I'm, I'm sure that I never had any discussion with Sri about any type of promotional, wealthy, all the terms that the Momar salesmen use, there was never any discussion about that, if you want me to talk about the Teac DVD now, I don't know whether you've got a question for that later but - - -

20 Is there something you want to say about that?---Just that it was, that was at the depot when I returned from annual leave on one occasion and it was in a courier bag with my name on it, it had no details of sender or who it was from and I had no idea who it was from, I just assumed it must've been from Momar because he was the only person I knew that had ever sent anything like that or given anything like that.

Okay. If that could be returned to me. I have no further questions, Commissioner.

30 THE COMMISSIONER: Yes. Mr Naylor?

MR NAYLOR: No questions, thank you, Commissioner.

THE COMMISSIONER: All right. Mr Duncum, thank you for your evidence, you may be excused?---Thank you.

THE WITNESS WITHDREW

[12.06 pm]

40

MR CAMPBELL: Commissioner, I see that Ms Traill is in court. Would it be convenient to conclude the evidence of Mr Lapham?

THE COMMISSIONER: Yes. Mr Lapham.

MR CAMPBELL: I don't see him in court at the moment, in the hearing room at the moment. Here he is. Come forward please, Mr Lapham.

THE COMMISSIONER: Won't you sit down, Mr Lapham. Mr Lapham, did you swear an oath before?---Yes, I did.

You did?

MR CAMPBELL: Affirmation, Commissioner.

10

THE COMMISSIONER: Affirm.

MR CAMPBELL: I beg your pardon, that's wrong page, Commissioner. It was an oath, I beg your pardon.

THE COMMISSIONER: You're still under the oath that you - - -?---Yes.

And the section 38 order that was made concerning you still applies?---Yes.

20

Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

THE WITNESS: Can I just say something before we go ahead?

MR CAMPBELL: What do you want to say?---I'd just like to say when you said that I left the Council because of ICAC I'd just like to say that there's documentation which you guys know about anyway.

30

There's a document, sir, is that to explain why you left the Council?---Yes.

Is that what you're saying to me?---Yes, one of the reasons.

Well, if you produce that document – may I have access to it, Commissioner?

THE COMMISSIONER: Yes.

40

MR CAMPBELL: This is a photocopied document, is that right, sir?---Yes.

Well, perhaps I'll just hand this to Ms Lee and she can look at it while I ask you?---Yes.

You say that you were thinking of resigning before 13 July because of some incident not related to this inquiry, is that what you're saying?---That's correct (not transcribable).

And you want to say, do you, that - - -?---Just, I'm sorry, just, just for the record.

You want to say, do you, that it was about an Industrial Relations matter you're not happy in relation to?---Yes, that's correct.

And you weren't happy how it was handled, is that correct?---Yes.

And that that's why you resigned, is that so?---Yes.

10

And you'll agree with me though, won't you, that - I'll withdraw that. Is this correct, however, that there's really no coincidence about the timing of your resignation was there?---No, it was two, two weeks before - I had a meeting with HR and told them I'm done, I've had enough so - - -

THE COMMISSIONER: Did you resign at least partly because of the ICAC investigation, did that influence you?---Not, not 100 per cent.

No, I'm not saying that?---No.

20

I'm asking you whether it was part of it?---It had a little bit of influence on the whole (not transcribable).

It was part of the problem?---Yes.

MR CAMPBELL: I mean, the ICAC investigation would probably account for the timing of your resignation, would that be correct?---Yes and no.

30

Well, I mean, the other issue had been bubbling along for a while, is that right?---Yes.

And 13 July was the day after you had the clandestine meeting with Mr Howard and the day before the ICAC officers came to talk to you, is that fair?---Yes.

And you, and you didn't give the, the period of notice to which your, your employer was entitled, did you?---No, that's correct.

40

Right. And what you said in your letter of resignation was "Because of confidential reasons I am not providing two weeks' notice." That's so, isn't it?---That's right.

And did the confidential reasons relate either wholly or in part to the impending ICAC interview?---No, not correct.

Are you sure about that?---Yes, because I got moved.

I didn't hear what you said, sorry?---I, I, I was moved from water and sewerage out to the MWF.

To where?---To the material waste facility.

I see. Well, why would that reason be confidential?---Oh, no, that was just, just an array of things.

10 I see. All right. One of which was ICAC, is that fair?---No, but part of.

All right. Well, look, I think when we left, when we, when we left off on, on Friday I was asking you about some other goods concerning Chemsearch - - -?---Yeah.

- - - including a, a Makita radio that Chemsearch's records suggest should have been delivered to you by Ms Verdeyen. Do you remember that?
---Yeah, yeah.

20 Do you remember the question?---I remember that, yes.

And you were adamant that you never, ever saw any of those goods?---No.

And - all right. And if, if somebody says that they were delivered to you then your answer is no, they were not?---Yes, that's correct.

30 All right. Do you remember that I asked, was asking you on Friday about whether you'd ever had a discussion with Ms Verdeyen about these promotional items that you did receive before placing an order. Do you recall that?---Yes.

And you told me that there was never any such discussion. Do you remember that evidence?---Can you say that again?

You - when I asked you whether you'd ever had a discussion with Ms Verdeyen about the availability of promotional items that you might become entitled to from Chemsearch you said you'd never had a discussion with her about the promotional items before placing an order?---Yeah.

40 Do you remember giving that evidence?---Yes.

Now was that evidence?---Yes.

Now, was that evidence the truth?---Yes.

All right. Now, Commissioner, could I, could I ask that the, that the witness be shown folder 29, tab 161, tab 161. Sir, could you turn to page 6 behind that tab?---Oh, there's nothing, nothing in here.

THE COMMISSIONER: There's nothing here either.

MR CAMPBELL: Oh, I beg your pardon. Commissioner, could the - - -

THE COMMISSIONER: Are we looking at the right - is it 29?

MR CAMPBELL: We're looking at the right folder but we've tendered that, the contents of it separately and it's Exhibit, it's Exhibit 35, Commissioner.

10

THE COMMISSIONER: Yes.

MR CAMPBELL: Do you have a working copy of that, Commissioner. Do you have a working copy, Commissioner.

THE COMMISSIONER: I'm sorry, I beg your pardon.

MR CAMPBELL: You've got a working copy?

20 THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: All right. Sir, can you turn to page 6, have you got that? ---Yes.

You see that's an email from Ms Verdeyen to you?---Yes.

You see that. And that's, that's, she's arranging to come to see you, you see that?---Yes.

30 And, and she says at the conclusion of that email, "PS, I have a promotion running that you might like." Do you see that? "That you may like"? ---Yes.

Well, that's certainly her raising with you the idea of a promotion before you've placed the next order with her. That's so, isn't it?---Yes.

40 Now - and if you look at the, at, at - yes, all right. Now, could I - pardon me, Commissioner. Could I ask you to look at page 17. You'll see that there she's giving you a reminder of the type of products you've previously ordered, do you agree with that?---Yes.

And you'll - now, just turn over to page 26 if you would, sir?---Yes.

And you'll see that at the bottom of that page is a, is a, is, is an email sent by you to Ms Verdeyen of 14 October, 2010, do you see that?---Yes.

Now, do you remember writing this email?---Not really but yeah, but obviously I've, I've sent it.

Yeah. And, and looking at that, you, you will, you will see at the foot of that page it, it says, the line, the last line on the page starts off total, do you see that?---Total?

Total, there's an equals sign but required for each order is \$7,000 plus - - -?
---Yes.

- - - to qualify for each TV, do you see that?---Yes.

10

Therefore this above order could be split in two to get two TV's, do you see that?---Yes.

Now, is that something she told you?---Well, obviously by the email, yes.

And that's, and that's something which, which you have incorporated into your email to her telling her what, what, what you had in mind ordering, that's so, isn't it?---That's correct.

20

Then if we look at the top email on page 26 which seems to be her response from 15 October, 2010, do you see that?---Yes.

You see she says, "Prices all done below, the first order would cover the phone." That's, that's, that's the total of around 11,600, do you see that?
---Yes.

And, and "the second would be split into two to cover two TV's", do you see that?---Yes.

30

And then she tells you the amount to qualify for each promotion is and she sets it out, do you see that?---Yes.

Now, all of that correspondence took place before you'd actually placed the orders the subject of the emails, that's correct, isn't it?---Yeah.

All right. Because we know that with certainty because Ms Verdeyen is saying that, that she needs to have the three purchase order numbers, do you see that?---Yeah.

40

So that your earlier evidence before the Commissioner on Friday was incorrect, would you agree with that?---Well, conversation wise, email, obviously email, I got an email, not a conversation.

It amounts to the - - -?---But, yeah, it amounts to the same thing.

I mean, an email is an instantaneous form of communication, is it not?
---That's correct.

Just as, just as much as a conversation is it not?---Yeah, but splitting, splitting the order is not the - because after Friday, I went home, had, had a think about it. The reason - because in the paper I read the, you know, the 11,000 and the 7,000, right, and the reason why I split that order is on paper here so I'd, I'd like to give that to somebody that (not transcribable)

Well just before I ask you to produce that, I want to ask you a couple more questions about this. The first thing I want to ask you about is you went home and read something about something that happened in the
10 Commission. Is that right?---In the paper.

In the local paper up at home?---Oh, in the Telegraph or wherever.

And did you read something about evidence Ms Verdeyen had given about these matters?---No. All I remember is that or it might have been when I was sitting in here about splitting an order.

Yes, so you went home and thought about it over the weekend. Is that right?---Yeah, correct.
20

Yes. And you felt you better come back today and, and change the evidence you'd given the other day?---No, no, I'm not changing the evidence.

Oh, I see. Well we can see that the emails between you and Ms Verdeyen that I've taken you to clearly show a discussion between you and her by way of email involving the suggestion on one part and the other that an order could be split for the purpose of qualifying for two TV's. That's so isn't it?---That's correct.

30 So the evidence you gave on Friday is incorrect. That's so isn't it?---Well -
- -

That's so isn't it?---Not, well it must be, yeah.

And when you came along to give evidence before the Commissioner on Friday, the evidence you wished to give was that you had nothing to do with asking for these promotions, they just showed up after you'd placed the order. That's so isn't it?---Yeah.

40 The evidence you wished to give that you never had anything to do with splitting orders in order to qualify for promotional items. That's so isn't it?
---(NO AUDIBLE REPLY).

And you wanted to give that evidence because you wanted to try and tell the Commission that you never had anything to do with wrongful conduct in ordering things. That's right isn't it? That was your motive wasn't it?
---Yeah, that's correct.

Yes. And, and that's because you fully appreciate that placing orders on the basis that you can qualify for a valuable piece of consumer equipment is corrupt. That's right isn't it?---Yep.

Yes. And looking at these emails now you have to admit that the way you dealt with Ms Verdeyen was corruption in the execution of your duties as a public official. That's correct isn't it?---No, it's not correct.

10 Well if splitting your orders to qualify for - - -?---Can I just say something.

Can I ask a question, please sir? That's why you're here?---Yeah.

You've already agreed with me, and I'll come to that, you've already agreed with me haven't you that, that splitting the orders to qualify for three items was a form of corruption haven't you? You've told me that not two minutes ago. That's correct isn't it?---What splitting the order?

20 Just answer my question. You've agreed with me two minutes ago that splitting the order in the knowledge that you could get three valuable items was corrupt conduct haven't you?---(NO AUDIBLE REPLY)

Mr Lapham, I insist upon you answering my question. Do you understand me?---Yeah, I do understand you.

Well please answer it?---Yeah, I will. But - - -

30 THE COMMISSIONER: Did you say, just answer the question. Did you say a couple of minutes ago that splitting the order in order to qualify for the three valuable - - -?---No, I didn't say to qualify for three valuable items. I said there is a reason why I split the order. Is that what I said?

Well, it's not my recollection.

MR CAMPBELL: Okay. Well I think the witness is declining to answer my question, Commissioner, but - - -

THE COMMISSIONER: Yes.

40 MR CAMPBELL: - - - are you, are you declining to answer the question because you don't wish to admit to what is obvious to every ordinary person in this court?---No I don't, well if I said that, I said it.

And you said it because it was true. That's so isn't it?---(NO AUDIBLE REPLY)

Answer my question, you said it because it was true. That's so isn't it? ---With a reason.

Well answer my question. I'll come to your bit of paper. You said that because it was true didn't you?---Yeah.

Okay. We'll deal with my next proposition before I come to your piece of paper which is that your conduct in relation to these transactions was an example of corruption by a public official in the discharge of his duties. That's correct isn't it?---Yep.

10 Now you want to produce a bit of paper?---Yeah, I actually - - -

I'll ask the Commissioner to have it received by the Commission and I'll ask for access to it. May I have access to it, Commissioner?

THE COMMISSIONER: Yes.

MR CAMPBELL: Thank you.

20 THE COMMISSIONER: Have you seen this Ms Traill?---No, your Honour.

MR CAMPBELL: So you've produced to the Commission a five page document which is giving an explanation for splitting orders. Is that correct?---That's correct.

The reason. Well I suppose I feel bound, Commissioner, to tender it as - - -

THE COMMISSIONER: I suppose that, I think that it would be appropriate for Ms Traill to look at it.

30 MR CAMPBELL: Yes.

THE COMMISSIONER: And I think that it can be dealt with after lunch. And then I suggest that unless you have other questions for Mr Lapham, he should be excused from the witness box until the next witness finishes and then we'll come back and Ms Traill can decide whether, Ms Traill together in consultation with Mr Lapham can decide whether that document should go in.

40 MR CAMPBELL: Ms Traill appears for Ms Verdeyen, Commissioner.

THE COMMISSIONER: Oh I see, I beg your pardon. I forgot. I'm sorry.

MR CAMPBELL: Mr Lapham is unrepresented.

THE COMMISSIONER: You're unrepresented?---Yes.

I'm sorry.

MR CAMPBELL: But perhaps given - - -?---Well can I read it out?

No sir, you can't. But we will take up with respect the Commissioner's suggestion, we'll ask you to wait. What time is your plane home tonight?
---6.00.

I'll, Ms Traill, who appears for Ms Verdeyen, has (not transcribable) by this evidence. We'll have a chance to consider it.

10 THE COMMISSIONER: That's got nothing to do with - - -

MR CAMPBELL: Well it may not, but she should make that decision. And I'll have a chance to read the five pages you've handed to me and I can ask you some further questions about it after 2.00. Is that okay?---Yes.

Thank you.

20 THE COMMISSIONER: All right. I think what you should do is leave the witness box, Mr Lapham and if you wouldn't mind coming back at 2 o'clock, please?---2 o'clock?

Yes?---Okay.

THE WITNESS WITHDREW

[12:26pm]

30 MR CAMPBELL: We'll return to the Council of City of Sydney, Commissioner and I call Mr Roger Martin. Could Ms Traill be excused until 2.00?

THE COMMISSIONER: Yes. Copies are being made of that document.

MR CAMPBELL: Yes, thank you. Sorry, Mr Martin.

MR MARTIN: No, you're right.

THE COMMISSIONER: Are you represented?

40 MR CAMPBELL: Mr Naylor appears - - -

MR NAYLOR: Yes, I appear for Mr Martin, if it please the Commissioner.

THE COMMISSIONER: Are you asking me to appear?

MR NAYLOR: Yes, please, sir.

THE COMMISSIONER: Yes, you have leave.

MR NAYLOR: And I'd ask you, Commissioner, I would ask you to, pursuant to section 38 order.

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

10

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

20

THE COMMISSIONER: Mr Martin, 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 MARTIN: Yes, I do.

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

30

MR MARTIN: Under oath.

THE COMMISSIONER: Yes, would you swear Mr Martin in, please.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Martin, would you – is your full name Roger Martin?---Edwin Roger Martin.

10 Edwin Roger Martin. Thank you, sir. And are you an employee of the Council of the City of Sydney?---That's correct.

Have you been employed by that council since 28 June, 1995?---That's correct, yeah.

And I think you had a four month break in 2006?---Yep.

And since 23 October, 2006 you have been employed as a, as a team leader in the civil maintenance section. Is that correct?---That's correct.

20 Is that in the eastern region as well?---East, yeah.

Yes. All right. At one stage you were the acting manager?---Yep.

Is that still the case?---That's, yeah, that's correct.

All right. Okay. Now you've provided information to the Commission, which Commissioner is in volume 17 at tab 98 in response to questions that you were asked under section 21 of the Act. Is that correct?---That's correct, yeah.

30 And in answering those questions, you had the benefit of legal advice. Is that correct?---That's correct.

Now, could I ask you, sir, to look at what's behind – I withdraw that. Is your statement contained in pages 40 to 42 of the material behind tab 98? Have you got it there, Mr Martin?---Yes. Yes, I do, yes.

40 All right. Now, you understand – you've been in court today haven't you, in the hearing room today?---Yes, I have. I've been outside, sorry.

You haven't been sitting here to hear the other men give evidence?---No.

All right. Well, would you look behind tab 97. You, as it were, Mr Martin, admit to receiving gift vouchers from Momar Australia Pty Limited, is that correct?---That's correct.

If you look behind tab 97 you'll see that we have prepared from the records of Momar Australia a spreadsheet relating to the vouchers that they say they sent to you?---Yes.

Do you see on page 33 there's a series of dates?---32.

Sorry?---Yes, 33, yes.

10 Yes. And their records show that you received or sent seven of these vouchers, do you see that?---Yes.

Does that accord with your recollection?---I sent about ten I think but, yes, I was, I didn't take count to be honest so I put down what I thought I received.

Yes, I understand that, but you don't have to – you'd accept that there are at least seven of them?---Yes, I, yes.

20 And each one of them was \$50?---Yes, I do, yes.

Okay. Now, you also accept, do you not, sir, and say that as part of your many roles as a team leader you had a procurement role, is that so?---That's correct.

Because you had a delegation from the Council which entitled you to order goods up to a maximum of \$5,000?---That's correct.

30 Yes. You also accept, don't you, that you have had over the years seminars and training in relation to Council's Code of Conduct?---Code of Conduct, that's correct.

And that you've received a copy of, in more recent times, the specific policy relating to gifts and benefits?---That's correct.

But the Code of Conduct from the time you've been a team leader always included the policy on gifts and benefits, that's so isn't it?---Yes.

40 Well, we've heard evidence – I'll move on, Commissioner. Momar was an organisation that was an accepted or approved supplier to the Council? ---That's correct.

Yes. So you were able to deal with them without anymore ado?---That's correct.

And I think, sir, to be fair to you that you've received a single \$50 voucher on seven, at least seven occasions?---Yes, that's correct.

And you want to say, don't you, as you have said in your statement at page 42, that, and elsewhere, that you thought you could accept these because the vouchers did not exceed \$50?---That's what I thought, yes, but after reading it properly I know it wasn't.

Okay?---So I do agree that what I done was wrong.

That saves me a bit of time?---Yes.

10 And you perhaps, Mr Martin?---Yes.

You'd accept that even though Council's got that doesn't exceed \$50 rule it doesn't apply to people on procurement?---Yes, I've read it wrong, yes, I agree.

Yes. And you - - -?---And they've sent me to ICAC training as well.

Have they?---And that was in March this year and really put it clear what was required.

20

All right. But you'd accept now, Mr Martin, wouldn't you, that a \$50 cash voucher anyway - - -?---I did the wrong thing.

No, that's okay. I'm going to give you that chance to say that but that wasn't what I was going to ask you at the moment?---Sorry.

Giving you a \$50 voucher is just the same as giving you a \$50 note virtually, isn't it?---I didn't take it that way, no.

30 No. Well, look at it from (not transcribable)?---No, I agree, it could, it could be seen that way, yes.

That's right. Because you can go to any number of the shops in the Coles Myer Group - - -?---Yes, that's correct.

Better if I ask the questions then you answer them?---Yes.

And buy whatever you want from the shelves?---Yes.

40 That's so isn't it?---That's correct.

Yes. And it's the case - I'll withdraw that. Did they get posted to your home?---He, he, he started to but I said from day one that I didn't, I didn't really want it and then he sent it home and I said, "Look, I don't want the vouchers." And then he started to bring them to the depot and left them on my desk when I wasn't there and - - -

THE COMMISSIONER: Who's he?---Sorry?

Who is he?---Paul from Momar.

MR CAMPBELL: Is that Mr Paul Goldin?---That's, I don't know his last name, I know him by Paul.

So he wouldn't take no for an answer?---Answer, no.

10 And well, and you finally gave in, is that right?---That's, yes, I did the wrong, as I said I did the wrong thing.

No, no, well, I do want to give you the chance to say that. And you see, did he ever say what he was giving you these vouchers for?---He gave some gifts, firstly, he didn't say they were gifts he said they were promotional, once you brought something they give you a promotional gift which was a couple of drills that I received which I used at the depot, a, a Navman which I use to get around the city and around Eastern Suburbs and a couple of other little things as well, yes, so - - -

20 No, go on, finished?---Yes, I don't know how many gifts he gave but, yes, he did.

Didn't the Council have drills?---We've got some drills but, yes, these come in handy as well, they were little battery drills.

Did you need a Navman to get around the eastern region of the city?
---Around, around some parts I did, yes.

30 All right. Okay. Look, you accept, don't you, that some people might think the amount involved was modest but it was the wrong thing for you to do?
---I, definitely.

Certainly in breach of - - -?---Yes.

- - - the policy?---After reading it properly, yes, it was.

And also, I mean, did he – we've heard some evidence that he referred to it at times as a loyalty program?---No, not to me.

40 Not to you?---He said to me that it was coming from his own pocket, that's how he explained it to me.

All right?---So at no stage did he ever say that to me, no.

Well, you see, in a sense coming from his own pocket makes it worse doesn't it?---Yes.

Don't you agree?---Yes, I, yes.

So a salesman giving you \$50 of his own money in the hope that you'll keep buying from him?---Yes.

And you'd accept, wouldn't you, - - -?---I can see that, yes.

You can see that?---Yes.

10 And you'd accept, wouldn't you, that, you know, in a leadership position - -
-?---I should know, yes, yes.

All right. So what's happened at work? Has anything happened at work about this?---At the moment I haven't told them because I got told not to by the ICAC letter, we got told not, not to tell anybody and even after legal advice they've said no, you've got to abide by that letter.

All right.?---And I wanted to tell Council from day one but I got told not to.

20 All right. So no one at work has spoken to you about these matters then?
---Not yet, no.

It hasn't come out?---I think they know but they just haven't said nothing yet.

All right. Okay. And you went to the – did you get sent to ICAC training?
---Yes, in April this year.

30 Is that how the deal with ICAC senior investigators?---I don't know. I don't know.

What was the content of it?---It was just about buying products, so what, the right thing to do.

All right?---And after that training I, yes, it opened my eyes.

All right. Okay. Well, I mean, your employer hasn't said what its attitude is to this matter?---Not at the moment, no.

40 No. And you still have to face up to that at some stage?---Correct. Yes, that's correct.

All right. Is there anything you'd wish to say in addition to the expression of regret you've made already?---Just that I apologise for what I've done.

I have no further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Patterson.

MR PATTERSON: Yes, just a few, Commissioner, if I may. Mr Martin, just to be clear, are you telling the Commission that you first received ICAC training after - - -?---That's correct.

- - - you received these gifts?---That's correct.

And in your evidence I think you say that you received about ten, ten gift vouchers?---Well, I, yes, I don't keep a copy so when he said seven I, I suppose that's right.

10

We've heard today that there was seven?---Yes, well, that's correct.

And you've said in your statement that at least half of those you did not use for your own personal profit, is that correct?---That's correct, I used it as - yes, we had toolbox tools and I had barbecues and - - -

THE COMMISSIONER: Mr Patterson, it's all in the statement, there's no point in repeating it, it's there.

20 MR PATTERSON: Very well, your Honour.

So just to be clear, at the time that you received - I, I withdraw that. Could I refer you to the document - and I'm not sure what tab card but the letter dated 9 March, 2011 which - - -

THE COMMISSIONER: A letter from whom to whom?

MR PATTERSON: - - - sets out the material that you wish to put to the Commission. Do you have access to that?

30

MR CAMPBELL: That's, that's tab 98, Commissioner - - -

THE COMMISSIONER: Thank you.

MR CAMPBELL: - - - and it's page 40.

THE COMMISSIONER: Thank you.

40 MR PATTERSON: If you could refer to the paragraph numbered 9 at the bottom of the page numbered 41 and then continuing over page 42, if you could just read that?---I understand that why the vouchers were provided was in gratitude of the continuing relationship between Momar and the City of Sydney.

You can just read it to yourself, Mr Martin?---Oh, sorry.

And specifically I direct you to the very final paragraph?---Yeah.

Do you say for the Commissioner today that at the time that you received those gifts - - -

THE COMMISSIONER: Are you leading this evidence?

MR PATTERSON: Yes, your Honour.

THE COMMISSIONER: Well, it has no value to me.

10 MR PATTERSON: If your Honour pleases.

THE COMMISSIONER: If you want to ask a question just don't ask him a leading question. Do you understand what I'm saying?

MR PATTERSON: Yes, yes, Commissioner. It's, it's in evidence, I'm prepared for it to speak for itself.

THE COMMISSIONER: Well, I don't think that - it might be in evidence but I think that Mr Martin now accepts that that's wrong.

20

MR PATTERSON: Well, if I might put it this way. What do you say today about the contents of that final paragraph?---I should have read the policy better to be honest, yeah. I, I, I made a mistake, I should have read the policy better, I didn't. I was under the understanding that it was right but it wasn't and if I read it properly I would have been all right.

So at the time you received these gifts you didn't (not transcribable)

30 THE COMMISSIONER: No, no, that's what not what he said, Mr Patterson. It's at the time he wrote the letter.

MR PATTERSON: Just, just clarify that for the Commission, please, Mr Martin?---At the time I thought it was right but it wasn't right after I read, after the policy properly.

THE COMMISSIONER: At what time?---Sorry?

40 At what time did you think it was right?---When, when I received the gifts but after I got the letter from ICAC in I think February, March I read it properly and I know that I did make a big mistake.

Why did you think it was right at the time you received the gifts?---Oh, I, I, I misread the policy.

When did you read the policy?---Every, every, once a year, once a year.

Why did you read it once a year?---Because that's when we, we, we're supposed to read it.

What, on a particular day, that's policy reading day?---Oh, they, they give you training once a year so that's when I read it.

So you thought that you were - are you really saying that you thought that you were - - -?---I did.

- - - allowed to get \$50 sent to your home?---Not sent to home, no.

10 Weren't they sent to your home?---No. As I said he sent the first one but I told him not to and he, he gave them to me at the depot.

So giving you \$50 at the depot you thought was okay?---It was stupid I know. What I done was, look, no matter what I, it was wrong but if I would have read the policy properly it would have - - -

20 Well, I understand you're saying that now but you're being asked questions (not transcribable)?---Well, I did, after reading the policy I thought that we, I could do it, yes, but after reading it properly I know now, no, I shouldn't have.

All right?---Under no circumstances.

Yeah.

30 MR PATTERSON: Mr Martin, did I hear you to say a few minutes ago that after you told this man Paul not to send things to your home that in fact gift vouchers were left on your desk in your absence?---If I wasn't there, that's correct but when I was there he handed it to me.

No further questions, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: Just a couple of things in reply.

THE COMMISSIONER: Hang on, Mr Campbell.

40 MR CAMPBELL: I beg your pardon.

THE COMMISSIONER: We've got another - Ms McGlinchey you wish to ask some questions?

MR CAMPBELL: I do beg your pardon.

MS McGLINCHEY: Just briefly, Commissioner.

Mr Martin, I appear for Mr Chris Meyers in these proceedings. Is it the case that from about 2007 you were Mr Meyers' supervisor?---That's correct.

All right. And correct me if I'm wrong but I think that you have given evidence that until this year you believed that accepting gifts or the vouchers up to \$50 was acceptable?---Yeah.

10 Do you think that you had conversations with people you've supervised where you've passed on that - - -?---No, never.

You do, do you, would you accept that you had a conversation with Mr Meyers where you - - -?---Not, not saying that that's acceptable, no, but we had training and it was brought up at a training course by an outside contractor that did the training that it was acceptable.

20 THE COMMISSIONER: What, the outside contractor said it was acceptable?---He said that you could, yes. Somebody asked the question, one of the labourers asked the question and he said the way he read it, yes.

He asked what question?---He asked, he asked if, if it's acceptable to receive a gift up to \$50.

And who was the contractor?---I, look, I can't remember now, it's been a, it was a while ago now.

When?---Oh, a couple of years ago.

30 Where?---Council, at, at Woolloomooloo depot. They, they used to bring in a contractor to go through eight or nine policies and everybody sat in, about 45 staff sat in and then they'd tick them off as, yes, they've done that training.

MS McGLINCHEY: Can you recall if Mr Meyers attending that training? ---As far as I know he did, I'm not, I can't be 100 per cent sure but, yeah.

40 All right. Can I suggest to you that in about 2007 - and when I say suggest, can you just tell me when I'm finished - - -?---Yeah.

- - - if you agree or not. You had a conversation with Mr Meyers where he said to you words to the effect, What's the go with these vouchers?---No (not transcribable) no.

No. All right. And if I can just finish, that, that you said to him that it's, it's acceptable up to \$50?---No, no.

Okay. At the training that you've spoken to, that you've spoken about, can you recall there was a conversation about whether it would be acceptable to split a case of beer if that bought the individual bottle of beer under the \$50?
---No, I can't remember that.

Can't remember that?---No.

10 All right. Well, can I suggest to you that the, that there was a, there was general discussion around - - -?---There was a lot of people there.

- - - the whole \$50 issue?---There was, exactly, there was some arguments as well, so yeah.

All right, about - - -?---I can't, I can't, I can't remember.

And whether it was acceptable to split things to bring them in under the \$50, \$50?---I, I don't remember that being said, no.

20 All right. But there was a lot of conversation about the \$50 issue?---Oh, there was a lot, yeah, a lot of the boys ask questions, they do.

All right. Because they were interested not to, not to breach it and they - - -?---Not to be in trouble, yeah, that's correct.

Okay.

THE COMMISSIONER: Were they all doing it?---Sorry? No.

30 So why ask the question?---Sorry, no, no, they weren't, no, sorry. I didn't hear where it come from, no, sorry, no, they weren't sir.

How did they know about?---They were just asking questions to the trainer.

In theory?---In theory, yeah, yeah.

MS McGLINCHEY: I have nothing further, Commissioner.

THE COMMISSIONER: Yes.

40 MR CAMPBELL: Sir, I do have a couple. I have one question by leave, Commissioner and then some re-examination.

THE COMMISSIONER: Yes.

MR CAMPBELL: Thank you, Commissioner, for the leave.

Mr Patterson asked you about paragraph 9 at the top of page 42, you say this in your statement, I considered the vouchers - "I also considered the

vouchers to be a gesture of gratitude for the general customer service I had provided to Momar Australia Pty Limited as a supplier.” Do you see that?
---Yeah, I’ve - yes.

It’s an unusual concept of customer service isn’t it, Mr Martin?---Yeah, yeah, it is.

Normally the supplier provides customer service to the consumer?---Yeah.

10 That’s, that the normal - - -?---(not transcribable) yeah.

You agree?---I was just being polite to him and, yeah.

All right. But look this thing about the non exceeding \$50 which appears in the - - -?---But as I said, I, I made the mistake, I didn’t read the - - -

THE COMMISSIONER: Just let Mr Campbell finish the question?---Yes, sorry, sorry, sir.

20 MR CAMPBELL: And I’ll take the Commissioner to these aspects of the policy but, but the not exceeding \$50 for a gift is in respect of a single gift, is it not?---I, I - - -

You don’t know?---No.

It doesn’t apply to a series of gifts like these vouchers?---Yeah.

Do you agree with that?---I do now, yes.

30 And it doesn’t apply to cash, you agree with that, don’t you?---I agree, I agree, yes.

You can’t accept a dollar in cash - - -?---Yeah.

- - - can you?---That’s correct.

And what’s more it just simply doesn’t apply to people involved in procurement, that’s so, isn’t it?---Yeah, I - when I read it, procurement, I thought it was people that was employed under procurement.

40

Yes?---In the, in - ‘cause we’ve got a procurement area, like a section called procurement and that, and that was my mistake.

Yes. Because you accept if you are purchasing things you are procuring them?---Yeah, exactly, I am. I made the mistake.

So if you - this isn't - I don't mean to be - cause you offence or to labour the point but if you - anyone who read all of the, all of the relevant section of the Code of Conduct at any time - - -?---I should have read it better.

Anyone who read it at the time would appreciate that the points I am asking you about are all clearly expressed there, do you agree?---I, I agree now, yes.

Nothing further, Commissioner.

10

THE COMMISSIONER: Yes, thank you. You may be excused Mr Martin.

THE WITNESS EXCUSED

[12.50pm]

MR CAMPBELL: Perhaps Commissioner - - -

THE COMMISSIONER: What would you like to do, Mr Campbell.

20

MR CAMPBELL: I'm happy to start with the next witness, Commissioner. And I couldn't quite finish him, but the next, perhaps, the next witness is Mr Chris Meyers.

THE COMMISSIONER: Yes. Take a seat Mr Meyers. Ms McGlinchey, you better come and sit in front.

MS McGLINCHEY: I am, I just coming up to get my things.

30

THE COMMISSIONER: Do you wish me to make a section 38 while you're doing that?

MS McGLINCHEY: Yes, I do, Commissioner.

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

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

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

MR MEYERS: Yes.

THE COMMISSIONER: Do you wish to give your evidence under oath?

MR MEYERS: Yes.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Meyers, would you please state your full name?---Christopher Edward Meyers.

10 And are you employed by the Council of the City of Sydney?---Yeah.

And when did you start with the council?---'95.

And since 1 January, 2007, have you been, I'll withdraw that. Have you been employed in maintenance work?---Yes.

And are you presently at acting team leader?---Yes.

20 All right. Now you've made a -- you've provided information to the Commission pursuant to a request you received from the Commission to do so. Is that correct?---Yes.

Commissioner, that's behind tab 92 and it's at pages 9 and 10. And you, you understand that you are, you're here in relation in particular to the gift vouchers that you received from Momar Australia?---Yes.

All right. Now in your statement you've, you've may I say accepted that you might have received as many as ten of these. Is that correct?---Yes.

30 And that they were all in a \$50 face value?---Yes.

Can I, I'm sorry, Mr Meyers, forgive me, if you look behind tab 91 of the document you have there you'll see we've got nine of them. Do you see? If you count up each of those entries there you get nine. So you accept Momar's records are accurate?---Yes.

You might have been doing yourself a disservice to the tune of \$50?---Yes.

40 All right. Now look you've relied in your statement on what I call the not exceeding \$50 defence haven't you?---Yes.

But it's not right is it?---No.

No. And if I could ask you to look at the first entry, you'll see how it says there that there were two entries for the one date, 9 September, 2008?---Yes.

Can I tell you that's because Momar's records indicate that on that date you received two of them, so \$100 in the one day?---I never ever received two.

Is that right?---Yeah. I never ever received two. I only ever received one.

All right. Okay. You see I know you've done your best to remember this -
- -?---Yes.

- - - but you've never kept any record of it?---No, that's, that's correct. But
I, I would remember getting two in one instance and I never did. I only ever
got one at every instance.

10 All right. Now you say that these were never sent to your home. Is that
correct?---No, one was.

And the first one or the - - -?---No, not the first one, no later on.

But normally someone left them on your desk. Is that right?---That's
correct.

Now did you have, I mean you, you didn't have any authority to bind the
council, you had no delegation. Correct?---That's correct.
20

But you did, you did have authority to, as directed by your team leader to, to
put together purchase orders?---Yes.

And once he approved them, you were entitled to send them off to the
supplier. Is that correct?---Yes.

So did you deal with Mr Paul Goldin from time to time?---Yes.

All right. And he knew that you were entitled to do that on behalf of the
council. Is that correct?---Yes. Yeah.
30

Did he ever talk to you about why he was giving you these vouchers?---No.

Did you ever hear mention of a loyalty programme or anything like that?
---No.

All right. All right.

40 THE COMMISSIONER: But you knew it was in connection with the
orders?---I gathered that, yes.

MR CAMPBELL: And having gathered that you understood didn't you that
if someone was giving you the value of \$50 you might put another order
with them. Do you accept that?---Yes.

Yes. And, and in other words the voucher was an attempt by them to
influence your decision in relation to placing orders?---Yes.

And the reason why the not exceeding \$50 defence doesn't run is because the vouchers are just like cash isn't it Mr Meyers?---Yes, yes.

You can along to Coles and buy what you want?---Yes.

Yes. And you can't receive any amount of cash can you?---Well I was under the influence that up to \$50 was cash or, or gift vouchers. I didn't think it made any difference to be honest.

10 Did you ever read the policy?---No, I have now.

Yes?---But I did not, hadn't read the policy.

20 THE COMMISSIONER: What did you get that impression from Mr Meyers?---Well if I can go back to that conversation that Roger was having, that we said that they would come in and teach you, they'd get us all to sit down and they'd teach everybody in one go about misprocurements and your Code of Conduct. And it was raised there that day were you allowed to accept any money because the boys on the jobs do at times get offered a carton of beer or \$20.

Yes?---And it was brought up that that was acceptable.

And do you remember the name of the person who gave the - - -?---No.

Do you remember where he came from?---The council organised him to come.

30 Was it a man?---Yes.

MR CAMPBELL: I mean you're being circumspect in what you say to us. Was it from the HR Department or something like that?---Yeah, yes, he, that was organised to teach all of us, from council (not transcribable)

THE COMMISSIONER: Was he an outsider or part of the council?---No, I'd say from outside.

I beg your pardon?---From outside.

40 From outside.

MR CAMPBELL: So HR organised the seminars but outside consultants came along and gave the lesson. Is that right?---Yes.

That's your understanding of what happened?---To my knowledge, yes.

All right. And now the, could I, I just want to ask you a couple more questions about those aspects. You see you say if the council goes and does

a job or work near a householders house and the householder is grateful for the work being done, the householder might offer you 20 bucks as a tip. Is that correct?---Yes.

And so the fellows want to know whether they can take that?---That's exactly right.

10 So this idea of this not exceeding \$50 appearing in relation to nominal gifts, that actually leads to quite a bit of confusion in your understanding of what you're entitled to do. Would you agree with that?---Yes.

And if you actually had a close look at the, whatever version of the policy was current in the last five years - - -?---Yeah.

- - - you'd see that any amount of cash was simply unacceptable. That's so isn't it?---I didn't realise.

You still haven't read it?---Not completely.

20 Well if I ask you - - -?---I wouldn't know.

Okay. So you don't know that. Are you telling me that?---Yes, sir.

Okay. And you don't know that it's unacceptable to have even if a \$50 gift in some circumstances is acceptable, you don't know that the council says you can't receive a series of them from the one person?---I know now that it's wrong because I have been re-taught, like the council has pulled me in and, and I have seen this and I do realise this now, yes.

30 But, but look I might have asked you this, and this is I think my final question, you accept don't you that if a salesman said here's a \$50 note, now you accept here's a \$50 note, that's just plain wrong?---Yes.

But whatever the council's policy was or whatever you understood it to be at the relevant time, don't you think from your own understanding of the way people operate that for a salesman to say to somebody who's got some authority in relation to purchasing, thanks for the order and here's \$50, it's corrupt isn't it?---Yes.

40 Yes. And anyone who is being honest with themselves at the time would understand it was corrupt conduct, that's so isn't it?---Yes.

And if he says, "I'm not going to give you a \$50 note, I'm going to give you a voucher you can spend on what you want at Coles" it amounts to the same thing doesn't it, sir?---Yes.

You heard Mr Martin's evidence about what you said in your statement in relation to what he said?---Yes.

Having heard him clarify it do you accept what he says is right or do you still say he told you that you could do this?---I, I had asked him at the time being my supervisor and I recollect that he did say we were allowed because it was under \$50 but I do accept that it is wrong.

But he said it to you in the context of one of those discussions at the seminar or was this a private conversation?---I think it was after the seminar.

Right. I have no further questions.

10

THE COMMISSIONER: Ms McGlinchey?

MS McGLINCHEY: Mr Martin's given evidence that the vouchers that he received were placed on his desk, did you actually see them placed on Mr Martin's desk?---No, not on Roger's desk.

THE COMMISSIONER: Were they placed on your desk?---Some were, yes.

20 And one received to your home?---Yes.

And was there any other way in which you got it?---Sometimes Paul would give me them himself. He would give them, he has given them to me.

MS McGLINCHEY: Does that mean that Paul Goldin was given fairly free access to the office at the depot?---Yes.

So he was just able to wander around and - - -?---Yes.

30 - - - place vouchers on people's desks?---Yes.

Okay. The seminar that there's been some various evidence about where the outside trainer came in do you recall what year that might've been?---I think it was a couple of years ago, probably two years ago.

40 You say you've been retaught and you now understand that – well, could you tell the Commissioner what you've been retaught, what you mean by that?---Well, now that I've read it properly and that I realise that, because I am part of Procurement and part of Purchasing that I can accept nothing whatsoever whereas before because I was working on the road and that question was asked in reflect for all the people that were on the road that I thought I could at that time but as I said now though I know for a fact that I cannot because I am part of Procurement and I do help purchase orders.

And how were you retaught that, how did that happen?---They just this year after this happened, after I was called to this ICAC Council has retrained us again and sat us down and gone through it all over again.

Have you received any vouchers since that time?---No. No.

Not been offered any?---No, we've had no dealings with Paul from Momar, since we received this summons to come to ICAC we have not, had no dealings with him whatsoever.

Thank you. Nothing further.

10 THE COMMISSIONER: Mr Meyers, I get the impression that these, the written policy isn't nearly as effective as being told orally by somebody at a course what to do or am I wrong?---If you hear it orally you, I think you understand things better because you might not read them yourself and as I said I hadn't read it all but then again, when they are doing these courses it is over a vast different things they talk about, it's not just the one thing, and as Geoff said I was in the same boat where your phone does go off and you do have to go in and out of these so you do miss things.

20 Yes. And I suppose people, some people aren't so keen on reading pages of what you're supposed not to do?---Yes. Yes, that's why (not transcribable).

THE COMMISSIONER: Okay. Thank you, you're excused Mr - - -

MR CAMPBELL: I just have one question, sorry.

THE COMMISSIONER: Sorry.

MR CAMPBELL: Have you, have you discussed this with your superiors at work? I mean - - -?---No.

30 - - - have they counselled you as it were?---Nothing, nothing has - I was under the same impression as Roger that we were not allowed to speak to anyone about it and we have not.

If there's any understanding along those lines, Commissioner, it would seem perhaps some consideration should be given to these men being able to go and talk to the council about what they've been involved in personally.

40 THE COMMISSIONER: Yes, perhaps we can consider a variation in the Suppression Order to that effect just after lunch.

MR CAMPBELL: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: At 5 past 2.00, Commissioner.

THE COMMISSIONER: Yes.

THE WITNESS: Does that mean I can talk to my - - -

THE COMMISSIONER: You're excused.

MR CAMPBELL: No, it doesn't yet. Sorry, Commissioner.

THE WITNESS EXCUSED [1.04pm]

10

LUNCHEON ADJOURNMENT [1.04pm]