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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

Reference: Operation E08/2469

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 12 OCTOBER, 2011

AT 2.10 PM

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

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: We're back in the city, Commissioner, we're dealing with Botany Bay Council.

THE COMMISSIONER: Right.

10 MR CAMPBELL: The evidence is in folder 20. And I call Mr Donald Harris. Mr Harris, would you come forward please and stand in the witness box.

MR NAYLOR: If the Commission pleases I appear for Mr Harris.

THE COMMISSIONER: Yes. You may be seated, Mr Harris.

MR HARRIS: Thank you.

20 MR NAYLOR: Mr Harris will take the benefit of the declaration if the Commission pleases.

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

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

40 THE COMMISSIONER: Mr Harris, you are obliged to answer all questions asked of you and it is a serious criminal offence either to refuse to answer or to give false answers and do you understand that?

MR HARRIS: I do understand.

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

MR HARRIS: Under oath I guess.

<DONALD GEORGE HARRIS, sworn

[2.10 pm]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Harris, would you
10 please state your full name?---Donald George Harris.

And are you employed by Botany Bay Council?---I was up until the 4th of
this month.

That's 4 October, 2011?---October, 2011. Yes, that's correct.

I'll ask you about that in a moment. Had you been employed by them up
until that time – I'm sorry – as a plumber?---That's correct.

20 And when did you start with them?---I started in July 2001.

Thank you. You've made a statement in this matter pursuant to the
provisions of section 21 of the Independent Commission Against Corruption
Act 1988 which can be found, Commissioner, at folder 20, tab 111 and page
10. Could the witness be shown that statement, Commissioner?

THE COMMISSIONER: Yes.

MR CAMPBELL: I beg your pardon, folder 20, folio 111 and page 10. I
30 beg your pardon. Is that two page document the statement that you made?
---I believe it is.

Yes. And you made that statement with the benefit of the advice of your
solicitor, is that correct?---Yes, that's correct.

I think that since you made that statement you've provided an addendum to
your solicitor on or about 6 October, 2011, is that correct?---That is correct.

40 Would you look at this two page document that you'll be shown by the
Commissioner's Associate. Just look at the second page. I beg your
pardon. Is that the addendum you've made?---Yes, that is correct.

I tender the letter from the Legal Representation Office of 6 October, 2011
with the attached undated statement, Commissioner.

THE COMMISSIONER: Yes. The letter from Legal Representation Office
dated 6 October, 2011 with the amended statement of information attached
will comprise Exhibit 47A and B respectively.

**#EXHIBIT 47A - LETTER FROM LRO TO ICAC DATED 6
OCTOBER 2011**

**#EXHIBIT 47B - AMENDED STATEMENT OF INFORMATION
SIGNED BY DONALD HARRIS**

10

MR CAMPBELL: Thank you, Commissioner. Mr Harris, do you understand that we contend that the records of Momar Australia Pty Limited demonstrate that you have received a total of \$1,450 in gift vouchers? Do you understand that?---I do understand that.

Yes. And we say that those records prove that you received that money over the period 5 June, 2007 to 11 January, 2011. Do you understand that?--I do understand.

20

In your statement, your initial statement you admitted to having received four or five Coles gift vouchers, is that correct?---That is correct.

And then the addendum that you've recently provided you say there's four or five or six you've received, is that correct?---Well, it's hard – it is correct but it's hard to know exactly how many I did receive over that period of time.

This is my question that you acknowledge receiving the vouchers but you kept no record of them?---No, I did not.

30

And it was a relatively long period of time, nearly, well, certainly three and a half years?---Three and a half years, four years possibly, yes.

And in those circumstances in giving the statement you were giving your best recollection. Is that correct?---That is correct.

The fact that you've made a slight change to your evidence about that is because you acknowledge you just can't be sure. Is that so?---That is correct. I can't be sure, so it's not my intention to mislead anybody but - - -

40

No. All right. Now do you still have folder 20 in front of you?---Yes.

Could you go to the first tab, which is tab 110 and you'll see behind that tab a four page document which has a series of dates on it. And you have to turn it around in sort of landscape fashion, I think they call it, sir. And you'll see it's got the name of your former employer, your name and address. Do you see that?---Yeah.

Don't worry about your address, it's, it's subject to a suppression order. Then if you go to page 2 you'll see the start of a series of dates. Do you see that?---Yes, I do see that.

Okay. And those dates continue over page 3 and page 4. Now what we say about this, Mr Harris, so you know, that this is a spreadsheet that's been prepared from Momar's business records and each entry on that spreadsheet represents a voucher sent to you by Momar. So that the first one says 5 June, 2007, what that means, our case is that on that evidence on that date one \$50 voucher was sent to you. Do you follow what I'm telling you?---I do.

Okay. And so it continues on. If you go over to page 3, you will see for example, a date 18 November, 2009. Do you see that date? It's about halfway along the list on page 3, 18 November, 2009?---I've got 19 November, oh sorry, 2009.

Page 3?---Oh yes, yeah.

20 And do you see that that date was entered twice?---Yes, I do.

What we say about that is that you, is that two vouchers were dispatched on that date. Do you follow me?---I do.

And if you go over to page 4 you'll see in a similar way, 19 November, 2010 appears twice. Do you see that?---Yes, I do.

30 So we, we say that on that date two vouchers were dispatched to you. Do you follow what I'm getting at?---Yes.

All right. Now do you agree that there were occasions when you received more than one voucher from them?---Yes, I do. Some of them were \$50 vouchers and others were \$20 vouchers.

All right. So – well can you tell me this, was it the case of once a pattern of sending you things got established that they were mostly \$50 vouchers? ---Generally, yes.

40 All right. Given the difficulties in remembering these things precisely, do you accept that what appears on that spreadsheet is probably an accurate record of the vouchers you received?---More than likely.

Now can I – it's the case isn't it sir that you, that you worked as a plumber for the council?---Yes, that's correct.

And that you didn't have any delegation authorising you to purchase supplies on behalf of the council?---Yeah well, that's a bit of a grey area

because as their plumber I was very often, daily in fact, had to go and get supplies for plumbing repairs.

I see?---And of course if there was anything of significant value, for example, over 15 hundred \$2,000 for instance, I'd always seek the permission of your supervisor, let him know that look, I've got to go and get this particular fitting or that particular fitting and whatever and it's going to cost whatever.

10 Just look at, I'll take you back to page, to tab 111, page 10, which is your statement and draw your attention to what you said in paragraph 4. Do you see that there you say, "Do you, do you see that there you say, "To my knowledge I didn't have purchasing or procurement delegation." You go on to say, "I order and receive goods and pass on the delivery dockets and invoices to my immediate superior for his signature." Is that, was the practice between you and your superior that items say less than \$2,000 you didn't have to get his prior approval. Is that correct?---That is correct.

20 But you'd have to get him to sign off on them because you didn't have the official authority to do it from the council?---Well, that's correct but he'd sign off on every, every docket that I brought back anyway.

Well - - -?---But if, if they were a, an item of, you know, significant value it was always discussed with the supervisor prior to ordering it or, or going and getting it and he would sign off on it anyway.

And your working definition of significant value was something around the \$2,000 mark?---Correct.

30 All right. All right. So now, the - how did it come about that you had contact with the salesman from Momar Australia?---Well, probably stretching back to around about 2005 a Momar salesperson, Paul Goldin - - -

Yes?--- - - - called on me at Botany depot, into my workshops in Botany depot and wanted to give me a demonstration of some products that they had and those two particular products were Mo-Flo and Sewer-cide.

40 What were they used for?---They're used for clearing drainage and sewer traps, very, very effective product and Paul Goldin and another fellow came along one time and the other fellow, I don't know who he was, gave a demonstration of how these products worked and we were pretty impressed with them at the time because you have to understand that Botany Council's infrastructure is extremely old, very prone to choking because of, you know, root infestation, tree root infestation, greases and fats and, and just general vandalism from people - - -

Oh, right?--- - - - shoving things down drain.

How, how did, how did he get access to you at the depot? Was it just a coincidence or did he know you were there?---He just wandered one day, just wandered, wandered in and introduced himself and told me, you know, who he was and where he was from and he had these amazing products and I said, oh how, and he wanted to show me a demonstration of how they worked and - - -

10 Oh, right?--- - - - which they did and I discussed it with the supervisor at the time, I said this is, this stuff seems to be pretty good, we should start using it because it can save us a lot of money in the long run from digging floors up and digging drainage lines up and, you know, that type of thing.

All right. So you, you liked the product. And you, you continued of course of dealing with them over the years?---Yes.

20 Was, was that by prior arrangement or did he just happen to show up at the depot from time to time when you just happened to be there? What, what was the, how did that work?---Well, the arrangement was that we brought the initial supply which we started using and it was immediately effective and as the supply dwindled I'd just give him a ring and he'd come back to the depot and we'd have a chat and say okay, well, I need to order some more of this and - - -

So after, after that first meeting he gave you his business card or something? ---Oh, yes.

30 Now, I'm sort of working on an assumption that as a, as a plumber you'd spend most of your working day not in the depot but out in the field?---That is correct.

And so that you'd have to make a particular arrangement to meet him at the depot. Is that correct?---Well, in, in my, my lunch-time was, was, you know, 12.00 till quarter to 1.00 type of thing.

And that was usually at the depot?---And always at the depot, yeah.

40 All right. So he came to call in around those hours, is that correct? ---Initially, yes, and then, you know, after that sort of thing he had my phone number, he'd give me a ring and say how you going for the product and I'd say oh, no, I've got enough for a while and I'll give you a call and then when I started to, to run out I, I'd give him a ring and - - -

All right. Now, when he first raise with you the question of these gift vouchers?---Oh, it was considerably later from, from our first meeting, you know, well, meetings I should say. At first they used to come around and sit and have a cup of coffee with you and, you know, they'd leave a lot of promotional stuff like cigarette lighters and pens and - - -

Anything else?--- - - - coffee mugs and just general \$2 shop rubbish.

Now, Mr Harris, we are interested in hearing all of this but I do want to know what I asked you which was when did he bring up the question of these vouchers for the first time?---It's hard to say but probably around about 2007 I would imagine.

Well, what did he say about them?---He said we're going to do away with our, our promotional gifts and the life.

10

That's the, that's the coffee mugs, the pens and things?---Well, the \$2 shop rubbish type of stuff but, yeah, we're going to do away with that one and, and we're bringing in a rewards programme for people that look after us. He said I want to look after you, you've been a good customer to me so I'm going to send you some gift vouchers.

THE COMMISSIONER: But you weren't the customer, were you?
---Sorry?

20

You were not the customer?---I was the contact.

The customer was the Botany Bay Council wasn't it?---Well, that is correct, Mr Commissioner.

You were being looked after, not the customer?---That's correct.

MR CAMPBELL: The, you see, you've sent us - he said it was a rewards programme. In your statement he, you said he called it a loyalty programme?---A loyalty programme.

30

Did he use those expressions?---Yeah, he, he did, yes.

And, and what did he, what did you understand him to mean by that, that expression?---Well, I just naturally assumed that he just wanted to, you know, look after the people that looked after him I guess. That's what I would - - -

THE COMMISSIONER: Look after them by paying them.

40

MR CAMPBELL: Yeah?---Yes.

So did he, did he hand you the first voucher or did he send it to you by some other means?---I believe they came through the post.

To which address?---To my address at the time.

Your home address?---Yes.

And how, how did he come by the home address?---He had my home address because I'd asked him to send me some safety data sheets on the, on the products because I was at that time, around about that time I was collating occupational health and safety documents. We employ apprentices from outside, from a - - -

A group scheme or something?---From a group scheme, yes, that's correct, and I asked - - -

10 But the (not transcribable) I beg your pardon, I didn't mean to interrupt you. And you asked him to send them to you, is that what you're saying? ---I, I asked him originally to send me all these proper product safety data sheets and all that sort of information so I could include that in our occupational health and safety books and also so that I could educate the kids on how to use it because it's pretty dangerous and volatile stuff.

Well, but, Mr Harris, he's dropping into the depot every, every now and then anyway, why couldn't he drop into the depot and leave those materials, safety data sheets there?---Well, when I, when I needed them I just rang him
20 and I said to him just post them to me direct, don't send them to the council 'cause it'll take forever to get there.

Well, why would that be so because he could come and see you any time you needed an order, couldn't he?---Well, he'd, he'd only come when, when I'd ring him to, to come for an order or he would, he would ring me and say well, you know, how you going for an order sort of thing.

All right. So - well, did he, did he come and meet you every time that you wanted to order something?---Yes, he did.
30

Why, why was that necessary?---Well, I just naturally assumed that it was part of his rounds.

Well, if that was part of his rounds why, why couldn't he drop off the material data sheets on part of his rounds?---Well; I suppose he could but when I rang him about it I said to him I needed the safety data sheets on Mo-Flow, Sewer-cide, Act-On and a disinfectant called DEO 99 or whatever it was.

40 Oh, right, but - - -?---And he said yeah, I'll pop them in the post for you tonight.

You see. You'd, you'd accept wouldn't you, sir, if I asked you this question, that if, if he offered you a \$20 note or a \$50 note when he raised his loyalty programme it would be just wrong of you to accept it? ---Absolutely.

Because that would be an obvious example of corruption between a council employee and the agent of a supplier of council, of products to council. That's so, isn't it?---That is so.

Yeah. And you'd accept, wouldn't you, that the vouchers are just the same cash for all intents and purposes?---Well, I see that now, yes.

Well, could I suggest to you that had you given it a moment's thought when he first mentioned this to you you would have come to the same conclusion?
10 ---Quite possibly, yes.

Well, did you agree to go along with this?---Well, I was probably doing it a bit tough at the time and - - -

You've said, you've said in your statement, and I won't go through all the details, but at page 11 of the, of the, of the folder that, that you had very significant domestic debts including in particular in relation to your, your mortgage, et cetera. Is that right?---Well, yes, I did, I did have a, a
20 mortgage but the biggest problem was the, was the strata fees and levies and those people finish up taking me to court for bankruptcy.

I see.

THE COMMISSIONER: So you were in financial difficulties and whatever you got paid was important to you, is that right?---That is correct, Mr Commissioner.

MR CAMPBELL: Did Mr Goldin develop a kind of personal relationship with you?---Yes, he did.
30

And made it feel to you like you were more than just business acquaintances, rather you were friends?---Very much so.

Yes. And did you ever confide in him about the financial burdens you were bearing?---Well, you know, on his visits we used to chat, used to chat about family and one thing and another, and his family and my families and - - -

Did he ever socialise with you?---Not as such, no.

40 And is he still your friend?---Well, it's hard to define friend, I mean, I don't know where the guy lives or I don't go out with him socially.

THE COMMISSIONER: When did you last see him?---When did I last see Mr Goldin, probably the last time I placed an order with, and that would've been around about two months ago possibly.

MR CAMPBELL: And was he still just as friendly with you then as he was previously?---Absolutely, yes.

You see, after it had gone on for a short did your conscience sort of start to play on you in any way about whether this was right or wrong?---Well, I didn't think it was probably the right thing to do but - - -

Put it out of your mind?---I'm sorry?

You put it out of your mind, is that right?---I did. I did.

- 10 And were you aware of the Council's policy in relation to gifts and benefits at the time this was happening?---No, I wasn't, I was, to my knowledge I've never received any formal training or anything on, on this type of thing to my knowledge. I have had some training courses in other things, traffic management and, you know, slips and falls and drug and alcohol in the workplace, that type of thing but - - -

You see, but even without knowing about any policies that might exist and without having training in relation to it, as you agreed with me already, a moment's thought about it would tell you that morally it was wrong?

- 20 ---Correct.

Well, what happened to your job?---My - I've resigned on the 4th I think.

You did mention 4 October when you came in?---Yes.

Why did you resign?---Well, I thought it was probably the right thing to do.

But did anyone at work talk to you about these matters?---No, certainly not.

- 30 When you say you thought it was the right thing to do you're talking about having regard to the fact that these matters were likely to become public you thought the right thing to do was to resign your employment, is that what you're saying?---I'm saying that, yes, and to save Council any embarrassment.

All right. So have you been able to find another job?---I am negotiating with a company in the private sector at the moment but it's not set in concrete yet.

- 40 I think you've said this in your statement - I won't mention it, but part of the consequence of that litigation you mentioned in relation to the strata levies and the like was that you were unable to pay the judgment, that's correct isn't it?---I've lost my home and all my debts were settled.

Yes?---And I'm now debt free.

But - - ?---And I have no assets.

And no income from a job at this stage?---That's correct.

Yes. Do you think you've paid a pretty significant price for this conduct of accepting these vouchers over these years?---Absolutely.

See, you have, I think, in your evidence today accepted some personal responsibility for your part in it, is that correct?---That is correct.

10 Is anyone responsible for this in your mind?---No, I think I'm the master of my own destiny and I made the mistake so I'll cop it on the chin.

What do you say about the practices of a corporation who would engage in this type of behaviour?---Well, I'm disappointed in myself for being allowed to be led into that and as far as the corporation is concerned well, that's a matter for somebody to answer really I guess.

20 Well, I'm interested in your personal opinion about it so can I ask you again. Do you think that they were doing the right thing by putting this temptation in your way?---Probably not.

If they had never offered you one of these vouchers would it have made any difference to you in relation to how you felt about Mr Goldin?---No, they would've got the same order every time because the products that were using from Momar were excellent, they were working and they were solving our problems, they would've got the order whether they sent the vouchers or not and I've told Mr Goldin that.

30 Do you think for instance – I'll withdraw that. You've made it quite clear that the product was a good one and that – can I ask you was their supply reliable in terms of being on time when you needed it and that sort of thing?---Certainly, yes.

You'd accept the possibility wouldn't you that there may be other equally effective reliable products out there in the marketplace?---There would probably be others but they were never brought to my attention.

40 That's all right. But I want to ask you this question this that. I suppose the fact that – do you think perhaps that Momar Australia didn't want you to look around to see if there were other products that were available that you might want to - - -?---I'm sure they didn't.

Yes. And do you think that might've had something to do with the reason why they had this rewards or loyalty program?---Possibly. That's, that's possible.

No further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Naylor.

MR NAYLOR: No questions, thank you.

THE COMMISSIONER: Thank you, Mr Harris, you're excused.

MR CAMPBELL: Thank you, Mr Harris.

THE WITNESS EXCUSED

[2.37 pm]

10

MR CAMPBELL: Commissioner, I should say in this case that behind tab 114 there is a statement as there is in all of these cases from the General Manager of the City of Botany Bay and it's just as well to point out with respect, Commissioner, that the Council acknowledges that they – although they say it's a standard practice to provide a summary of the Code of Conduct the Council has no records – I'll read the statement, it's from page 22, paragraph 11, "Council records do not indicate whether Mr Harris received training detailing the Code of Conduct" which is parallel to the evidence he gave before you today, Commissioner. And likewise over the page on page 7 they say that, "The Council of Botany Bay has a procurement procedure and a procurement policy." It's attached to the statement. "Council records do not indicate whether Mr Harris has undertaken procurement training" which again is consistent with what he says about those matters. And may I say that the policy itself is pretty consistent with the other policies we've seen in this case and the evidence is before the Commission about which we'll be making some submissions in due course.

30 THE COMMISSIONER: Yes. Thank you, Mr Campbell.

MR CAMPBELL: Commissioner, that brings the oral evidence today to a conclusion. I wanted, however, before we adjourn to deal with Mr Harman's matter and that's – he is a storeman employed by the Broken Hill City Council. The evidence in his case, Commissioner, is in the folder 24. I did announce before, Commissioner, that we've received evidence from the Legal Representation Office that Mr Harman of course who lives in Broken Hill is unfit to travel to Sydney and to give evidence by reason of a medical condition and I've reviewed that evidence and with respect may I be permitted to say that I accept the genuineness of the submission.

THE COMMISSIONER: Yes.

MR CAMPBELL: Could I tender, Commissioner, a letter dated 27 September, 2011 from the Legal Representation Office to a Dr Andrew Crossman and Dr Crossman's report of 28 September, 2011. And I'm asking of course, Commissioner, for a suppression order in relation to that matter relating to the details of Mr Harman's medical condition.

THE COMMISSIONER: Exhibit 48A and B comprise a letter from the Legal Representation Office to Dr Crossman of 27 September, 2011 and a letter dated 28 September, 2011 from Dr Crossman.

#EXHIBIT 48A - LETTER FROM LRO TO DR CROSSMAN DATED 27 SEPTEMBER 2011

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#EXHIBIT 48B - REPORT OF DR CROSSMAN

MR CAMPBELL: Commissioner, just so that these matters are on the public record, I'd like to take just a few minutes just to highlight some aspects of the evidence which is before the Commission - - -

THE COMMISSIONER: Yes, thank you.

20 MR CAMPBELL: - - - about Mr Harman.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: Behind tab 133 of folder 24, you'll see the list of, of vouchers that were provided to Mr Harman by R&R Tape.

THE COMMISSIONER: May I just look at that. I didn't get the reference, I'm sorry, Mr Campbell.

30 MR CAMPBELL: Yes, of course, Commissioner. It's folder 24, tab 133 and it's page 1.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: I should let you know Commissioner, Mr Naylor appears.

MR NAYLOR: Yes, I appear for Mr Harman.

40 THE COMMISSIONER: Yes, Mr Naylor. Yes, Mr Campbell.

MR CAMPBELL: That list of, of vouchers, Commissioner, totals 200, I'm sorry, \$2,550.

THE COMMISSIONER: Are these sent by - - -

MR CAMPBELL: R&R Tape.

THE COMMISSIONER: R&R.

MR CAMPBELL: That's Mr Pearce's company, they're the telemarketers who supply the gloves and other things.

THE COMMISSIONER: Yes.

MR CAMPBELL: Now I should say, Commissioner, that when interviewed by Mr Grainger, and that's behind tab 134, Mr Harman was frank in the admissions he made in relation to the questions he was asked by Mr Grainger. And perhaps, Commissioner, if I could take you to page 12 of the bundle, to be confusing, it's page 11 of the interview and around line 10, you will see that Mr Harman said, just before line 10, about line 7, he says, "Occasionally I'd get other gifts." And Mr Grainger asked, "What do you get?" Mr Harman said, "From the supplier I get once every six months, he gives me a voucher for gloves and all sorts of stuff." Then he says, \$200. So there's a little bit of problem with Mr Harman's syntax, but the voucher is for the \$200, Commissioner.

20 THE COMMISSIONER: Yes.

MR CAMPBELL: And at the foot of the page at line 25, he's asked, "What's the voucher? What is it?" Over the page on page 13, "Just like an ATM card that you can use at various places." And about line 14 he says, "This is just a card. You go to the supplier, give them the card and you get some, say four, five slabs of beer or a slab of beer or whatever it is." And at page 14 of the folder, about line 14 again, Mr Harman says, sorry Mr Grainger asks, "What sort of value do they give you?" Mr Harman answers, "I think it's around 150, 200." And at the top of page 17 of the bundle, Mr Harman says this in part, "When I first started getting them they said, what do you want? Do we send them to your home address? I said, well if you like, mate. And I just, I just gave them my home address and they started sending them to there." Commissioner, might I at this point tender the compulsory examination of Mr Harman before Assistant Commissioner Hamilton on 20 December, 2010 which goes in behind tab 134 of the folder. Mr Naylor has a copy.

THE COMMISSIONER: Yes.

40 MR CAMPBELL: 135, Commissioner, I'm sorry. I interrupted you, I beg your pardon.

THE COMMISSIONER: I have an unnumbered, it's not numbered.

MR CAMPBELL: No, but I think, I think you should have an empty tab 135, Commissioner.

THE COMMISSIONER: Yes, I do.

MR CAMPBELL: And it goes behind that tab.

THE COMMISSIONER: Yes, very well. I don't need to make an order then, it just goes in does it?

MR CAMPBELL: It just goes in, Commissioner.

THE COMMISSIONER: Yes.

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MR CAMPBELL: We have adopted the practice of withholding the compulsory examinations other than in cases where there is some good forensic reason for introducing them.

#EXHIBIT 49 - COMPULSORY EXAMINATION OF MR ANTHONY HARMAN

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MR CAMPBELL: Yes. Oh, yes, Commissioner, I think, I think because I pressed on regardless, I didn't give you the opportunity to, to suppress the contents of the medical report.

THE COMMISSIONER: Yes, correct. Dr Crossman's medical report, which is Exhibit 48B, is subject to a suppression order.

THERE IS A SUPPRESSION ORDER ON THE CONTENTS OF DR CROSSMAN'S MEDICAL REPORT

30

MR CAMPBELL: Thank you, Commissioner. Commissioner, if you go to the, I think you have the page numbers, Commissioner.

THE COMMISSIONER: Yes, I do.

MR CAMPBELL: Page 29 is the first relevant entry in the - - -

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THE COMMISSIONER: Compulsory examination.

MR CAMPBELL: Yes, it is. And line 39 you'll just, you'll just see that Mr Harman is asked the question about his salary and he answers it, "I think about 40,000." Then he's asked, "Have you ever been offered any gifts or benefits?" And consistent, may I say, with his frankness of the record of interview, he answers with a plain unadulterated, "Yes." At page 30, at the foot of the page again, he describes his procedure with R&R Tape that he'd ring up every three to four months, I'm sorry, I'll withdraw that. He says, "I suppose they'd ring me up and ask me what my glove supply was and if I

needed gloves I'd order them and they'd send the gift cards to me then through the post".

THE COMMISSIONER: Yes. And I noticed that they, they, at the top of page 30, they also offered him a weekend away but he said he knocked that back.

10 MR CAMPBELL: Yes, Commissioner. Yes, thank you for that. Yes. And page 31 at line 20 he says that every time he placed an order he was offered a gift card. He was then asked, "What was the value of the gift card?" He says, "When it first started it was \$250 worth, like five \$50 gift cards." Although I don't think he's complaining, but he says, "It's gone down to four \$50 gift cards in more recent times." And he then, around line 30, says, he's asked what he, what he did them and he said, "I only ever used mine at one place and that was our local Liquorland. I think you can use them at Myer, I think it was and I can't really remember the other two. But they had a choice of four or five that you could use them I suppose." And he truthfully answered at line 41 that he had been receiving them for six or seven years.

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THE COMMISSIONER: From R&R?

MR CAMPBELL: From R&R, yes, yes, Commissioner. And at page 34, although at 20, just below that point he says, "The gloves, the gloves are good, the gloves are good and the gloves are cheap. The guys that use them they like them, it's a good product, a good price, that's why I stayed with them." He then says in answer to a question from the Assistant Commissioner, "You didn't think they were just giving you gift cards because they liked you did you?" His answer, "No, I know that now, 30 Commissioner, that I've made a mistake there, Commissioner." And he's asked, "You would have known would you that it was a business thing. They wanted the council business didn't they?" He says, "The gloves themselves when they first and they still are a good price compared to everyone else." He's asked, "I'm not doubting that, I'm talking about what they wanted." "Yeah, obviously they gave me that", that's a reference to the vouchers I'd submit, as a keep on staying with us, I suppose. Whatever that's called." Question, "Yes, to encourage you." Answer, "To encourage me, yes." At page 35, Commissioner, question at line 17 he's asked, "But 40 now you say you realise that your conduct was wrong." "Yes." "It was inexcusable. Do you accept that?" "Yes." And page 41, he just points out that again that it was the R&R salesperson who'd ring up and ask about the gloves. And that was to say R&R, I will submit in due course, were, were the ones who were pushing this. And then just below line 10, "I think they sent us a sample of the gloves first and then, then it got back to me and like the sample, yes, if you buy X amount offer then it started from there."

THE COMMISSIONER: It seems to suggest that in saying that if you bought a certain amount you get the gloves.

MR CAMPBELL: Yes, that's so, Commissioner, that's so. At page 42 - - -

THE COMMISSIONER: Sorry, you get the voucher.

MR CAMPBELL: Get the voucher, a certain amount of voucher. At 42 he says that, this is at line 25, he at that time had a delegation of \$5,000 he's got and that's, that's the evidence. And now I want to go to, Commissioner, just while we're in the folder at tab 136 at page 47, and I'll come back, I'm
10 about to go on to this topic, you'll see at paragraph 8 that the General
Manager - - -

THE COMMISSIONER: For Broken Hill Council.

MR CAMPBELL: Broken Hill Council says that the current delegation of the storeman, stores officer, that's Mr Harman, is now \$1 but the part I wish to draw to your attention, Commissioner, is that in the 2009/2010 financial year Mr Harman ordered approximately, well, nearly half a million dollars worth of stock.
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THE COMMISSIONER: Under his own delegation.

MR CAMPBELL: Yes, Commissioner. Now, Commissioner, there is some supplementary material that Mr Naylor has provided to us that he would wish to be tendered and I am content to do that. It's after these matters came to light Mr Harman underwent a disciplinary procedure at the Broken Hill City Council and I tender as a bundle a record of an internal investigation carried out on 1 December, 2010. In file order, Commissioner, a letter to Mr Harman from the Council dated 14 October, 2010.
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A further letter to Mr Harman from the Council dated 16 December, 2010 a tax invoice from the Council to Mr Harman in the sum of \$5,750 and a letter of 25 February, 2011 acknowledging receipt of the payment of that sum as well as the return of two Drizabone coats because the two coats were also provided by R&R to Mr Harman and apparently according to the record of investigation one for his wife.

THE COMMISSIONER: He has paid the Council \$5,750?

MR CAMPBELL: More than we can prove, Commissioner. And it seems that during - it doesn't seem - during the record of the interview he was asked by Council to state how much was involved and he gave an estimate at that time of perhaps 5 or \$6,000 and at that time he had \$200 in vouchers on hand which he handed in. So there's an inference open that the Council took the higher of his estimated figures of \$6,000 and deducted the \$200 he had on hand for the \$5,750 that he had to repay and that Mr Harman has repaid it in full.
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THE COMMISSIONER: And is he still employed by the Council?

MR CAMPBELL: He's still employed by the Council. As you've seen from the General Manager's statement his delegation, perhaps unsurprisingly, - - -

THE COMMISSIONER: Reduced.

10 MR CAMPBELL: - - - has been reduced to virtually zero, he can buy – I'm not sure what you can buy for a dollar if you're working in the stores, Commissioner. But if you look at the letter of 16 December, 2010 you'll see the conditions upon which his employment continues, and that's at point 3 of that letter, so his Honour might (not transcribable) as some of the other witnesses have said about their employment, they're on a sudden death tenure, any mistake and you're gone.

THE COMMISSIONER: Yes.

20 MR CAMPBELL: And he's to undertake counselling, there's the matter of his financial delegation, he's to undergo further training in relation to the Code of Ethics and you'll see there that he's to surrender the coats and to make arrangements to pay the full amount of the value of the gift cards which he has done.

THE COMMISSIONER: Well, I had better take this. Exhibit 50 is a bundle of documents tendered on behalf of Mr Harman concerning his dealings with the Broken Hill City Council.

30 **#EXHIBIT 50 - BUNDLE OF DOCUMENTS TENDERED BY MR HARMAN CONCERNING DISCIPLINARY PROCEEDINGS AT BROKEN HILL CITY COUNCIL**

MR CAMPBELL: If it please the Commission. That's the evidence I wish to lead on that matter, Commissioner.

THE COMMISSIONER: Yes.

40 MR CAMPBELL: Mr Naylor is indicating he has no further evidence or nothing to say at this stage about those matters.

THE COMMISSIONER: Thank you.

MR CAMPBELL: Perhaps, Commissioner, I've neglected to ask you that on the basis of that medical report would you excuse him from compliance from the summons.

THE COMMISSIONER: Yes. He is excused from compliance from the summons.

MR CAMPBELL: And that concludes my evidence about that matter and it concludes the available evidence today, Commissioner.

THE COMMISSIONER: So we adjourn till 10.00am tomorrow morning?

MR CAMPBELL: Yes, Commissioner.

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THE COMMISSIONER: Very well. Yes, thank you.

AT 2.58 THE MATTER WAS ADJOURNED ACCORDINGLY

[2.58 pm]