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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 13 OCTOBER, 2011

AT 10.12AM

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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. I think that there are some counsel in the hearing room who wish to seek leave to appear for - - -

THE COMMISSIONER: Yes.

MR CAMPBELL: - - - parties who we're dealing with today.

10 THE COMMISSIONER: Thank you. So if they're new counsel, if they'd wish to announce themselves, please.

MR HARVEY: If it please Commission, my name is Ian Harvey, I'm instructed by Blake Dawson. I seek leave to appear on behalf of the corporate interests of the Roads and Traffic Authority in that part of this inquiry that deals with matters of interest or concern (not transcribable)

THE COMMISSIONER: Yes, Mr Harvey, you have leave.

20 MR HARVEY: Thank you, Commissioner.

MR HEENAN: Commissioner, my name is Heenan, solicitor and I seek leave to appear for Mr Bancroft in the relevant part of the inquiry.

THE COMMISSIONER: Yes, very well, you have leave.

MR HEENAN: Thank you.

30 MR CAMPBELL: Thank you, Commissioner. Commissioner, the first part of today's evidence will relate to the Liverpool City Council. The evidence in the regard to that matter is contained in folder 21 and I call Mr Amjad Maaya. Come forward please, sir.

MR NAYLOR: If the Commission please, I appear for Mr Maaya. And he seeks the benefit of the declaration.

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

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR MAAYA 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 Maaya, 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 MAAYA: Yes, I do.

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

MR MAAYA: It doesn't matter.

20 THE COMMISSIONER: You've got to choose I'm afraid.

MR MAAYA: Under oath.

THE COMMISSIONER: All right.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Maaya, would you please state your full name?---Amjad (not transcribable) Maaya.

10

And were you employed by the Liverpool City Council between 9 February, 1998 and 25 March, 2011?---That was the last occupation, yes.

And at the time you were last employed by the Liverpool City Council were you in the - I'm sorry, did you have a job as a coordinator in relation to street maintenance?---Yes. It was actually, the job was changed every now and then due to restructures and yeah, so from neighbourhood services coordinator to city works coordinator to civil maintenance coordinator. The last one was supposed to happen some time around April or May but I left Liverpool Council on 28 March so, so the coordinator street furniture never happened.

20

All right. So it's probably just as well if you just listen carefully to the question I ask you and only answer the question rather than - if I need some additional information I'll ask you another question?---Thank you, sir.

Do you understand?---Yeah.

All right. Now, in your role as coordinator did you have delegation of authority from the council to purchase supplies?---Yes.

30

And what was the amount of that delegation?---Up to \$10,000.

And this tab 118, Commissioner, of volume 21. Were you asked to provide information to the Commission pursuant to section 21 of the Independent Commission Against Corruption legislation? Is that, is that right, sir? ---Sorry, I can't, I can't find it.

All right. Well, you've got the folder there. Go to tab 118, the first one's a little faint perhaps and turn up page 52?---Can I just pick up my glasses?

40

You might need them. All right. Well, my question Mr Maaya was were you asked to provide information to the Commission pursuant to the legislation?---Yes.

Yes. And have you got the folder opened at page 52?---Yes.

And are pages 52 and 53 the statement that you made in response to the Commission's request for information?---Yes.

And are the contents of that statement true and correct?---I would like to make some changes to the statement.

Well, would you just answer my question first then I'll ask you about that. Does that mean that the answer is not completely?---Not completely.

10 All right. I'll ask you about that in a moment. What changes do you wish to make?---Number 7, the first paragraph.

Yes. Well, in that paragraph you said that you, that you did receive gift cards, there were less than 10 of them and the maximum amount you received was \$70. Now, do you wish to change any of those details?---Yes.

Okay. Well, what, what, what do you say is the true position?---It would be probably about 25 vouchers and the amount was varied between 20 and in one instance was for 150.

20

Now, you understand don't you, sir, because it was on the notice that it was your legal obligation to be completely truthful with the Commission in providing this information?---Yes.

And can I ask you this, that before you provided the information you did have the benefit of legal advice about your obligations in regard to complying with the notice?---Yes.

30 Well, why didn't you tell the Commission the whole truth when you provided this information?---Actually, the whole, the whole issue was due to my ethnic background. Back in my culture if, if a man admits to do something wrong that's puts him down low and, and I was very embarrassed.

Well, I think you can take it, take it, Mr Maaya, that in any civilised culture if a man admits to doing the wrong thing it's a shameful thing, isn't it?---It is.

40 Is that, is that, that's your explanation, you were too ashamed to admit the truth?---Yes.

All right?---And I was, I was scared as well.

I beg your pardon?---I was scared as well.

Scared of what?---Just of the shame, that's all. Just for the shame, that's all.

THE COMMISSIONER: The consequences of making the admission?

---Not really, just something which actually will put me down, down actually low.

MR CAMPBELL: You understand don't you that the matters we're about to discuss are a serious misconduct. Do you accept that?---Yes.

And that serious misconduct can have legal consequences. Do you accept that?---Yes.

10 Do you also understand that lying or not telling the whole truth to the Commission is serious misconduct, it's illegal. Do you understand that?
---Yes.

And that can have legal consequences. Do you understand that too?---(NO AUDIBLE REPLY).

All right. Would you turn back the folder please, to page, to tab 17 at page 41. Now Mr Maaya, pages 41 to 46 are actually a spreadsheet. Do you understand what I mean by that?---Yes.

20 And you'll see it's got your personal details on it on page 41. Do you see that?---Yeah.

And what, the information on the spreadsheet is what we contend that the evidence provided by Momar Australia proves about how many vouchers they sent you. Do you understand?---Yes.

30 Now if you look at the date under the heading Set Number 2 on page 41, how we've done this is that each date entered on the spreadsheet represents one voucher. Do you follow me?---Yes.

Thank you. Now firstly we contend that each of the vouchers was of \$50 in value. Do you accept that?---I do, but there was some for \$20 as well.

I see. Now if you turn over to page 42, you will see that there are a series of dates and if you get to what's titled Set Number 11, do you see that?---Yes.

40 That's the date of 22 April, 2010. Now we say that, and do you see that that date is entered twice?---Yes.

We say that on that date you were sent two vouchers, each of \$50. Do you understand me?---I do understand, yes.

And you admit now, sir, don't you that there were occasions on which you received more than one voucher?---Yes.

And indeed from what you've said to the Commissioner this morning, you admit that on at least one occasion you received as many as three vouchers. Is that correct?---There was on time actually I receive five.

One time you received five?---Yeah. That's the one which I said that one time was over \$150.

Well if you received five, do you accept from me that you probably received \$250?---I don't think so, no.

10

I see?---There was, I as said 20, I mean, it was definitely over 150.

All right. We say, sir, that in total you received from Momar Australia over the period covered by your spreadsheet a sum of \$1,250. Now do you accept that's the total amount you received?---Possibly, less. And that - - -

Of that magnitude?

20

THE COMMISSIONER: I beg your pardon?---Because there are some - - -

I couldn't hear what you said, Mr Maaya?---I said possibly yes.

Possibly yes. I'm sorry what else did you want to say?---There was, there was some vouchers for \$20 as well, so if you count all \$50, yes, and if you count some of them was to be less, that's I say it's possible.

Well would it be fair to say that they were in the vicinity of say between a 1,000 and \$1,250?---Yes.

30

MR CAMPBELL: Thank you, Commissioner. And, and you accept that the period is from 28 August, 2007 to 15 December, 2010. Is that correct? ---That's correct.

Now when you commenced work, I'll withdraw that, Commissioner. You knew did you not that the Liverpool City Council had a gift and benefits policy?---Yes.

40

And you also knew didn't you that it had a gifts register for officers to record gifts received?---Yes.

And you had used that gift register in the past had you not?---Yes, sir.

Did you record any of these vouchers on the gift register?---No, I didn't.

You knew didn't you that in accordance with the policy established by the Liverpool City Council, it was wrong for you to receive and keep these vouchers?---Yes.

You accept don't you, Mr Maaya, that receiving a cash voucher that you can spend in a shop is just the same as receiving the cash itself don't you?

---Yes, sir.

And you'd accept wouldn't you that it was a corrupt practice for any council officer to receive cash from anyone dealing with the council. Do you accept that?---Yes.

10 And that's why you were ashamed to admit the full extent of it. Is that correct?---Yes.

All right. Now you, you've mentioned, if you go back to page 52 and to your statement, you've mentioned someone who you have referred to as Paul Goldin. Do you see that? It's in the first bullet point of paragraph 7 on page 52?---Yes.

Now how did you first meet Mr Goldin?---He just been to the depot and I was - - -

20 THE COMMISSIONER: Sorry?---He came to our depot.

Yes?---Yeah, to our works depot and he was looking for, I mean he was looking (not transcribable) a lot of coordinators and then one of them was me.

MR CAMPBELL: Did someone introduce you to him or did he introduce himself?---I think, I think he was sent to me, to my office by the stores, by our stores 'cause the stores office was just exactly across of my office. And he just sent him to see me. And he just came and introduced himself.

30 And up until the time he introduced himself had you been ordering the products of Momar Australia?---Oh well not, not only from him. I had, yes..

You had previously ordered them before you met Mr Goldin?---No.

You were using other companies products?---Yes.

40 And what did Mr Goldin say to you on that first occasion that you met?
---Well he just presented his products, you know, and we said that we're going to try them. And he was really, you know, we were like getting a minimal amount or he would give us like a sample and we'd give it to our workers and they would try it and they will give us the feedback, is it better than the products which we have been using before or is it, if it's worse then we do not buy them at all.

Now can you tell me, you've mentioned in your statement that he spoke to you of a loyalty programme. When did he first speak to you about that loyalty programme?---That just after sending the first - - -

The first, after the first voucher you say?---After the first voucher, yes.

You see did the first voucher go to your home address?---Yes, it did.

And did all subsequent vouchers go to your home address?---Yes.

10

Well how did he get your home address in the first place?---Okay, I actually asked him for a, as a private issue, you know, just for some brochures for cleaning products. That's all what I did. And I ask, I told him because that doesn't have anything to do with the council and I ask him, can you please send it to my home address.

What, did he send them to your home address with a voucher?---No, no. That was way before that, the voucher.

20

Well when the first voucher came in the mail, was that you say before you'd had any discussion with him about the loyalty programme?---Yes, yeah. Yeah, he sent the first one without any notice.

Well did you know where it came from when it turned up?---Well he, he asked me a couple, I didn't know who it came from from the beginning and he asked me a couple of days about did you receive anything from us.

30

You mean a couple of days later he asked you?---Yeah, a few days later, yeah, it was a few days later. And I said that I received a, he said, he said, mention actually a gift card. And I told him so it was you who send it. And then I ask him actually, that, why did you send it? And he said that's part of our loyalty programme, you know. And, and, but I actually assured him that please, that's not going to affect what we buy and how much we buy. Do you understand? He said, yes, no, no, we know that and that's not going to affect any of that. We're not going to put, there won't be any affect on, on, you know the buying or, or whatever else.

40

Did you find, however, that each time you did place an order for Momar Australia's products that some of these vouchers, one or more of them came to your home?---Yes.

And just to make it quite clear, you spent them on your normal household expenses, is that correct?---Well, usually my wife and the kids they were spending them.

And you, you see you say it, it didn't affect your, your purchasing pattern for the council?---No.

But you must have, they must have come in handy at home, is that correct?
---Well, yeah, I mean the, the, the kids were spending them and the wife,
yeah.

THE COMMISSIONER: Well, when he said it was a loyalty programme
what did you understand a loyalty programme to mean?---Well, probably
because we're using their services, that's all that it is.

10 So you're getting a reward because you, the council use - - -?---Their
product.

- - - the council's using their services?---Their products, yeah.

And after a while you must have realised that the more you bought the more
vouchers you get?---Could not find any connection between the amount
honestly 'cause sometimes they would come in less and sometimes they
would come in more.

20 So the more orders you placed the more vouchers you'd get?---That's
exactly when, when I got the last two lots of vouchers, you know. It
became a concern and beside he started becoming very pushy, asking for,
for the orders and, and we told them do not send any more. Well, I stopped
him from sending any more. That was just before the end of 2010.

30 How did he, how did he become pushy?---Well, not every time he was
coming he was getting an order so he start, you know, pushing for an order
but if I have got the chemicals I told him, if I've got the chemicals I cannot
order any more 'cause it's not appropriate and, and when I see him that he
become more pushy and pushy, I told him please stop sending anything and
do not come without, without calling us because he start coming too often
and I told him do not, if we need you, we will call you ourselves.

You see, so from that experience you understood that Momar Australia
were, were using the loyalty programme to try and increase the sales they
were making to you?---That's exactly why I stopped them, yes.

Sales that they were making to you on behalf of the council?---Yes.

40 You see, if you'd thought about it at the start you would have realised that
that's what they were doing wouldn't you?---Unfortunately, yes.

Now, the - if you look at paragraph 3 on page 52 you've, you've said in
your statement and you've acknowledged that you did receive training in
relation to the Code of Conduct, do you see that?---Yes.

And that, and that included, did it not, training in relation to the Code of
Conduct so far as it included the receipt of gifts and benefits, that's correct
isn't it?---Yes.

You do say, however, that last sentence of paragraph 3 “No amount has ever been indicated as being an upper limit for a token gift.” Do you see that?
---Yes.

But, but, sir, you knew that a \$20 or a \$50 voucher or a series of them was much more than a token gift, didn't you?---I wasn't very sure but I, I felt that it's inappropriate, yes.

10 Well, you've already agreed with me it was just like giving you the cash itself, wasn't it? Wasn't it?---Yes.

You don't, you don't mean to blame council do you for what you did?---No.

The whole idea of them going to your home address was so it could be kept secret from council, wasn't it?---(NO AUDIBLE REPLY)

Can you speak up?---Yes.

20 Thank you. Now, what, you've told us that you left the council on, on 25 March, 2011?---28 March.

28th?---Yes, I did.

That was three days after you were required to complied with the Commission's notice, wasn't it?---Yes.

Did that have anything to do with you leaving the council?---No.

30 Nothing?---No, it didn't have anything to do with the ICAC investigation, no.

Why did you leave the council?---'Cause I got another job at Penrith City Council.

Are you still there?---No. I resigned on 30 September.

40 Why did you resign from that job?---That was, firstly it was personal issues and, and there was some amount, after the ICAC actually made some inquiries about me and they started having some issues on me so it was just too much for me and they start, you know, picking on me, checking on me and everything. I had to resign. So I chosen to resign because um, at that moment I was feeling myself very well and plus some personal issues as well on me, distance was too far for me and I needed to get some time to my family.

Are you unemployed at the moment?---I am unemployed, yes.

So from what you've said to me then a large part of the reason for resigning from that position was ICAC's investigation into these matters. Is that correct?---It wasn't the main thing, no. It wasn't the main thing but it was, I, I could feel there was some, you know, you know, some like, there, there was something I mean start happening in there, I mean, I could feel that the manager wasn't treating me, you know, as, as before that inquiry, even, you know, oh, I could feel the difference, I could feel the difference.

10 Did they institute an internal investigation of their own into some aspects of your performance as an employee?---No, no not with performance. I had very good performance in there and besides also with, with (not transcribable) I've, I've done a very good job there and, and that can be proven by my direct supervisor.

Was there any question raised about your timesheets?---About my timesheets, yes.

20 And what was the question that was raised about your timesheets?---Well, about what time I was leaving from work, what time I was coming to work.

You've said it was a long way from your home?---Yes.

I have no further questions, Commissioner.

THE COMMISSIONER: Mr Naylor?

MR NAYLOR: No questions, thank you, Commissioner.

30 THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: Could Mr Maaya be excused, Commissioner.

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

THE WITNESS EXCUSED

[10.37am]

40 MR CAMPBELL: I call Max Bancroft. Come forward please, sir.

MR HEENAN: Commissioner, I'm instructed that he will take an oath and that he will seek to make objection in the usual way.

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

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

THE COMMISSIONER: Now, Mr Bancroft, 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. I'm sure you understand that.

MR BANCROFT: I clearly understand it, sir, Commissioner.

THE COMMISSIONER: Would you swear Mr Bancroft in please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Bancroft, would you please state your full name?---Maxwell Eric Bancroft.

10

And were you an officer of the Liverpool City Council between 23 August, 1993 and 8 July, 2011?---That's correct, sir.

And had you been employed in the capacity of a senior coordinator since about August 2005?---That sounds correct, sir.

All right. Now, during - in that capacity did you have a delegation from the council authorising you to purchase supplies required for the performance of the work for which you were responsible?---Correct, sir.

20

And what was the amount of that delegation?---It did change a couple of times but I believe when I was finishing that it was 25,000, sir.

Now, you were asked to provide information to the Commission pursuant to the provisions of section 21 of the Independent Commission Against Corruption Act 1988, were you not?---That's correct, sir.

And you understood, didn't you, that you were required by law to provide the information sought?---That's correct, sir.

30

And that there penalties for failing to comply, you understand that?---I understand.

Including penalties for failing to provide all of the relevant information that was sought from you. Do you understand, did you understand that?---Yes, sir I did.

And I'll ask that you be shown Folder 21 and tab 116. Firstly, if you open that tab at page four of the folder, you can identify that as the first page of the notice you received. Is that correct?---That's correct, sir.

40

And if we go to page eight, we can see that you had the benefit of legal advice before providing the information. Is that correct?---That's correct, I've spoken to Gareth Lewis.

And that if you didn't understand it already from the clarity of the notice you were given, you certainly understood it from what you were told that

you had to be fully frank with the Commission and provide any information. Is that so?---That's the advice that Garth Lewis gave me.

Yes, I assume so. And is the information you provided the statement contained on pages nine and ten of the folder behind tab 116?---I'm sorry, could you say the question again please.

Would you look at the statement on pages nine and ten.---Yes, sir.

10 Is that your signature appearing above the name, Max Bancroft - - -?---Yes, sir that's correct.

- - -on page ten?---Yes, sir.

Is that the statement you provided to The Commission in compliance with - - -?---Yes sir, it is.

20 You really have to wait Mr Bancroft until I finish I asking you the question before you answer it otherwise it just won't be recorded. Do you understand?---Sorry, sir.

That's quite all right. Is that the information you provided in compliance with the notice you were given?---Yes, sir.

Now, are the contents of that statement fully truthful and correct?---To the best of my knowledge, yes sir.

30 Can I ask you, I withdraw that. Looking at the statement would you agree with me that although you make reference to what's called a loyalty program you don't tell us how many gift cards you received or in what amount, do you?---No, I didn't because I actually didn't know how many it was.

Well, what's your best estimate?---I, 'cause when I tried to work back over it I couldn't actually remember exactly how many I got so I thought - - -

40 I suppose Mr Bancroft that when you received these gift cards and I'll ask you about the circumstances in just a moment, they were spent. Is that correct?---Correct sir.

No record of them was kept?---No, sir.

And it was very difficult in those circumstances for you to give The Commission a completely accurate assessment of how much was involved. Is that correct?---Correct.

If I could ask you this, Mr Bancroft, you didn't even try did you to tell us how much was involved?---The reason I answered that - - -

Would you mind answering my question?---Well, I did try sir.

I see. You didn't even take a stab at it did you?---No, I didn't take a stab at it, no sir.

In any event, would you agree with me that the total amount that you received from Momar Australia by way of these gift vouchers was \$800?---I guess sir.

10

You don't, you have no idea. Is that right?---That's correct, sir.

Would you look at – but you know it was more than nothing wouldn't you?--Yes, I would sir.

And you're - - -?---I'm not denying I didn't receive them, sir.

20

Well, can I ask you this question as well, sir, you, what you've got the plural gift cards and you've got it there twice – I'm sorry I'll withdraw that – three times. Do you see that?---Yes sir.

And you've got the date, you've got query?---Yes, sir.

Now, if it were correct to say that you only received these gift cards on three occasions you'd have an idea of how much it was wouldn't you?---No, I'm not saying it was on three occasions sir because, I - - -

30

Did you – go ahead, please give me your explanation.---Because where it's got question mark that was because that was a period of time and I wasn't, I knew that I'd received multiple times but I wasn't sure how many during that period so that's why I did it that way sir, so I - - -

THE COMMISSIONER: I'm not sure why you've given three - - -?---
Because - - -

- - -you mention it three times. Why did you do that, what are you trying to indicate?---Because I tried to put in a chronological order.

40

I see.---Because I had the iPod, the gift cards - - -

All right.- - -?- - -the bottle of bourbon gift cards, I tried to do it as accurately as I could.

And all these gifts came from Momar did they?---That's correct, that's the only place.

MR CAMPBELL: Mr Bancroft, would you accept from me that the way that you've presented that without the explanation that you've given to the

Commissioner is quite misleading. Do you not agree?---I didn't intend it to be misleading.

Well, I'm not asking you what you intended I'm asking you whether you agree that the affect of it is quite misleading absent the explanation you've just given The Commissioner?---It has to be because - - -

10 It might have been useful if you'd included the explanation that there were too many to remember over a long period of time in your statement. Do you not agree?---Yes, sir.

All right. Would you turn over to tab 115.---Yes, sir.

Now it consists of pages one to three of the bundle. Do you see that?---Yes, sir.

It's got your personal details and your employers name on it on page one. ---That's correct.

20 Now you were in court when I was explaining to Mr Maaya?---Yes, sir.

Sorry, the hearing room when I was explained it to Mr Maaya. And you understand don't you, from the explanation that I gave you that what we say about this document that it is a spreadsheet that we prepared from the evidence provided by Momar Australia relating to despatch of gift cards to you.---That's correct sir.

30 And that each date set out in the spreadsheet represents one gift card. Do you see that?---Yes, sir.

So that when we put in the same date more than once we're saying that you received an equivalent number of gift cards or at least an equivalent number of gift cards were sent on that date. Do you recall that don't you?---That's correct.

And do you accept that you received these gift cards between the 9 of July 2009 and sometime shortly after 16 of December, 2010?---Yes, sir.

40 All right. And you accept – and was it the case that each of these gift cards was in the amount of \$50?---Yes, sir, there was no variation from that.

And you accept from me, you haven't done the sums yourself, but the Commission officers have calculated that the total amount involved in your case was \$800?---I have no reason to disbelieve that, sir.

Now can we go back to your statement at page nine, if we look at the information you've given in response to question seven, you've told The Commissioner in answer his question that each of those items listed was

something you received from Momar Australia's representative. Is that correct?---That's correct, sir.

All right. Now, he gave you two iPod's in 2008?---I believe he did, sir.

THE COMMISSIONER: Are these, what size iPod's were they?---They were just for playing, small one, yes sir.

10 MR CAMPBELL: Is that the thing that they call an iPod Shuffle?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Or a Nano?---I truthfully don't know.

MR CAMPBELL: Does it have a - - ?---I just gave them to the kids, I didn't, I, I not technologically incompetent.

Did it have a screen on it or?---No, no, no, it was just - - -

20 A little square thing?---It was just a little square thing, it was about, so big.

All right. I think it's a shuffle Commissioner. Now was it always the same person that you dealt with from Momar Australia?---I only ever dealt with Paul.

And is that Paul Goldin?---I'm not sure of his surname but, yes.

All right. And when did you first meet Mr Goldin?---I truthfully don't know the date.

30 Well, you've told us doing the best you can that you might have received these iPod shuffles in 2008.---And I was trying to work out back from my memory so that would be about some time in that period.

Yes. Well, was it early on in your relationship with him that he gave you those gifts?---Yes it was, well I probably would have done some dealings with him prior but yeah, it would have been early in the piece.

40 All right. Now how did you, how did you meet him?---He would have just come to the office, I believe.

Did somebody at work introduce you to him or did he seek you out?---I believe he sought me out. I don't think there was any introduction or anything.

All right. And he introduced himself to you?---That's correct.

And he must have known something about you before he met you if he came to you unannounced to speak to you about the products he was selling. That's a fair assumption isn't it?---Yeah, that would be.

And - - -?---Yes, sorry.

That's all right. What type of products did you obtain for the council in the course of your work?---Well one of the first things that I dealt with Mr Goldin, was that we had a problem with uric smell in the stairwells of the,
10 sorry - - -

Just have a glass of water if you wish?---The, I'm just a bit nervous that's all, sorry.

Go on?---In the stairwell of the car park there was a uric smell because we had homeless people living in there and they were urinating in there. And he had this, and we tried many different types of products from different companies and they got this thing called Powder Puff and it worked really well at countering the, the smell.
20

That was Momar's product was it?---That's correct.

All right. But you hadn't previously been using any of Momar's products before you met Mr Goldin. Is that correct?---No, I had not.

All right. But you liked that product?---Yes, yes we did.

It worked well?---And it worked very well.

30 All right. When did he first mention to you the loyalty programme?---That was some time after I had built up a relationship with him.

Did he acquire information from you about your, about your home and your family and your interests and that sort of thing?---Yeah. I actually thought that we, at the time I thought we'd had a friendship rather than - - -

And, and in hindsight?---I was gullible.

40 And anyway what did he say to you about the loyalty programme?---That the loyalty programme, when he introduced it to me he basically said this is a loyalty programme that operates with all the, all the councils and all the companies. That it works like a coffee voucher system, you get a stamp and, yeah, that was how the loyalty programme worked.

THE COMMISSIONER: I'm not sure what that means, Mr Bancroft. Can you just explain that, please?---The loyalty programme was, when you used their services or just for continuing to, to be with them, that there was a loyalty programme, so - - -

Does that mean that every time you ordered you'd get some kind of gift?
---No. It didn't work, well I never, sorry, not every time that I ordered did I receive a gift.

But most times?---I would say 50 per cent of the time, yeah, or higher.

50 per cent or more?---50 per cent or more, sir, sorry, Commissioner.

10 And did the, did the value of the gift vary in your relationship to the amount of the order?---I haven't actually correlated that til I was sitting up the back and heard the other evidence.

What do you think now?---Having heard the evidence now I do.

What evidence?---Earlier in the discussions with Mr Maaya.

No, no, what about you only? I mean if you think back in your own
20 dealings and the orders you placed with Mr Goldin, can you say whether there was any correlation between the amount of the orders and the number of vouchers you received or the value of the vouchers that you received?---I actually thought the vouchers always came exactly the same, to be honest. I didn't think there was any variation at all.

I see.

MR CAMPBELL: Well you see we can – if you look at page 2 for instance
- - -?---But that was like - - -

30 That was then?---Yeah.

Not now?---Yeah, not now. That's what I'm saying, I now - - -

THE COMMISSIONER: What are you saying now?---Now I say that there probably is a correlation.

Now you've had a revelation have you?---Sorry, sir?

40 You've had a revelation?---Oh well I realised quite early on in the piece when I was told about the ICAC investigation just how stupid and gullible I was.

Yes. You, you were, it was a bit like fishing wasn't it? He'd put the bait in and the person would be hooked?---Yes, sir.

MR CAMPBELL: Thank you, Commissioner. I have just a few more questions. You see, I mean when you look at the spreadsheet, sometimes, don't look at it, just take my word for it, sometimes you'd get two vouchers

when you've placed an order and on other occasions you'd get three vouchers, on the spreadsheet?---Yes.

Now looking back at it was the number of vouchers related to the size of the order that you happened to place?---Now I'd say yes it is.

All right. Now these were sent to your home address?---Yes, it was, sir.

10 When you were with the council, Liverpool City Council, did you undertake training in relation their procurement policy? Do you understand what I mean by that?---Yeah, how to raise purchase orders and all that sort of thing, yes, sir.

Yes. And what, and what was expected in terms of the conduct of officers entrusted with the councils authority to purchase on its behalf. Did you receive that training at all?---I believe I might, yes, sir.

20 Could I, could I take you please, in the bundle, to page 262. It's behind tab 119, Commissioner. Now have you got it opened there now, Mr Bancroft? ---Page 262?

Yes?---Yes, sir.

Do you see that from the top of the page that I'm showing you a page in what's called Liverpool City Council's Procurement Policy Manual. Do you see that?---Yes, sir

30 Now is this – and from page 246 we can see that this policy was in place from at least June 2005. Do you see however on page 262, paragraph 8.6.1, the second sentence, gifts should not be provided to council personnel in expectation of reciprocation of granting of, of favours. Do you see that?---I do see that, sir.

Now had you seen that before as part of your training with the Liverpool City Council?---To be truthful sir, I can't remember.

40 And you see it says, if a supplier wishes to provide a personal gift, it should be of nominal value only such as a calendar and it should be offered only on occasions such as Christmas, which have no connection with the valuation of tenders or awarding of contracts. Do you see that?---I can, sir.

Yes. And it says, if a supplier wishes to provide a gift such as a model or a sample of more than nominal value, this should be to the council unit concerned rather than an individual. Do you see that?---Yes, sir.

You see this loyalty programme breached every single one of those requirements that I've read out to you, does it not?---Yes, sir.

And you would be the first person to say wouldn't you, Mr Bancroft, that gifts vouchers in the sum of \$50 or \$100 or \$150 or more are of more than nominal value aren't they?---I do now, sir, yes.

Well if you've taken even a moment to think about it, at the time that these were coming to your home address, you would have come to that conclusion as well would you not?---Yes, sir.

10 And you accept don't you that a gift voucher may as well be cash. Do you accept that?---I, I didn't think of it that way at the time, sir, but I do now.

Well because these were, were these Coles Myer vouchers?---Yes, sir.

And there are a lot of shops associated with the Coles Myer - - -?---Yes. Sorry.

That's all right, aren't there?---Yes, sir.

20 You can, in fact we've heard evidence that there might be as many as 14 of them. Would you, when you go to any one of those shops you can hand over a \$50 vouchers in the same way you hand over a \$50 note can't you? ---Yes, sir.

Can I take you to page 88, Mr Bancroft, of the bundle. And it's still in folder 119, I mean tab 119. And you'll see, you'll see that this is, I beg your pardon, Commissioner, you'll see that this is a part of the councils Code of Conduct for its councillors and officers. Do you see that?---Page 88?

30 Page 88?---Gifts and benefits, yes, sir.

And I won't read out all of these but you can see, can't you, that - and you'd accept this is correct, wouldn't you, you must not seek or accept a bribe or other improper inducement?---That's correct, sir.

By virtue of your position and you must not by virtue of your position acquire a personal profit or advantage which has a monetary value other than one of a token value. Do you see that?---Yes, sir.

40 And you'd accept, wouldn't you, that \$50 is more than a token value?---I do now, sir, yes, sir.

Well, if you thought about it at the time, Mr Bancroft, you'd have come to the same conclusion, wouldn't you?---Oh, most definitely, sir.

And you'd agree with me, wouldn't you, and you can look at page 62 of, of, of the folder - if you turn it up, this is a statement from the general manager of Liverpool City Council, I'm sorry, if you go to 61 to start with. Do you see that? If you go to page 61, paragraph 7 you'll see the second sentence

of paragraph 7 that council records indicate that Mr Bancroft, that's you, undertook Code of Conduct training on 9 December, 2003 and 24 November, 2005?---Correct, sir.

You, you accept the accuracy of, of that information?---I have no reason to disbelieve it, sir.

10 If you go to page 62, paragraph 8, you'll see that from the last sentence of paragraph 8 that the council records indicate that you undertook purchasing training on 9 March, 2005 and 25 June, 2007. Do you accept that, Mr Bancroft?---Yes, sir.

And you'd accept from me that an objective observer reviewing these facts would be entitled to conclude that your receipt of these vouchers in Momar Australia's loyalty programme was corrupt conduct by a public official, would you agree with that?---Yes, sir.

20 All right. What do you, what do you think about the conduct of Momar Australia now in relation to giving you these vouchers?---Well, yeah, I, I wish I'd never come across Momar Australia and yeah, as I said earlier, my stupidity and gullibility.

THE COMMISSIONER: Mr Bancroft, please correct me if I'm wrong but the impression I get is that you accepted these vouchers because it was so easy to get them and you thought you'd never be found out?---No, that's not true, sir.

Not true?---No, sir.

30 So why did you do it?---Because I didn't really think about my actions, sir and I mean - - -

I mean, didn't it strike you - you see, it's hard for me to understand that because they were sent to your home?---But they were sent by registered - like thinking about it afterwards, like they, they sent it to me via registered post. If I really wasn't - - -

At home?---Sorry?

40 At home?---Yes, sir, but - - -

Why did he send it at home?---Well, because he, I mean, the explanation that I got given was that they sent it to your home address by registered mail because things kept going missing and it was for their, for their records and things and so I just accepted that on face value. However, I, it was a blatantly stupid thing to do and had I actually thought - - -

(not transcribable) he came to see you often, didn't he, Mr Goldin?---About once a month, sir, yes.

So he could have just brought them in and handed them to you?---Yes, sir, sorry, Commissioner.

Yes. All right.

10 MR CAMPBELL: You may have been gullible to start with but the, your gullibility led you into morally reprehensible conduct, didn't it?---Yes, sir.

Now, you mentioned earlier in your evidence a loyalty programme that a café might have if you buy their coffee. Do you remember that example?
---Oh, yeah, I was just trying to look for a - - -

Well, there are a few differences between that example, are there not, and the example of Momar Australia? I'll suggest to you what they are. The first difference is that if you go to the coffee shop to, with your own money to buy a coffee you're the consumer aren't you?---Yes, sir, that's correct.

20

It's your money and you can go to any number of cafés but you choose to go to that one, that's so, isn't it?---Yes, sir.

If you're a council officer spending the council's money procuring supplies for the council you're not the consumer, are you?---Ah, no, sir.

THE COMMISSIONER: I beg your pardon?---No, Mr Commissioner.

Yes.

30

MR CAMPBELL: And the coffee loyalty programme normally works on the basis if you buy a set number, five, eight or 10 or whatever they do, they'll give, they'll give you the consumer a free coffee?---That's correct, sir.

Well, this programme didn't work on the basis that they'd give the council the consumer a free pallet of chemicals, did it? After, after a certain number of purchases?---No, sir.

40

No. It rather worked on the basis they'd give you the, the council's trusted agent a kickback. That's right, isn't it?---I didn't see it as a kickback at the time but that's how - - -

THE COMMISSIONER: It's a bribe isn't it?---Perception's reality, sir, Commissioner.

I'm not sure what you mean?---The only time, when, when I bought things from Momar I was buying things that were actually needed. I didn't buy

excessive amounts of materials or anything, it was just what we were, we actually did require. That's why I'm saying perception is reality and reality is that it looked like it was a kickback but I wasn't actually - like if there hadn't been a loyalty programme I still would have bought it anyway which is why it's so bloody ridiculous. Sorry, I didn't mean to swear.

No, that's fine, Mr Bancroft.

10 MR CAMPBELL: I don't think the Commissioner's offended. Can I say this to you, ask you this question. You see, you say that once upon a time you didn't use Momar's products, did you?---No, sir.

Until they were introduced to you, that's correct, isn't it?---That's correct, sir.

And then you continued to use them the whole time that Mr Goldin built up this relationship with you. That's so, isn't it?---I also refused to buy some of his products too.

20 I see. But you continued to buy others of his products, didn't you?---Yes, we did buy some other products.

And while you were buying the products you were, you were getting the benefit of this so-called loyalty, loyalty programme?---That's correct, sir.

And during that period of time you weren't shopping around saying well, this Momar product's working okay but is there some other product on the marketplace that might do the same job at a cheaper price, were you?---I'm afraid we were, sir.

30 Were you, you were doing that?---Yes, sir.

And, and you didn't find one that you thought was better than Momar, is that what you're saying?---He had two or three products that were the best ones that we thought were on the market and the easiest to use but he also tried to introduce things like for removing graffiti and things and we didn't use those products (not transcribable)

40 You didn't find they were as good as the one you were using, is that right? ---That's correct, sir.

Well, you see, for all, all the world's appearances of course that this programme once it's uncovered looks like you were being induced to keep doing business with them, doesn't it?---Yes, sir, it certainly does.

And if you, and viewed from the standpoint of the, of the supplier, that's certainly what they meant by loyalty you now agree, don't you?---I certainly do now, sir.

Now, you've, your last day at the council was 8 July, 2011, is that right?
---Yeah, but I went on leave prior to that and, and didn't attend Liverpool since then.

Okay. What happened to your job?---I quit, sir. Oh, well - - -

That's all right, you can say that, you quit?---Yes, sir.

10 After you'd used up your leave, is that right?---Yes, sir.

Why did you quit?---Because I could, I didn't think I should be employed any more.

Because of this?---Yes, sir.

20 Apart from, apart from this course of conduct by Momar Australia did - in which you involved yourself, was it your intention to stay on with the Liverpool City Council?---Well, I, to be honest at different times during my career at Liverpool I've thought about leaving but at the time that this came up I wasn't particularly thinking about leaving but then other things happening at work I just thought I'd - and, and I started to feel really sick and I lost quite a bit of weight and things so I thought I should leave and plus I just thought I couldn't stay there and do that to everybody.

Have you found another job?---I'm just self employed now sir.

30 What do you think about, do you think you've paid a personal price for having been embroiled in this loyalty program?---I'm very - - -

You can tell me, I'm asking you?---Yes, sir.

I have no further Commissioner.

THE COMMISSIONER: Mr Heenan?

MR HEENAN: No, questions thank you Commissioner.

40 THE COMMISSIONER: Yes, thank you for your evidence Mr Bancroft you're excused.

THE WITNESS: Thank you sir.

THE WITNESS EXCUSED

[11.10am]

THE COMMISSIONER: The Commission will adjourn until 11.30.

MR CAMPBELL: I'm sorry for the delay in recommencing, Commissioner, we had an issue we had to deal with in relation to Monday's programme, so please forgive us.

THE COMMISSIONER: No, no, accepted.

10 MR CAMPBELL: I'm now moving from Liverpool to Byron Shire Council. The information is in folder 26 and I call Robert Arthur Vagne, V-A-G-N-E. Mr Vagne, would you come forward, please.

MR PATTERSON: Commissioner, Patterson, solicitor, I seek leave to appear for Mr Vagne.

THE COMMISSIONER: Yes, Mr Patterson. I take it you want me make a section 38 order, Mr Patterson?

20 MR PATTERSON: Please, Commissioner.

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

And besides that there is a penalty for giving false evidence in a public inquiry is a gaol term of up to five years. Now do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR VAGNE: Affirm the truth of my evidence.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Mr Vagne, are you Robert Arthur Vagne?---I am.

10 And were you formerly employed by the Byron Shire Council as a storekeeper?---I was.

And to the best of your recollection did you commence with the council on 20 October, 1994?---Yes.

And did you resign your employment effective from 17 December, 2010? ---I did.

20 I'll come back to the circumstances of your resignation later. In the, in your capacity as storekeeper did you have a delegation from the council authorising you to bind it in relation in to the purchase of necessary goods and supplies?---I did.

Can you now remember the amount of that delegation?---15,000.

All right. During the time that you were employed at the council did they have a Code of Conduct for their staff members?---They did.

You knew of it?---I did.

30 And had you received training in relation to its contents?---Code of Conduct training, yes.

Yes, Code of Conduct training. And did the Code of Conduct training also include specifically training in relation to the receipt of gifts and benefits by council officers?---It did.

40 And as part of that training did, did they go through sort of hypothetical but practical scenarios asking you what you thought about the appropriateness of the conduct and to engender discussion about it. Is that - - -?---They did, yeah.

All right. So that you, you were well aware, were you not, sir, that the policy extended to the important idea that you weren't entitled to receive any gifts of greater than what's referred to as nominal value. Is that correct? ---That's correct.

All right. It certainly extended to the idea that you shouldn't receive any cash. Is that correct?---That's correct.

And did it extend to the idea that - I withdraw that. Now, the - you dealt with a lot of different suppliers, correct?---Yes.

And indeed does it accord with your recollection, you may never have added it up, that in any given year you would be responsible under your delegation for placing orders with various suppliers, you know, totalling over the year about \$900,000?---That would be correct.

10 And in the course of that work did you, did you come across a company called R&R Tape Supplies?---I did.

And how did you first come across them?---They rang me.

Do you remember the name of the person who first rang you from that company?---Doug Quinn.

20 Doug Quinn. That's a name we've heard, Commissioner, already. And what did, what did he say to you when he rang you?---Well, he rang and offered to supply riggers gloves and chemical gloves as well and if we were to purchase a set amount there would be a gift supplied.

Did he say that to you right from the outset?---He did.

And, and what did he, did he, at that - I withdraw that. Can you remember when it was that you first dealt with him, Mr Vagne?---No, I can't remember that.

30 All right?---It was a long time ago.

THE COMMISSIONER: Did he tell you what the gift would, could be?---I believe it was a DVD player, the first gift.

Is that what he suggested on the telephone?---This is so.

MR CAMPBELL: All right. We, we have records, Mr Quinn, showing that you were dealing with R&R Tape as long ago as August 2001, does that sound right to you?---That could be right.

40 And was it around that time that you had the conversation with Mr Quinn that you've just relayed to us?---That's correct.

All right. Well, when you say that, that if you ordered a certain amount there'd be a gift did he say to whom the gift would be given?---Oh, it would, would be given to me or sent to me, yes.

Okay. And you told the Commissioner that the first thing you got from them was a DVD player?---I believe so.

All right. Doing the best you can to now recall?---This is right.

And - well, was it, was it, where was it - it was sent to you? To, to where was it sent?---It was sent to Byron Shire Council with attention Bob Vagne on it.

All right. Did it go to the council chambers or did it come to the depot?
---Comes to the, came to the depot.

10

All right. And that's at a separate location from the civic centre I suppose, is it?---This is so.

And, all right, now when you got, when you got that did you disclose to anyone at council you'd received it?---No.

What did you do with it?---Took it home.

20

Without making too big a point of it it should have been disclosed?---It should have been.

And it should have been recorded in the register that was kept for that purpose?---It should never have been accepted in the first place.

Well, you've anticipated me, Mr Vagne, but in any event we'll move on. Now, this, this relationship with, with Mr Quinn continued over a number of years, at least up until the end of 2009 or 2010, is that correct?---Mr Quinn resigned from R&R Tape at some time and another person took over from him, Martin somebody I believe.

30

Does the name Martin Slade mean anything to you?---Oh, it may have been Slade, yes.

All right. And, and did Mr Slade - well, I want to ask you about the relationship but up until a certain period of time Mr Slade continued the same relationship as the one that Mr Quinn had developed with you, is that correct?---That's correct.

40

All right. Now, you've, you've told us about a DVD player. Perhaps I could deal with it this way, Commissioner, if I haven't said so the evidence about this council is in folder 26 and could Mr Vagne be shown a copy of it.

THE COMMISSIONER: I think - - -

MR CAMPBELL: He's got it, yes.

THE COMMISSIONER: He's got it.

MR CAMPBELL: If you open it up at tab 139, sir, you'll see behind tab 139 page numbered 1 is a spreadsheet that the Commission's officers have prepared from the records provided to the Commission by R&R Tape which details things that have been given to you. Do you see that?---I do.

Now, have you seen this list before?---I've seen it this morning, yes.

You saw it this morning. Mr Patterson showed it to you?---Yes.

10 And do you agree its contents are true and correct?---I would.

All right. The, now we see that - I mean, it doesn't have the DVD on there but it has a number of, of - it has, for instance, one large hat - I withdraw that. It had one - the first item in August 2001 that we have recorded is, it says one large but that, that's, do you understand that to be one large size Drizabone coat?---31 August, '01 you're talking?

Yeah, I am.

20 THE COMMISSIONER: It's at the bottom, is it?

MR CAMPBELL: At the bottom, Commissioner.

THE WITNESS: Yes. It says one hat.

MR CAMPBELL: Well, you see, it says "One LGE" then it says "one hat"? ---One large hat.

30 Its, its supposed to represent one large coat and one size 58 brim hat, did you get both the coat and the hat from them?---I don't remember a hat but I did get the coat, yes.

Okay. And then you see that there are a number of others items between 31 August, 2001 and 7 May, 2003, for instance, the second item is one medium and you can take it from me that's supposed to mean one medium coat so were there other coats that were provided at different times by R&R Tape?---There may have been other coats.

40 And what did you do with the other coats?---Well, I don't know what happened to the other coats or how many there was.

THE COMMISSIONER: That says 25 October, 2000.

MR CAMPBELL: It does, Commissioner, quite right, I think is that an error? Mr Grainger tells me that it's just out of order, Commissioner. It's not an error so I've, I've made that error myself which I apologise for and Mr, Mr Vagne, it may have been as long ago as October 2000 that you first dealt with them. Do you see that second item on the, from the bottom?

---I do.

All right. Okay. But anyway, there were a number of items which, which consist of coats and things, you remember there being more than one coat, is that correct?---I do.

You only kept one of them for your own personal use, is that correct?---I did.

- 10 And you, you can't tell us what happened to the rest of them, is that correct?
---Probably handed over to other staff or something.

All right. It's something from you to them that you got from R&R Tape, is that correct?---That's correct.

All right. And then you see that we, that we get to about March 2008 and, and there are gift vouchers for Harvey Norman commence about that date, do you see that?---I do.

- 20 Now, when the gift vouchers started did Mr Quinn have a conversation with you about them?---He did.

And what did he say to you?---He suggested they be posted to my home address.

Well, thank you for that and there's a suppression order in respect of your home address but that's the address shown on that document you're looking at, is that correct?---That was the address then, yes.

- 30 It was the address then. But before, before that he must have said look, we've got this new programme or something like that, did he - I mean, how did he, how did the idea of the gift vouchers come up in conversation?---I don't really recall. I think it was in around that time that the Code of Conduct was brought into, into being.

Yes?---And that was the way of getting around the Code of Conduct.

All right. Was that a discussion you had with Mr Quinn or was that your own idea?---That was my own idea, yes.

40

All right. But did he say, did he say whether they'd been doing that, I'll withdraw that, Commissioner. So who made the suggestion about the home address, you or him?---He did.

And when he made that suggestion it occurred to you that was a good idea because it would get around the Code of Conduct. Is that correct?---Yes.

Right. And now you continued to buy the gloves off R&R Tape after that time. Is that correct?---I did.

And did he mention to you that the gift vouchers would continue for as long as you kept ordering the product?---No, I don't believe so.

All right. But did you work that out?---No. The vouchers and the gifts were given in return for the amount of goods purchased.

10 That's my question. Did he say that or did you just work that out?---(NO AUDIBLE REPLY)

Did you say to me just then that the vouchers were given according to the amount of goods purchased?---This is so, yeah.

Well was that something he said to you about how the system worked or was that something you worked out about how the system worked?
---Vouchers were not supplied every time I purchased from R&R Tape.

20 Ah hmm?---So I may have only, I may have purchased three times from R&R Tape. The first time there may have been a special offer. Usually it was, I've got two boxes of gloves left and if you purchase these two boxes you will get a gift voucher.

And so that would be said explicitly in that way when you were on the phone to them?---This is so.

30 Would they normally ring you and ask you how the gloves supply was going or did you ring them?---Mostly they would ring me.

All right. And – but, I'll withdraw that, Commissioner. I mean when you were placing – when they rang you and you decided to place an order with them for gloves, I mean, would they sometime say, look you're ordering so much, if you order these last two boxes I've got there'll be something in it for you or something like that?---This is so.

40 And then would you – if that was said to you, would you, would you say, okay I'll take those last two boxes as well, for instance?---Depending on stock levels, yes.

All right. Well (not transcribable) two questions is the idea that you, you might want four boxes, say, I'm just making an example, but they'd say why not take six, if you do we'll give you a gift voucher. Do you follow me?---I do.

Is that how it worked?---That's, yes.

So in that example, you only really thought you wanted four but you ended up taking six. That's right isn't it?---Yeah.

THE COMMISSIONER: Mr Campbell, according to this page 1, there are only five vouchers. Do I understand that correct?

MR CAMPBELL: There are five occasions on which they were provided, Commissioner, yes.

10 THE COMMISSIONER: And one on each occasion?

MR CAMPBELL: Well I better clarify that. You'll see they're of different denominations, Commissioner.

THE COMMISSIONER: Yes.

MR CAMPBELL: Can you tell me this, the gift vouchers that were supplied, did you always just get one or did you get more than one sometimes?---When it first started they were a \$50 voucher.

20

Yes?---And then I never asked for a set amount, I just, if they sent them they did, if they didn't, they didn't. And then it went to \$100 and then when Mr Martin, whatever his, Slade - - -

Slade, yes?--- - - - came along they just turned up with an order anyway, with no mention of, of - - -

THE COMMISSIONER: Mr Vagne, how many vouchers did you get do you think, approximately?---\$450 in monetary value, I think.

30

MR CAMPBELL: We've got, on our list here that we've shown you, sir - - -

THE COMMISSIONER: 500.

MR CAMPBELL: 500, thank you, Commissioner.

THE COMMISSIONER: So 500 I suppose you wouldn't quibble with? ---No, sir.

40

MR CAMPBELL: All right. So, but did you ever get like two \$50 vouchers when you got \$100 or was it just \$100 voucher?---I really don't remember, can't remember.

All right. All right. Now, all right, did you – because of the way they dealt with you did you develop, I'll withdraw that. You've already told the Commissioner that sometimes they'd come, sometimes they wouldn't. Do you understand that?---That's right, yeah.

But if they rang you to inquire about whether you wanted some gloves, did you ever say to them, well what's in it for me?---I did on a couple of occasions because they were turning into pests, calling me more than, more than usual.

Yes?---And I just said, well is there any graft or corruption in, in this for me and just left it at that.

10 THE COMMISSIONER: Did you use those words?---I did.

MR CAMPBELL: Mr - - -

THE COMMISSIONER: And what was, I'm sorry, Mr Campbell, what was their response?---We'll see what we can do, maybe.

And it was either Mr Quinn or Mr Slade?---Mr Quinn, I think.

20 Can I, Mr Slade has given evidence already before the Commissioner and this is at page 25 of the transcript of 4 October, Commissioner, about line 25. He said this, that the first time he contacted you that you had said to him, "What's in it for me?" Do you, do you acknowledge the truth of that matter?---No, I can't remember that.

All right.

30 THE COMMISSIONER: Your evidence is that it was only after some time of dealing with him when he was a nuisance that , when they were proving a nuisance you said that?---This is so. That's correct.

And when you say, to adopt the Commissioner's word, proving a nuisance, I mean - - -

THE COMMISSIONER: No, that was his words.

MR CAMPBELL: I beg your pardon, sir. I beg your pardon, let me start again. When he became a nuisance, what were they persistently ringing you, trying to drum up business all the time?---That's correct.

40 Did they seem to have an expectation that, that somehow you owed them an order or something like that?---I don't know.

Did you form any impression about it is what I'm really asking?---I, they were just pushing for, for sales, yes.

Yes. All right. Now were the gloves any good?---They were.

All right. The, all right, now Mr Vagne, can I say this that you've, you have spoken to the Commission twice before about these matters I think. Is that correct?---That's correct.

And on each of those occasions you've been very forthcoming and frank about your involvement in this matter. That's what you've tried to be. Is that correct?---That's correct.

10 All right. And the – now are you aware, you agreed with me when I asked you about the, the amount of orders that you would make from time to time in a given year on behalf of the council, pardon me, Commissioner, could I just take you some evidence from somebody else. Would you mind going to, I'll have to get you to jump around a bit, sir, but could you go to tab 144, page 159 of the bundle?---Yes.

And it's – this is a statement which is in evidence from Mr Holloway, who's one of the executives at the council. You know him?---I do.

20 All right. If you go to page 159 and paragraph 6 of Mr Holloway's statement, you see there that he made that statement in September, 2011 and he says that the current delegated limit for the stores officer is \$25,000. Do you see that?---I do.

And that in the 2009/2010 financial year that you ordered approximately \$101, 826.80 in goods. Is that correct?---That would be.

You agree that would be right?---Yes.

30 Would it surprise, if you look at page 86 of the bundle, it's behind tab 143 and that's part of the statement of Mr Mark Arnold, another executive of the Council. Do you know him?---Mark Arnold, I do.

Okay.---What page?

Page 86 Mr Vagne.---Yes.

40 Now you'll see what he's got there is a list of orders that were, that were obtained by you from R&R Tape Supplies over the period from 1 January 2007. Do you see that?---I do.

Now in that 2009/2010 financial year, you'll see that there are towards the foot of that list there are three of the last four orders fall in that period. DO you see that?---I do.

Now, this is only a rough calculation but according to my court arithmetic, of the \$901,000 you ordered during the period only \$4,500 went to R&R Tape Supplies. Do you see that?---I do.

A very small proportion of it by anyone's language. Do you agree?---I agree.

Did any of the other suppliers of nearly \$900,000 worth of supplies that you acquired give you these gift vouchers?---No.

Now what, and the total amount you've received told The Commissioner was only \$500 over a number of years. Correct?---This is correct.

10 Well, I want ask you about your resignation on 17 December 2010. Why did you resign?---I was being pressured by the general manager to, because I had broken the code of conduct and they sent me a great list of what I'd broken the rules about and all the rest of the of it and I had to come up with a reason why I should not be sacked and chose not to challenge it, I resigned.

Why did you choose not to challenge it and resign, did you feel that they were justified in calling you to account?---They were, yes but I had, they offered redundancies earlier in 2008/09 or something and I had applied for
20 one hoping to get out and but of course I didn't and I just had enough and this was, yeah, I'd had enough so I resigned. It cost me a lot of money I might add.

But I'm going to ask you about that. When you, when you took the option of resigning rather than waiting for the chop I suppose, is that how you saw it?---I did.

And when you took that option did you lose out on employment benefits by doing that?---I lost thirty grand, probably in wages plus accrued benefits,
30 superannuation, annual leave, stuff like that, yes.

Well, how do you feel about losing all that money now for the sake of \$500?---Not good.

No. And I accept what you say that you might have taken a redundancy had it have been offered earlier?---I would have.

Would you have preferred to have gone of the time of your own choosing?
---I would have.
40

And have you been able to find other work?---I'm on, I was given a disability pension from the date I resigned because I have back problems and I'm now on aged pension.

I take it that if you were, if you were going to resign you would have rather waited until that thirty grand entitlement, or that \$30,000 in entitlements accrued to you?---I would.

It would have come in handy in your retirement doubtless?---It would.

What do you say about, I'll withdraw that Commissioner. I mean, Mr Vagne, some people might say that the amount you received was a small amount. Going back on it, would you have done it again, knowing what you now know?---No.

You didn't think it was worth it?---No.

10 No. I suppose you say, not by a long measure, is that so?---Exactly.

And what would you say to other people in a position like yours if they were offered this type of incentive in the future?---Not to do it.

Thank you Mr Vagne.

MR PATTERSON: Just two very brief questions if I may Commissioner.

20 Mr Vagne, to the best of your knowledge was there ever a person called Bob Bourne or Bob Boor employed by the Council?---Not to my knowledge, no.

Thank you. And of the gift vouchers that you received, did you use them all?---No.

Can you explain that?---We spent \$100 at Harvey Norman in Lismore and \$150 at an off-shoot of Harvey Norman in Ballina, and that's it, the rest was destroyed.

30 You destroyed them?---I did.

No further questions, Commissioner.

MR CAMPBELL: Can Mr Vagne be excused Commissioner.

THE COMMISSIONER: You may be excused. Thank you for your evidence Mr Vagne.

THE WITNESS: Thank you sir.

40

THE WITNESS EXCUSED

[12.05pm]

MR CAMPBELL: That's the end of the evidence about Byron Shire Council, Commissioner, end of the oral evidence about that but there is some other evidence in the documents.

I'm now moving onto the Roads and Traffic Authority at Rockdale and I call Mr Phillip Burnie. Is Mr Burnie in court? Come forward please sir. He's unrepresented Commissioner.

10 THE COMMISSIONER: Won't you take a seat please Mr Burnie. Mr Burnie, as a witness appearing before The Commission, you are required to answer all relevant questions and produce any document which you are required to produce and you must do this even though your answer or the production may incriminate you but if you object to answering any question or producing any document your answer or the document cannot be used against you in any civil or criminal proceedings or even in any disciplinary proceedings. Do you understand that?

MR BURNIE: Yes.

THE COMMISSIONER: This protection, however, does not prevent you from being prosecuted for giving false or misleading evidence. Do you understand that?

20 MR BURNIE: Yes.

THE COMMISSIONER: Now perhaps the most convenient way to get this protection is for me to make an umbrella order to the affect that every answer you give is subject to protection, so is given on objection and therefore you get the protection for that answer. It means that you don't have to think about it and that whatever evidence you give is subject, is given on objection and you get the protection that I've explained to you. Do you understand that?

30 MR BURNIE: Yes.

THE COMMISSIONER: Would like me to make an order like that?

MR BURNIE: Yes, sir.

40 THE COMMISSIONER: It is in your interest. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Burnie 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 BURNIE 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 THE COMMISSIONER: Now Mr Burnie, as I have explained to you, 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. I'm sure you understand that now?

MR BURNIE: Yes.

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

MR BURNIE: Under oath.

20

<PHILLIP GEOFFREY BURNIE sworn,

[12.08pm]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you Commissioner.

Mr Burnie, would you please state your full name.---Phillip Geoffrey Burnie.

10

And are you employed by the Roads and Traffic Authority of New South Wales?---Yes.

Whereabouts are you employed?---In Rockdale.

Are you employed there as a team leader in the stores section?---Yes.

And for how long have you held that position?---May be eight years, I think there were other people before me and they retired.

20

And for how long have you been with The Authority?---Thirty-two years.

I'm sorry?---Thirty-two years.

Thirty-two years. You understand, do you not, that The Commission in inquiring into the receipt of gifts and benefits of the employees of certain public authorities. Do you understand that?---Yes.

30

And we are inquiring into the receipt of gifts and benefits by public officials from three specified suppliers. Do you understand that?---(NO AUDIBLE REPLY)

Do you know that or not?---No, I don't.

All right. You have previously spoken to the Commission or its officers about these matters, have you not?---As (not transcribable) it can be.

Well, have you spoken, sir, to anyone on behalf of the Commission before today?---No. I'm confused, that's all.

40

You're confused?---Sorry.

Well, perhaps I'll help lift the confusion. Pardon me, Commissioner. You came before the Commission on Thursday, 9 December, 2010 and were asked questions on your oath?---Oh, yes.

Do you remember that?---Yes, I do.

And you remember, don't you, that the Commissioner was presiding at that examination?---Yes, I do.

Commissioner, this is folder 27, it's tab 149. Now, do you - and do you remember that my instructing solicitor, Ms Lee, who is sitting beside me was asking you questions on that occasion?---Yes, I do.

Do you remember Ms Lee asking you this question - - -

10 THE COMMISSIONER: Can you just please tell me where it is?

MR CAMPBELL: I'm sorry, Commissioner. It's tab 149, Commissioner, it's page 25 in the, in the bundle.

THE COMMISSIONER: Thank you.

MR CAMPBELL: If you can turn it up, Mr, Mr Burnie, it's the foot of the page and perhaps you'll follow it while I ask you this question.

20 THE COMMISSIONER: Sorry, I don't have it. It's not in the file.

MR CAMPBELL: It's not in the file. Stop looking, I'll just have to read it to him, Commissioner. We'll get a copy. It's not in the, in the bundle. Just listen carefully to the question I'm going to ask you, we'll get a copy of this. This was the question: "Mr Burnie, were you ever offered any gifts or incentives or payments from any suppliers that you deal with in your capacity as an RTA officer?" Your answer to that question was, "No." Mr Burnie, the next question was, "Never?" Your answer was, "No." My - the next question was, "Are you absolutely sure of that?" Your answer was, 30 "Yes." My question is that each of those answers was a lie, wasn't it?---It was, I was scared.

You knew at the time, didn't you, sir, because the Commissioner explained it to you very clearly that there were severe penalties for lying to the Commission, that's so, isn't it?---Yes.

All right. Now, why were you scared?---I didn't know what to say, the first time in, in, in here, like this type of stuff. I was scared.

40 All right. What's, what's the true answer, sir?---I did.

You did?---Yes.

Now does, does the name R&R Tape Supplies mean anything to you?
---Yes.

And does that have anything to do with the true answer to the questions?
---True answer to the questions of R&R, yes.

All right. Now, could I show you a document, it's - this is in the bundle, Commissioner. It's tab 145, it's page 1. Mr Grainger instructs me that there are some duplications in the document, may I substitute this document I, I'm handing up for the document in the bundle and there's a copy for - - -

THE COMMISSIONER: Yes. I'm substituting this document for the present document at page 1 of tab 145 in volume 27.

10 MR CAMPBELL: Yes, Commissioner. Now, Mr Burnie, can I tell you what this document is. It's, it's, it's a spreadsheet prepared by the officers of the Commission from the material that has been supplied to the Commission by R&R Tape. Do you understand me?---Sure.

And from that material the Commission officers have compiled and summarised the evidence that relates to things they gave you. Do you follow me?---Yes.

20 You've not seen this before?---Yes, I haven't.

Would you just take a moment please to cast your eye over it and tell me when you're finished?

THE COMMISSIONER: I think it might be helpful if you just explain to Mr Burnie what the document means.

MR CAMPBELL: Yes, thank you, Commissioner.

30 Mr Burnie, you will see that firstly there's a series of dates starting with the date of 25 September, 2004, do you see that?---Yes.

And it runs down to 12 December, 2009. You can see the organisation which is RTA Rockdale, that's where you work?---That's right.

And then your name appears in the next column, do you see that?---Yes.

40 Then, then, there's an address. Now, that, that address will not be published, there's a suppression order in respect of it but that's your home address, is that correct?---That's right.

And then you'll see there's a, there's a heading "Incentive amount." Now, and there are a number of items listed under that which I'll take you to in just a moment. The slightly offset items to the right are Harvey Norman gift vouchers and the amount or the number appearing to the left of the name Harvey Norman represents a dollar figure. Do you see that?---Yes, I do.

Then the, the reference number in the next column is the express postage number relevant to the envelope by which they were sent to your home address, do you see that?---Yes, I do.

The property reference relates to the Commission's internal filing system, do you see that?---Yes.

10 And then the comments in respect of two of those items are, are comments Mr Grainger lifted out of the records of R&R Tape, do you understand that?
---Yes, I do.

All right. Now, with that explanation of the document would you just have a look at it again and tell me when you've finished looking at it?---Yeah, sure.

Okay. Do you accept that you received each of, each of those things described as incentives from R&R Tape?---I did receive it but not as incentive.

20 All right. Okay. Well, I'll come back to the incentive. But every item on the list is an item received by you. Is that correct?---Yes.

Including the holiday at Batemans Bay?---Yes. That was the first time, overnight.

Yeah. And who, who went? Your whole family?---My wife and, yeah.

30 Okay. You don't have to tell us what your family consists of, sir, we don't need to know that but - not at the moment but - and it says the (not transcribable) is taken by Doug, does that name Doug meaning something to you?---Yes.

Who does it refer to?---Doug Quinn is the gentleman I said before.

Doug Quinn?---Quinn, yes, the gentleman I said before, I, I forgot until that man mentioned his name.

40 I need, I need to, I need to ask you this question. Because you've been summoned and told to come today you have been, as you're entitled to, sitting in the back of the hearing room. Is that correct, while other people have given their evidence?---Yes.

Yeah?---Yeah.

And you've heard what other people have said about these matters. Is that correct?---For sure.

Now it says taken – so, so Mr Doug Quinn, had you met him face to face apart from talking to him over the phone?---I think he rang up first, introduced himself and then he said he'll come out one day and introduce himself again personally. That's the only time I met him. He wanted to know what we have in store and so on.

Yes?---Yep.

And, and - - -?---And other times it was just phone calls.

10

All right. And can I just ask you this question, I needn't go through it now, Commissioner, but some of these gift vouchers you used to purchase an item at, from Harvey Norman. Is that correct?---Mmm.

There was gift vouchers and Harvey Norman vouchers and there's evidence about that Commissioner, behind, I beg your pardon, tabs 146,147 and 148, which I needn't go to. All right. Now apart from the gift vouchers, and we can see that the evidence we have is that the gift vouchers total \$450? ---That's right.

20

And you've said yes to the holiday, the DVD video player?---The DVD player I did, yep, but I didn't keep. I put that down to the charity bin down the road from me and also the, the - - -

The Drizabone?--- - - - the coat, Drizabone. I didn't keep them.

Well can I ask you why didn't you keep those items?---I didn't want them, I didn't ask for them.

30 No.

THE COMMISSIONER: I beg your pardon?

MR CAMPBELL: I didn't want them, I didn't ask for them was the answer, Commissioner. You certainly, well I don't suppose you asked for the holiday either did you?---That's true.

But it was offered to you?---Yes.

40 And you accepted it?---Yes, I did.

And likewise in the first place I don't suppose you asked for the gift vouchers?---That's right.

But they were suggested to you?---They were suggested, not first off, when I placed the order, he said I'll send you something. That was it.

This is, you're telling me now that the circumstances in which you received the first gift voucher. Is that correct?---The first gift voucher as in the holiday?

No, I don't mean the holiday, I mean, I mean the first Harvey Norman voucher, I'm sorry?---Regarding what?

Well - - -?---I'm sorry.

10 Well when you first got that \$100 that's on the list was that something that somebody said was coming to you?---I can't remember to be honest, I can't. They could have, I just can't remember.

You see the – after 12 March, 2007 the things you received were sent to your home address were they not?---Yes.

Well you must have given it, given somebody your home address - - -?---
Well (not transcribable) sir.

20 Can I just finish the question?---Sorry.

You must have given somebody your home address in order for them to have been sent there?---Oh, yeah.

Who did you give your home address to?---Doug Quinn.

Did he ask you for it?---Yes.

30 All right. Well why did you think he wanted it?---Well I suppose to send gift vouchers.

Did he say that to you?---I can't remember, sir.

All right?---Honestly.

Looking back on it he probably did. Is that what you're telling me?---He possibly could have.

40 THE COMMISSIONER: Why else would he have wanted to know your home address for?---I don't know, I suppose to send the gift vouchers.

MR CAMPBELL: Now you've, you knew when he said he would send these gift vouchers to you that that was the wrong thing to be happening didn't you?---I didn't think so because I wasn't ordering directly to him, sir, so - - -

THE COMMISSIONER: Sorry?

MR CAMPBELL: I wasn't ordering directly to him, sir. Well let me take you through this. You're the storeman. Correct?---Yeah.

The way the system works at the RTA is that you raise a requisition. Correct?---That's right.

And, and you send that requisition off to the purchasing division or a branch that are based in Parramatta?---That's right.

10 And they, they then make the orders themselves to the various suppliers?
---That's right.

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

You see you have the option on occasions of nominating who the supplier should be?---Which I did, yes.

20 And which you did in relation to R&R Tape didn't you?---Yep. But that was up to the people at purchasing to buy it. It was up to them to purchase -
- -

THE COMMISSIONER: Did they refuse your nominations?---I can't remember to be honest, Commissioner.

Well - - ?---The had the right to say, if they were too dear get quotes.

Yes. Did they ever say no?---Not that I recall, no.

30 MR CAMPBELL: And the simple fact of the matter is that you did not make it your practice to always nominate the supplier did you?---That's right.

But you did always nominate R&R Tape, I'm sorry, R&R Tape when you wanted things from them didn't you?---Yes, because they were the cheapest going around.

Well I'll just give you an example of this, please, you've still got that bundle of documents in front of you?---Sure.

40 Would you go behind tab 150 and turn up to page 247. Now unfortunately the RTA has helpfully redacted a lot of this document, but I think it's still clear what it means, Commissioner?---I'm not sure if I've got the right page.

It's page 227, sir. I'm just asking you this as an example?---Sure. A purchase order?

I beg your pardon?---A purchase order?

It's a purchase order, it's, no, no, 227 is a requisition. It's a stock re-order form. Do you see that?---No, I haven't, what page again, sorry?

247?---Yes. Yes.

THE COMMISSIONER: Do you have it?---Yes, I have.

10 Now even though there's been an attempt to exclude material not directly relevant in someone's view, we can see from that page can't we - - -?---Ah
hmm.

- - - for instance, that the only supplier perhaps, perhaps one or two that you nominated is R&R Tape. That's so isn't it?---Yes, it is.

About a third of the way down the page there's a comment, mercury, that doesn't relate to the identity of the supplier I suppose or does it?---No. That's just a mercury lamp.

20 Right?---Or (not transcribable) I think it was (not transcribable)

So on that page the only person you've nominated is RR Tape. Correct?
---Yes.

Could you go to page 249 and we have another stock re-order form. I suppose I should have made this clear, that each, each of these two forms I've now shown you has your name on it at the bottom left hand box. Is that correct?---That's right.

30 And the other details that will enable the, the purchasing department to recognise that it's someone who's authorised to make this request. Is that right?---Ah hmm.

Yes?---Yes.

Thank you. And you've signed it. Yes?---Yes.

40 Again here we can see that you've made an order, this time on 3 November, 2009 and you have again the only supplier nominated is R&R. That's so isn't it?---That's right.

And that's in relation to on that occasion to what's called danger tape?
---Yes.

And if you look at – go back to that, perhaps the witness could be given this other copy to save flicking through the book, Commissioner, of the summary form. If you go back to that summary form you'll see that the records show that in December, 12 December, 2009 you got a Harvey Norman gift voucher. Do you see that?---Yes, I do.

It's after you lodged this order. That's correct?---Maybe - - -

Well it's certainly after it in point of time is it not?---Yes. Yes, it is.

And then if we go to the next one on page 251, which is one date 3 December, 2009 we have another stock re-order form from you don't we?
---Yes.

10 And we can see once again that the only supplier nominated on the form, perhaps I wrong on that, you've nominated R&R about half way down the page. Is that right?---That's right.

And there's, two spots along you've written Nashua, are they, are they another supplier?---No, it's just the brand of a tape, a special brand of a tape we get.

20 THE COMMISSIONER: There seem to be two orders for R&R on that, on this invoice at page 251. Underneath the first one there's another R&R?

MR CAMPBELL: Yes, thank you, Commissioner, there is two. There's, it may be the one, Commissioner because it's the danger tape, oh yes, thank you, Commissioner, danger tape and gaffa tape are both to R&R and Nashua is the brand that R&R are supplying. Is that correct, Mr Burnie?
---That's right.

THE COMMISSIONER: So there are three? There's - - -

30 MR CAMPBELL: There's PJ Box.

THE COMMISSIONER: That's one.

MR CAMPBELL: Yes.

THE COMMISSIONER: Danger tape is two.

MR CAMPBELL: Yes.

40 THE COMMISSIONER: And gaffa tape is three.

MR CAMPBELL: Yes, thank you, Commissioner. The PJ Box is a product from R&R. Is that right Mr Burnie?---No, no it's not.

Why are there three references to R&R on that form in your handwriting?---Where's it (not transcribable) I'm sorry.

Well, if you look at it this way. If you look at the PJ Box where it says PJ Box ten each.---Yes.

And then there was a number and then there's R&R at the end of the line. Do you see that?---Yes, that's not my writing.

I see. Then the next one is R&R.---Yes, gaffa tape.

And that's your writing?---Yes.

10 And then the gaffa tape is R&R and that's your writing as well. Is that correct?---Yes.

All right. And that's the 3 December that you filled that out. Is that correct?---That's right.

THE COMMISSIONER: Can I just ask about the top of the page, Mr Campbell, you'll see at the very top of the page in the second item.

MR CAMPBELL: Yes, I'm - - -

20 THE COMMISSIONER: I don't know what that is. Do you know what that is Mr Burnie? Do you see what I'm talking about?---It's one (not transcribable) line two?

The very top of the page you'll see two numbers, V1028129 and then underneath that, not a V I think it's a tick, 1028139 and then 1015649. Do you see that?---Yes.

30 And then next to the 105649 is a dash and in there is the words R&R tape. Is that in your handwriting?---I can't see that Commissioner. I can see that there's a 1028, yeah, that's not mine, that must belong to the PJ Box, they don't come from R&R.

All right.

MR CAMPBELL: Now, just I'll go along to page 254, that's another order, stock re-order form from you. Correct?---Correct.

40 And we'll see it down there, there's more gaffa tape?---Yes, we use a lot of gaffa tape.

And again, you want the Nashua Gaffa tape?---Yes.

And you want it from it from R&R?---That's right.

And once again, once again R&R is the only supplier referred to on the stock re-order form?---Yes, I think we gave them from another supplier and once again they gave us a price which (not transcribable) got a quote and she was happy with the quote and just went and did from there.

See the system, the system at the RTA that you work under enables you to nominate a supplier from someone's who's accredited with the RTA. That's so isn't it?---I can put their name down but necessary they buy from them, they've got to get quotes.

THE COMMISSIONER: But you've never, you can't recall an instance where they haven't accepted your nomination?---Not that I can recall, no.

10 MR CAMPBELL: But my point is this, that the only, on these documents we've been looking at around the end of 2009 the only supplier you've exercised that right in respect of is R&R Tape, that's right isn't it?---No, there were other orders.

Pardon?---No, I get stuff from Blackwoods I part their part numbers down. The rest, which I think is wrong there.

Anyone else?---Not that I can think of.

20 No, no.---There could be.

You could get, I suppose, gaffa tape from a lot of different suppliers?---Yes, that's right.

A Blackwood part number might be hard to get from someone else. Would that be right?---I don't know about the part number but (not transcribable) it goes to a price on the gaffa tape they went to Parramatta and they got a quote, got a quote and they bought from them, so it just, we buy from them all the time.

30

But what you're doing though sir, is that you are directing the purchasing division towards R&R Tape by putting their name on the form, aren't you? ---Attention to.

That's - - -

THE COMMISSIONER: Why did you put the name on the form?---Just because we bought it from them last time, I just thought (not transcribable)

40 So you were directing the attention of the, Parramatta to R&R Tape aren't you?---If you put that way Commissioner.

MR CAMPBELL: And in doing that, you've been influenced by the fact that they've given you these gifts and benefits over the years. That's correct isn't it?---I've never been influenced by gifts.

You've accepted them haven't you?---Indeed I did, I've done that.

You've kept them secret from your employer haven't you?---Yes, yes.

THE COMMISSIONER: You've accepted them at home?---Just the gift vouchers.

And you told R&R Tape your home address so that they could be sent to your home?---I suppose I did, yes.

10 You see, being in a purchasing position you have received training from the RTA about what their policies and requirements are, haven't you?---Yes.

And there couldn't be any question in your own mind that getting any sort of gift or benefit from the supplier of goods was just forbidden by the RTA wasn't it?---Yes.

And you understand the good reasons why the RTA forbade it's people who are working in the procurement chain from accepting gifts. Can't you?---Yes.

20 Apart from anything else, you'd have to admit wouldn't you sir, that whatever you say about the innocence of your, of your motive, anyone else looking at it would suggest it was corruption, wouldn't they?---It looks that way but it wasn't intentional.

Well - - -?---Going to R&R all the time.

30 You'd appreciate wouldn't you that the whole reason why R&R were giving you these personal gifts was to influence your decision about where to direct Parramatta to buy the products from?---Yeah, I just wasn't thinking, I was thinking about going to the last buyer and if they bought it, that was it.

By that answer you're agreeing with the proposition I've just put to you, aren't you?---Yes.

And if you look at these documents I've taken you to in the folder then an objective view is they were successful in influencing your decision because you nominated them on the stock re-order form. That's correct, isn't it?---It's true what you said.

40 I didn't hear what you said?

THE COMMISSIONER: It's true what you said.

THE WITNESS: It's true what you said.

MR CAMPBELL: Thank you sir. Now look, when you came along to the Commission on 9 December 2010 you were given every opportunity to tell the truth, weren't you?---I was.

When you came along on that date The Commissioner very carefully explained to you the very serious ramifications of the process in which The Commission was then engaged. Didn't he?---Yes.

Indeed, that process was carried out in private wasn't it?---It was.

So that you wouldn't have to go through this process in process. That's so isn't it?---I was scared.

10

Well, you must have been even scarer coming along today - - -?---Yes I am.

- - -knowing that you were coming to a public hearing. Yes?---(NO AUDIBLE REPLY)

You see if you had co-operated with The Commission from the very outset you might not have had to face this public humiliation. Do you understand that?---It was stupid I know.

20

I have no further questions, Commissioner.

THE COMMISSIONER: Mr Harvey?

MR HARVEY: Commissioner, if I may clarify some matters. So I take it Mr Burnie that - - -

THE COMMISSIONER: You better just explain who you are?

30 MR HARVEY: I'm sorry, My name is Ian Harvey and I'm here representing the RTA.

But if I can just clarify some aspects of your evidence (not transcribable) First of all in terms of your longevity to the RTA - - -

THE COMMISSIONER: I'm sorry Mr Harvey, I can't hear you, do you mind speaking a bit louder.

40 MR HARVEY: I'm sorry. In terms of your longevity at the, or your lifetime at the RTA, I understand correctly, that you commenced with the DMR the old Department of Main Rains in 1979. Is that right?---Yes.

And you commenced there as a labourer. Is that right?---That's right.

And how long were you a labourer at the RTA for, the amount?---Ten years I think, ten years, yeah.

And where did you progress to from there, did you go into the stores area from that department?---I went from there to the stores (not transcribable) truck.

And when approximately did you do that?---I (not transcribable) because I was learning the job first and then I got my license through the RTA and done the store run.

10 Just in terms of the time though, the year, approximately, when did you make that move into stores?---Well, I started in '79, well then, in '89 I guess.

All right. Thank you.

And am I right in saying that you became the team leader at Rockdale in about 2001. Would that be right?---That's possible, yes.

20 All right. Thank you. You were asked some questions about a spreadsheet that Mr Campbell showed you. Have you still got that there with you?
---Yes.

And could I just ask you to clarify one aspect of this, in terms of the DVD player you say you put that in the charity bin. Is that right?---That's right.

In terms of the Drizabone coat, you say you didn't keep it, but what did you with it?---The same thing, threw in the charity bin up the road from me.

30 THE COMMISSIONER: I beg your pardon?---There's a charity bin up the road from me and I just put it, where people put their clothes and things like that, because I didn't need it, I didn't want it.

All right.

MR HARVEY: But Mr Burnie, I think in answer to a question that Mr Campbell indicated to you, you were aware at least of the RTA Code of Conduct. Is that right?---Yes.

40 You've been given training in the RTA Code of Conduct. Is that right?
---Yes.

You're aware are you not that an aspect of the police (not transcribable) of bribes, gifts and other benefits guidelines says something the affect that if you're offered something you should really disclose that to your manager. You're aware of that aren't you?---I can't recall that, but I'd say it would have been.

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30 You're aware are you not that an aspect of the police (not transcribable) of bribes, gifts and other benefits guidelines says something the affect that if you're offered something you should really disclose that to your manager. You're aware of that aren't you?---I can't recall that, but I'd say it would have been.

And there's a gifts and, there's a gifts and benefits register?---I can't recall that.

You can't recall that?---No.

40 You can't recall it or you've just never made any inquiry as to whether if you received something like a DVD or a Drizabone coat - - -?---No.

- - - that you should really put that on the register?---Sure.

You agree that you should put it on the register?---Yeah.

Is that right?---Sure.

And just on these two occasions then why didn't you do that? Why did you (not transcribable)?---Because (not transcribable)

Just let me finish the question?---Sorry.

Why did you take it to the charity bin and not place those two items on the, on the register?---Well, I didn't know we had one to be honest.

All right. All right. You didn't know you had one at that, at the time that you did this, is that right?---Yes.

10 So even, even after the training that you'd received you didn't know that there was a - - -?---I can't recall ever being told that, sir.

I see?---But there's a charity we could, a place you can put your stuff, your goods.

(not transcribable)?---I'm just a bit - I wasn't told about where I could put my stuff, the DVD and that, I'm, I am a bit confused, that's all, yeah.

20 THE COMMISSIONER: Are you talking about the training, Mr Harvey?

MR HARVEY: Yes, I'm talking about the training. But in terms of the training did you, did you not get informed about a gifts and benefits register?---No, I can't recall that at all.

All right. At no time have you inquired of your manager in respect of either of those items - - -?---No.

30 - - - as to - just let me finish, as to whether the appropriate thing to do in terms of your understanding of the RTA policy - - -?---No.

- - - was to disclose that to your, to your manager?---No.

That's not something that ran through your mind?---No.

All right. Thank you, thank you for that.

THE COMMISSIONER: Mr Campbell.

40 MR CAMPBELL: I have no re-examination, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Burnie. You may be excused?---Thank you, sir.

THE WITNESS EXCUSED

[12.42pm]

MR CAMPBELL: Commissioner, given the answers of Mr Burnie it may not be strictly necessary but I, I seek to tender the transcripts of the compulsory examination of Thursday, 9 December, 2010.

THE COMMISSIONER: Yes, I think it should be tendered. The transcript of the compulsory examination of Mr Burnie on 9 December, 2010 is Exhibit 51.

10 **#EXHIBIT 51 - TRANSCRIPT OF MR PHILIP BURNIE'S
EVIDENCE GIVEN UNDER COMPULSORY EXAMINATION**

MR CAMPBELL: May it please the Commission. Commissioner, that completes the evidence in relation to the - what we've called the incentive segment in relation to the 15 specific organisations the subject of the public hearing. This afternoon I will be calling evidence from an expert in procurement systems. You'll see evidence in due course, Commissioner, that not all of the organisations concerned have standard approaches to this
20 matter and part of the case which I opened on day 1 of the inquiry was that the absence of appropriate business models in that regard contributed to what's happened in respect of these matters that we've been looking at closely over the last nearly two weeks. But I apply to adjourn the hearing until 2 o'clock.

THE COMMISSIONER: Very well. The Commission will adjourn until 2.00pm.

30 LUNCHEON ADJOURNMENT [12.44pm]