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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, 20 OCTOBER, 2011

AT 2.05PM

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THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Commissioner, could I just make mention a housekeeping matter, you'll recall that when, when NCH were here in the first week and just before learned senior counsel appearing for that company was excused, an undertaking was given to produce certain documents, in particular what we referred to as the Dallas Directive.

THE COMMISSIONER: Yes.

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MR CAMPBELL: And well can I say, Commissioner, we hadn't received by Friday. Contact was made with the solicitors who are Messrs Freehills and a letter was written on Monday asking them to in effect, in my own language, honour that undertaking by today. Now we still don't have the documents, although this morning we were given a copy of the Dallas Directive, but with substantial parts of it redacted by the assertion of the claim for legal professional privilege. Now we've been back in touch with the solicitors and pointed that the provisions of section 37 to them and asked them for a unredacted copy. And Ms Lee has pointed out to them that if they want to make an application in relation to certain parts of it by way of a suppression order, well once they produce it they could appear for that purpose. Now we're hoping, Commissioner, that we'll get it today. We've, apparently instructions are being sought from Dallas Texas, although I'm not sure what time of the day it is there at the moment. And, but I'm mentioning it now because if, if our expectations are unfulfilled by the end of today, then we would wish to have one of the lawyers appear and explain why, what appeared to be a clear undertaking to the Commission hasn't been honoured.

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THE COMMISSIONER: Well I think that we should also get the senior director, summons the senior director to attend and require him to produce an unredacted document as well.

MR CAMPBELL: But the practical difficulty about Mr La-Vite, because he's interstate at the moment - - -

THE COMMISSIONER: Yes. He was number 2.

40

MR CAMPBELL: Number 2, yes. The only local executive who's been involved in this case is Mr Pavan. We could have him come along, Commissioner.

THE COMMISSIONER: Yes. But I think a summons should be served on him this afternoon.

MR CAMPBELL: Yes. I think once we draft it then we can attend to that Commissioner.

THE COMMISSIONER: Yes. It can just be handed up to me for signature when it's ready.

MR CAMPBELL: I think we've already - - -

THE COMMISSIONER: It's been dealt with has it?

MR CAMPBELL: It's been dealt with, yes.

10 THE COMMISSIONER: Yes. But I think the solicitor as well should be summonsed.

MR CAMPBELL: Yes, yes. We'll attend to that and perhaps it might help if I ask Ms Lee to relay your observations to them forthwith, Commissioner.

THE COMMISSIONER: Well I think, yes, the summonses will be served on both those individuals unless the unredacted copy arrives here by 4 o'clock.

20 MR CAMPBELL: We'll transmit that observation to them, Commissioner, the direction, in fact.

THE COMMISSIONER: And I think there's more to it than that.

MR CAMPBELL: There was more to it. There was, there were also some emails that we wanted that or a particular email we wanted that Ms Verdeyen had forwarded to Fatima, who was the office manager concerning some wishes that Mr Lapham had expressed about delivery of products to him.

30 THE COMMISSIONER: Yes.

MR CAMPBELL: I think that may - - -

THE COMMISSIONER: And has that been produced?

MR CAMPBELL: That has not yet been produced either.

40 THE COMMISSIONER: Well, the summons should deal with that as well. But under section 98(b) of the ICAC Act person who having been served with a summons to attend before the Commission fails to produce any document the person's custody or control that the person is required by the summons to produce is guilty of contempt of the Commission and I think that a summons should be served on both those persons as well asking them to show cause tomorrow morning why we should not proceed further with the provisions of the ICAC Act relating to contempt.

MR CAMPBELL: Yes, Commissioner, we'll attend to that matter.

THE COMMISSIONER: But if they produce the documents by 4.00pm it won't be necessary.

MR CAMPBELL: Thank you. Thank you, Commissioner.

Mr Smith, before the luncheon adjournment you were telling me about these vouchers and who they came from. Before I proceed with any further questions I need to ask you this. You understand, don't you, that the evidence before the Commission, notwithstanding the protection you've received in relation to your own evidence, may be capable of a finding of corrupt conduct on your part. You understand that, don't you?---Yes, I do.

10

You understand, don't do, that the general evidence before the Commission, again notwithstanding the protection you have in respect of your own evidence may be capable of persuading the prosecuting authorities that you should be prosecuted to conviction for a serious criminal offence? Do you understand that?---Yes.

All right. Now, I just want to ask you - I think your evidence was before lunch that you go gift vouchers from UTS - - -?---Yes.

20 - - - Momar Australia - - -?---Yes.

- - - and also from various incentives or gifts from NCH?---Yes.

Is that correct?---Yes.

Are the only companies that gave you - I'll withdraw that question. In relation to the gifts from NCH Australia would you please look at this two-page document that you'll be shown, a copy for the Commission. It's a long list, sir, just have a quick look at it. Let me tell you why you're looking at it. That's a document that has been produced by NCH Australia in response to information demanded of it by the Commission and from their records that's what they say you have been given over the years. Do you understand that?---What they say I've received?

30

What they say you've received?---Yeah.

Do you understand it? Have you had a sufficient chance to look at it to tell me whether you accept its accuracy?---Actually I can't see it that clearly, I'm sorry.

40

THE COMMISSIONER: Sorry, I beg your pardon?---Sorry?

I can't hear you, I'm sorry, what did you say?---I actually can't see it properly.

You can't see it properly?---No.

MR CAMPBELL: Well, you see - let me tell you how it works. You see it's got a customer number on the left, do you see that? And then it's got the name of the customer who's the Yass Valley Council, your former employer?---Yes.

There's a postal code, there's an order number, there's an order date, there's the name of Mr Ramachandran, do you see that?---Yes.

There's a buyer's name, that's you?---Yes.

10

And then in the, in the comments is where you should look, you'll see that they are - the promotional items they say that were delivered to you is described or are described. Do you see that?---Yeah.

So that for instance, I'm not sure whether what a - I'll withdraw that. You see that the first one is - they're asked to combine it looks like the two orders, do you see that? The first two orders?---Yes.

20

It says please combine those first two orders and provide six drills on promotion. Do you see that? Do you understand how it works now? ---Six drills.

Six drills. But my question is do you understand how it works?---No.

Pardon?---No.

Well, sir, I've described it for you. You told me - - -

30

THE COMMISSIONER: What don't you understand?---The combination part.

What do you mean the combination part?

MR CAMPBELL: Combine?---Combine, yeah.

40

It's a direction from the salesman to NCH's office saying combine the two orders so if you look back to order number do you see? There's order number 0-9-2-A and the second one is 0-9-2-B and the instruction from the salesman to NCH's office is please combine those two orders?---Right.

And provide six drills on promotion?---Yeah.

Do you understand how it works now, how the document works now? ---Sort of, yeah.

Well, sir, do you want a bit of time to look at that document?---(NO AUDIBLE REPLY)

If you do I'll ask the Commissioner to stand your evidence down and I'll go on with something else while you have a look at it?---Yeah, no, you're right, continue.

Well, I want you to tell me, that's a very important, a very important matter. I want you to tell me whether you accept that you have received each of the items described on this schedule. If you need some time to consider it, just ask.

10 THE COMMISSIONER: Do you understand which are the items, which are the promotional items? I mean that's really the important thing here, Mr Smith. Do you understand which are the promotional items in this document?---Not really.

Well, just look at it carefully. You've got the heading Comments?---Yes.

And do you see the first line under the heading Comments it's got details of an order and then it's got "Provide six drills on promo"?---Yeah.

20 Now, what it says is that the promotional items are the six drills?---Yes.

And the inference is that these drills were provided to you because it's to the Yass Valley Council - - -?---Yeah.

- - - by Mr Ramachandran?---Yeah.

And your name is listed as the buyer and on the very right-hand side it's got the cost, that's the cost - - -?---\$948.

30 - - - to - it's NCH isn't it?

MR CAMPBELL: NCH, Commissioner.

THE COMMISSIONER: Yes. 948, do you see that?---Yes.

Now, if you go to the second line and the third line, that also deals with - it also suggest that you got six drills on promo but it's another six drills.

40 MR CAMPBELL: I'm sorry, Commissioner, I think it's the same six drills.

THE COMMISSIONER: Well, it's the same six drills and the third line says that your promotional items are the laser distance finder and a set of bar clamps. Do you see that?---Yes.

Then if you go down to the fourth line you see that the promotional item is the Café Roma coffee maker?---Yes.

And the comment is that I, that's presumably Mr Ramachandran, will collect it from operations and personally deliver it to the buyer, that's you?  
---Yes.

And you go to the fifth line, it's four duffel bags to be shipped directly to your shipping address. The next line might be the same four duffel bags and so on and so you go and as you go down each line you'll see the different promotional benefits described in each line?---Yes.

10 Do you understand that?---I do now, yes.

Good. Now I think the question is do you recognise these promotional items as having been given to you by NCH?---I don't remember the six drills.

All right. Leaving the six drills out - - -?---All right.

- - - what about the rest?---The set of clamps, the coffee maker, the duffel bags, I don't remember the trolleys.

20

So, well let's go through each one?---Yeah.

You dispute having got the six drills?---I don't remember getting the drills.

You don't remember getting them. All right. What about the laser distance finder and the bar clamps?---I don't remember the laser distance finder, but I do remember the bar clamps.

The coffee maker?---Yes.

30

Well Mr Campbell you might as well proceed down that - - -

MR CAMPBELL: I was thinking that, Commissioner. And then, sorry, then we've got the duffel bags?---Yes.

And you've already told the Commissioner you don't think you got the trolleys. Is that right?---I don't remember getting the trolleys.

All right. The bar clamps?---Yes.

40

One jacket?---Yes.

A Hitachi GPS?---Yes.

A Russell Hobbs coffee machine?---Yes.

An Otto welding helmet?---Yes.

A Black & Decker Jigsaw?---A jigsaw, yes.

You know what a jigsaw is don't you?---Yes.

And, sorry, and then there's a combination of a number of orders to give you a Grundig LCD TV and DVD combo. Do you see that?---Yes.

You got that?---Yes.

10 And the next item is probably a combination of those orders. So it's just the one TV?---Yeah.

And then the next item is a high definition set top box?---Yes.

You got that?---Yes.

And then, I think we may have asked you this before, the Convair portable air-conditioner?---Yes.

20 You got that. And then another, a vest, a reversible vest. Do you remember that?---I think so, yeah.

Okay. And then there was a combination of orders to give you a camcorder. Did you get that?---Yes.

And the next two relate to the same matter I believe. And then there's a Dyson upright vacuum cleaner, the second last on the page. Did you get that?---Where did it go?

30 Sorry?---What happened to that?

THE COMMISSIONER: Did you, do you - - -?---I got the vacuum cleaner, yeah.

MR CAMPBELL: All right?---Ah, there we are.

Yes, it's the second last one on the page. Then there are two torque jackets, do you remember what they are?---Torque jackets.

40 Well another two jackets anyway - - -?---Okay.

- - - to wear. Did you get those?---Oh, probably.

You have all the jackets from what you told me before over the years?  
---Yeah. No, these are different to Drizabone.

Yes. But you think you probably got them?---Oh, I'd say so.

All right. Over the page, we're on the home straight Mr Smith. There's the Black & Decker power driver?---Yes.

You're saying yes you got that. There's another fleecy vest, did you get that?---I don't know.

Okay. The torque jacket, large, did you get that?---Probably.

10 A Café Roma promotion of some kind, did you get that?---Yes.  
The Black & Decker impact driver, did you get that?---Yes.

Bar clamps?---Yes.

What are bar clamps?---Oh, they're just real good clamps, you actually squeeze the trigger - - -

Yes?--- - - - instead of winding the handle.

20 Oh, I see. And they're easily used and they, what, hold something tight. Is that - - -?---Yeah.

Yes.

THE COMMISSIONER: And a shredder, a garden shredder?---Yes.

MR CAMPBELL: Thank you, Mr Smith. Just can I ask that we substitute that schedule for the one behind folder 12, tab 60.

30 THE COMMISSIONER: It will be substituted.

MR CAMPBELL: And my learned friend Mr Clay helpfully tells me it's an extract from Exhibit 38, for which I am grateful. Now we look at this you'll now be shown and this is a copy for the Commission. This is a spreadsheet Mr Smith that's been prepared by Commission officer's from the records of Momar Australia Pty Limited to show the gift vouchers Momar Australia gave you. Do you understand?---Yes.

40 Now if you go over to the second page it's, you'll see that there are dates. Now each date corresponds to a single gift voucher?---Right.

Do you follow me?---Yes.

And so if you go along say to 15 April, 2009, which has five entries. Do you see that?---(NO AUDIBLE REPLY)

We say that Momar's records show that on that date Momar sent you five gift vouchers. Do you follow me?---Yes.

And likewise 12 August, 2009 appears five times. The same thing. Do you follow what I mean?---I'm sorry can you repeat that?

Yes, I can. Each date is one gift voucher, so that where a date appears more than once, it means that on that date Momar sent you an equivalent number of vouchers?---Ah, yes.

Do you understand that?---Yes.

10 All right?---Sorry, I didn't quite see the dates properly.

No, that's okay. Have you got your reading glasses on?---Oh actually, they're only \$2 ones.

Oh, I see. And then over the page, there's three pages of it, and the same principal applies?---The 31<sup>st</sup>.

20 Yes. And the final one was on 14 September, there's actually two on 14 September, 2010. Now it's our contention that if you add all those up you get a total of \$1,150 in gift vouchers from Momar Australia. Does that sound right to you?---Probably.

You probably received that amount from them. Is that correct?---Yep.

THE COMMISSIONER: Or something in that order?---Sorry?

In that order, approximately that amount?---Yeah, probably, yeah.

30 MR CAMPBELL: You didn't keep count?---Not really.

No. Commissioner, could I ask that that document also go behind tab 60 in volume, folder 12.

THE COMMISSIONER: That document will be inserted in the folder.

40 MR CAMPBELL: All right. And just to make it clear you had the gift vouchers that were sent to you by UTS. We don't have a record of that but you told the Commissioner earlier today that the gift vouchers probably added up to a couple of hundred every month. Is that correct? A couple of hundred dollars every month?---Oh, not every month, but every time I got them, yeah.

I see. Right. In any event you knew you shouldn't have got those vouchers. That's correct isn't it?---Yes.

You knew that the council had a gifts and benefits policy. That's correct isn't it?---(NO AUDIBLE REPLY)

Did you know that or not?---Not, not when I was dealing in the early stages of UTS, no.

But later on you became aware of it?---Yes.

Yes. And you knew that you were supposed to refuse gifts like that?---Yes.

And you didn't?---No.

10 All right. Now, but that's not what you were talking about when you said to the Commissioner earlier today that you're here to explain dodgy dealings is it?---No.

No. There are other matters that you're here to explain. That's correct?  
---That's correct.

20 All right. Just before I get on to those and I'll try and deal with them as quickly as possible, sir. I know you've been asked about this a number of times. But let me, let me say this, you were, you were responsible for purchasing all goods for the store. Is that correct?---Yes.

All right. Now the system worked that you had the authority to place an order with a supplier?---Yes.

Up to your delegation?---That's right.

You didn't need anyone's, anyone's second signature on that?---No, no.

30 And indeed it's possible at times that you could keep order within your delegations by splitting the orders. Is that correct?---Oh, it's possible, yeah.

Did you ever do that?---Not that I recall, no.

You may have and you just can't remember or you didn't do it?---I may have.

All right. Now when you made, made an order where did you get your order number from?---Out of the book.

40 And it was a manual system was it?---Yeah.

And you just wrote on the order?---Just the handwritten one, yeah.

Did you have to send a copy of the order to anybody?---Yeah.

Who did you have to send it, apart from the supplier, to anyone else in Council?---Yeah, the creditors clerk, the creditors clerk or debit clerk, the person that pays the money.

Because that person would have to pay the money in due course?---Yeah.

Now when the goods were delivered by the supplier, would you have another document you'd sign off to confirm delivery?---Yeah.

And that would also go to the, go to the creditors clerk. Is that correct?  
---Yeah.

10 And that person then would pay the invoice matching that order when it came in. Is that correct?---Yes.

And that was the total system of procurement that you were involved in at Yass Valley Council. Is that so?---That's so.

Occasionally did you carry out a stock take?---Yeah.

And how often did that happen?---Twice a year.

20 And who was responsible for taking stock, was it you or somebody else?  
---Counting?

Yes.---Myself and the creditors clerk.

All right. And it was just a matter of tallying what stock was on hand. Is that correct?---That's it.

30 There was never any attempt to reconcile what had been purchased during a period with what was on hand?---That I did?

No, that when you did that stock take with the creditors clerk you didn't try and reconcile the stock on hand with purchasers that had been made during the period since the last stock take?---No.

40 And the, when, when Council people came to you and they wanted something from the store, did they have to sign a book for it?---In the initial stages we used to just have a running sheet they had to sign and when they went to the computer I had to print one out for them, but they had to sign them.

They signed it and then you kept it in a folder or something did you?---Yes.

And did you have something called non-stock items?---Oh yeah.

And they were things that were procured for a particular job. Is that right?  
---Sometimes yeah.

And sometimes just procured as non-stock items. Is that right?---Yeah.

And did you have to have a job number for those ones?---Yeah.

And was the job number supposed to be on, on the order form or not?  
---No.

What was the relevance of the job number, did you record it in a book somewhere?---Yeah, just to cost it, yeah.

10 And the cost of those goods which were ordered as non-stock items were added to the cost of the job who's number you used. Is that right?---Yes.

Did anyone ever audit those entries that you made in relation to non-stock items?---Not that I'm aware of, no.

So it was, it was from beginning to end all down to you, is that so Mr Smith?---You'd pretty much say that, yeah.

20 All right. Now I want to ask you about the dodgy deals. Do you understand?---Yes.

Do they, did that involve a man named Robin Newman?---Yes.

Who's name you've mentioned. Now what was dodgy about the deals?  
---(NO AUDIBLE REPLY)

Can I help you?---Yeah.

30 Did he suggest to you that, that, that money could be made if, if the order was overstated and a lesser amount of goods were delivered?---Yes.

And well, when he suggested that to you, did he tell you whether there was something in it for you?---He did.

And what did he say was in it for you?---Um, actual words?

Yes. If you can remember?---Yeah. You'll get a bit, I'll get a bit.

40 Thank you. And you understood that to mean a bit of cash?---Yeah.

Well what else would it be?---Well, that's right.

All right. Well, why did you agree to that?---Oh stupidity I suppose.

Stupidity - - -?---Greed, greedy.

Because anyone who paused for a moment would know that's completely wrong wouldn't they?---Absolutely.

Doesn't matter if you have gifts policy or a gifts register or any such thing, it was cheating the Yass Valley Council. Was it not?---It was.

Now, was that the only sort of dodgy deal that Mr Newman suggested to you?---(NO AUDIBLE REPLY)

10 Were there variations on the theme, for instance, did he say to you, well, we can may be up the price – I'll withdraw that. He mentioned to you that he could under deliver, overstate the order and then only deliver part of the goods. Is that correct?---That's right.

Did he say another variety, not in these words, might be that we could inflate the price on the invoices?---Yes.

And did he say that sometimes we could just issue the invoice and not deliver the goods at all?---He did.

20 Did that ever happen?---No.

Why not? Why did you balk, at that one?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Is that going too far?---Well, I think so.

MR CAMPBELL: Thank you Commissioner.

Now the company's involved, do you remember the names of them?---Yes.

30 What were they?---Pinnacle.

Pinnacle Traders Pty Limited?---Yes.

And any others?---There's PAE - - -

Does PAE Industries mean anything to you?---PAE, yeah.

In relation to these, did he tell you, you'd been dealing with UTS I think? ---Yes.

40 Did he tell you who Pinnacle was?---After I'd phoned him, yeah.

And what did he say about who Pinnacle was?---He said it was just another arm of the company.

Meaning another arm of UTS?---Yes.

And some time later did he introduce this other company, this other name PAE Industries?---Yes.

And did you quiz him about that name?---Yes.

And what did he say about that?---Same answer.

Did you ever deal with anyone else from PAE Industries?---I never dealt with anyone from PAE.

Just Mr Newman?---Yeah.

10

Okay. For how long did these dodgy dealings go on?---Oh I don't know a while.

A number of years until it was discovered. Is that correct? Until ICAC came?---Yeah, probably.

All right. Well, there's a bit for you and a bit for him, what bit did you get? ---Oh, I got some payments on me credit card, I got a ute, I got some payments on my wife's credit card.

20

Did your wife know anything about this?---No.

Did you get anything in cash?---Yeah.

And how frequently did you get cash?---Probably only two or three times.

And how much cash was given?---In total?

On each occasion?---Each occasion?

30

Yeah.---The last lot was \$3,000.

Yes. And what, did he hand that over to you in an envelope?---Yeah.

He came and saw you?---Yeah.

Yeah. And what other amounts, that was the last one, what about the others?---I'm not sure, one was \$1,000 I think, one was \$1,000 it might have been two \$1,000 lots or one \$2,000 lot, I'm not sure.

40

Well you certainly, you remember distinctly the \$3,000 in cash, correct? ---Yeah, that's a big one.

It's a big one. And the and you remember \$1,000 worth on at least one occasion. How many, how many in total were there?---Cash payments?

Yes.---I'm pretty sure there was only, excuse me, either two or three.

We know that from Pinnacle alone between January 2006 and December 2008 there were 15 invoices and the Yass Council paid \$139,026.27. Do you follow me?---Yeah.

Well that's a lot of money?---It is.

It seems to me that even though figures of \$3,000 and \$1,000 here and there are substantial figures, it doesn't look like if that's all you got you were getting your bit, does it?---Oh well no, it doesn't but I got a bit.

10

THE COMMISSIONER: But you got - - ?---I got a ute.

You got the ute?---Yeah.

And you've got some payments on your credit card?---Yes.

And on your wife's credit card?---Yes.

How much were they?

20

MR CAMPBELL: I can show Mr Smith those, Commissioner.

THE COMMISSIONER: Thank you.

MR CAMPBELL: I'll show you those, Mr Campbell?---Okay, thanks.

All right. Well, I'm just wondering whether there might have been a few more than three, do you see what I mean?---Yeah, I can see where you're coming from.

30

Yeah, well, am I coming from the right direction?---No.

You think I'm wrong?---I'm not saying you're wrong I'm just saying that's all I remember.

I see. You've had trouble remembering things since the Commission first started talking to you - - -?---Yes.

- - - haven't you?---Yes.

40

It's a fair comment, isn't it?---It is.

Yeah. And in fact when the senior investigator to my right asked you about this the first time you couldn't remember anything about any of this, could you?---No, not really.

You denied to Mr Grainger that you ever received any cash, didn't you?---I did, I think so, yeah.

And it was only when he handed you a summons that suddenly your recollection got a little bit better, that's right, isn't it?---Clearer.

A little clearer, the summons helped clear the mind I suppose did it?---Oh, put the fear of God into me, yeah.

10 Yeah. Well, that was the idea I think, sir, if I may make that comment. Can I say - well, and a little bit more came clear as time went on I think, that's so, isn't it?---Yeah.

The Commissioner asked you some questions in a compulsory examination, didn't he?---He did.

And it took a little while to clarify all of the evidence that you had to give about these matters, didn't it?---It did.

20 Well, now we're here on I think a fifth occasion that the Commission has spoken to you about these matters. Is it any clearer now?---Oh, yeah, a bit of it, yeah.

Well, I mean, one - if I was a cynic, sir, I might conclude that, that it was convenient not to remember this because there were just so many payments one couldn't keep track of it. Is that the situation?---No.

THE COMMISSIONER: What sort of profit would you make on an order, how much?---(NO AUDIBLE REPLY)

30 On a dodgy order, how much profit would you make?---Oh - - -

How much would you get out of a dodgy order, on average?---I don't know, I've never actually averaged it but I mean I got the ute.

Oh, no, that's overall but I mean you must - did you get payments after each, after each invoice?---No.

When would you get payment?---Oh, every now and again.

40 Whenever, whenever Mr Newman felt like it or was there some - - -?  
---Pretty much, yeah, no, there wasn't any arrangement.

No, no rationale connecting the payment to an invoice?---No, not really.

It all sounds very haphazard?---Yeah, it does.

And didn't you care?---About the payments?

Yes?---Oh, no, not really.

I mean, you were taking a big risk?---Yeah.

Weren't you, weren't you, didn't you want to be, to make sure that you would be properly rewarded for the risks you were taking?---Did I want to be sure, oh, oh, I knew I'd get something out of it.

And that was enough for you?---Yeah.

10 MR CAMPBELL: Well, can I say, sir, that you've lost your job?---Yeah.

You've lost your reputation, yes?---Yes.

Your standing in the local community, yes?---Yes.

It must have caused trouble at home?---Absolutely.

Has it been worth it?---Not a chance.

20 Could you look at this document you'll now be shown. Now, I've asked you and I'm going to take you through some information from Pinnacle Traders but I've asked you about a total amount of \$139,000-odd, do you remember that?---Yes.

Now, what we have here is not the full amount, what we have here is an extract of some of the orders that invoices were sent in relation to - I'll put it, let me put it this way. This is an extract of the invoices that PAE Industries rendered. Do you know what I mean?---(NO AUDIBLE REPLY)

30 And what we have on it - it's not the full picture. What we have on it is you'll see in blue those are the payments made by the Yass Valley Council, do you see that?---Yes.

And the red things are cash withdrawals from the bank account of PAE Industries - - -?---Right.

- - - following those deposits, do you get my drift?---Yeah.

40 Now, you'll see that at the foot of the page, and it's not the full picture, at the foot of the page on the snapshot as we would call it over a period of only eight months - do you see that?

THE COMMISSIONER: November 2006 to July 2007?---Yes.

MR CAMPBELL: There was, there was \$30,599.10 - - -?---Yes.

- - - paid by the council, do you see?---Ah hmm.

Now in very close proximity to each of those deposits you can see that large amounts were withdrawn in cash and totalling \$28,575, do you see that?---I do.

THE COMMISSIONER: Withdrawn from PAE Industries' bank account.

MR CAMPBELL: Yes. Now, the evidence the Commission has heard is that that money was withdrawn, given to Mr Newman so he could split it with you. Do you follow me?---Yeah.

10

Well, \$28,000, your bit would be a lot more than the \$5,000 in cash you've told me about today wouldn't it, on anyone's reckoning?---Well, you would assume so.

Yeah, that's the assumption I was making. Well, is that what happened? You got a lot more than five grand - - -?---No.

- - - in cash?---No, absolutely nowhere near that.

20

Are you sure about that, Mr Smith?---Fairly sure.

Well, you see I just want to ask you one last time, you've got - there's a bit in it for you and you've got some cash payments, you weren't keeping a record of things. I know you're surprised to see on just on this small - just this short period that so much came out but you can see why I'd ask you surely, even if you didn't get half, you must have got much more than five grand. That must be correct, surely?---You would assume so.

30

Well, is it a fair assumption that I'm making?---It is.

You just can't tell us how much more, is that correct?---No, I can't.

THE COMMISSIONER: I mean, am I correct that you, you are really saying that you can't remember getting more - although it looks as if you must have got more you can't remember getting more, is that what your evidence is?---Well, pretty much.

40

Do you accept that you may be making a mistake about the \$5,000 that you admit getting?---No, I got the \$5,000.

Yes, but could you have got more?---Probably, it's possible but I'm not sure. I don't think I did.

MR CAMPBELL: Commissioner, could I - I tender that spreadsheet and could I ask that it be put with the spreadsheet which is inside annexure 1 of Yass financial report.

THE COMMISSIONER: Well, I think we'll mark it X and just insert it in that position.

MR CAMPBELL: Thank you. Pardon me, Commissioner. All right. Now, once your associate has a - I'll withdraw that. Just while that's happening I'll just ask something else. Can you tell me this, Mr Smith, you say you thought what we might call phantom orders, ie, invoices where no goods were delivered, do you remember that?---Yes, sorry, yes.

10 Thank you. But with those other inflated price ones or under-delivered orders, was it, was it your practice to, to attribute those matters to non-stock items rather than stock items?---Yeah.

And part of the purpose of doing that was because it was much harder for anyone to detect the discrepancy. That's so isn't it?---Oh, well it would be, yeah.

And I mean didn't you worry that somebody was going to find out about this sooner rather than later has occurred?---Yeah.

20

Well I mean did you take any comfort from the fact that you were in charge of this system from, as it might be put, end to end?

THE COMMISSIONER: In other words did that make you feel as if it was less likely you'd be found out?---No.

MR CAMPBELL: You see you had an advantage didn't you to engage in these dodgy dealings because you were in charge of the procurement process from one end to the other. That's correct isn't it?---Mmm.

30

You ordered them, allocated the order numbers, you signed off on, on delivery and the credit clerks acted on your say so?---Yes.

So there wasn't anyone coming down looking over your shoulder for instance. No?---No.

There was nobody who you had to go and see and get to countersign any part of the process?---No.

40 So is that why you think you got away with for as long as you did?---Oh, I'd say so.

Now Commissioner, could the witness be shown annexure 1 to the financial report. Now just open it up, sir, we've got all the documents there if you need to any, to satisfy yourself in relation to the accuracy of this document, but this is a spreadsheet. Do you see that?---Yep.

And again you'll see that it's got the details of the deposits made by the Yass Valley Council in respect of Pinnacle Traders invoices. Do you see that?---Over on the blue?

That's the blue?---Yeah.

That's right. The black is money coming out of either Mr Newman's account or Pinnacle Traders account. Do you see that?---Yes.

10 And then the red is money going into one of your accounts. Do you understand the system?---Where's the red one?

Pardon? Do you understand the spreadsheet?

THE COMMISSIONER: I'm not sure, not all of them have the coloured printing Mr Campbell.

MR CAMPBELL: I see. You don't have one Commissioner?

20 THE COMMISSIONER: No.

MR CAMPBELL: I'll give you a copy.

THE COMMISSIONER: Well does, does Mr Smith have a colour - - -

MR CAMPBELL: Do you have a colour, sir? It's the, we're talking about the Yass matter.

30 THE COMMISSIONER: I think I've got, I've got the wrong folder.

MR CAMPBELL: I'm sorry, Commissioner.

THE COMMISSIONER: No, it's not your fault. Thank you for that. They're coloured now.

MR CAMPBELL: Okay. Do you want me to explain that again to you Mr Smith?---Yes, please.

40 Okay. Look across the top. The first column is a narrative or significant deposits and withdrawals. And the first account referred to is Robin Newman's personal account, the second account is Pinnacle Traders account and then the next three accounts are your joint account, your credit card account and your wife's credit card account. Do you see that?---Yes.

All right. Now, and this is a document that's been prepared by the Commission's financial investigators from the material from your bank account and from the other bank accounts shown. Do you follow me?  
---Yes.

All right. This is in addition to the cash that you've told us about. Do you understand?---Mmm.

Yes. All right. Now you'll see that in blue are all the payments by the Yass Valley Council and they total that figure I read to you earlier of 139 odd thousand dollars. Do you see that?---I do.

10 And you'll see the dates of the payments. So the first payment that we say was made to you as part of these dodgy dealings through the bank accounts was, was \$1,000 that went into your wife's Mastercard account. Do you see that?---No.

Well if you look at the \$1,000 - - -?---Yeah.

- - - in the third, in the Pinnacle Traders column and follow the broken line across to the end of the page?---Yeah.

20 You'll see it's your wife's credit card account.

THE COMMISSIONER: It gets put into it.

MR CAMPBELL: It gets put into it. See?---Yeah.

Now that would be right wouldn't it?---Yes, sorry, yes.

30 Thank you. And then, I mean why did you, why did you have these financial, traceable financial dealings when he was offering you cash at times? Why didn't you just insist on getting the cash?---Well these were before the cash.

These are before the cash are they?---(NO AUDIBLE REPLY)

This goes all the way down you'll see to the last one 1 November, 2008. Do you see that, for \$4,000?---Yep.

You got that?---Yeah.

40 All right. So maybe that's wrong that they were before the cash?---Yeah.

Okay. Anyway, but then I'll just take you through them quickly. There's \$900. Do you see that?---No.

\$900 was cashed by Mr Newman on 30 November, 2006 at an ATM in Yass. Do you see that?---No.

It's the black writing, Thursday, 30 November - - -?---(not transcribable) up here, yeah.

If you look in the folder it's all in front of you. You can look on the screen if you look?---Yeah, I know but I can't see it properly on the folders.

I see. Okay. Fair enough. Sorry?---That's all right.

So 30 November have you got that now?---Yes.

10 You see he cashed \$900. Do you see that? But he apparently kept \$100 for himself because we see that \$800 is going into your credit card account at Yass on the same day?---Yep.

Not the same day, I'm sorry, a week later. Do you see that?---I do.

Now was that cash he gave you or did he do that transaction for you?---No, I think that was cash he gave me.

All right. That's the cash?---Yeah.

20 And you put it in your credit account?---Yep.

And then you'll see that on 13 February, 2007 there's two amounts of \$700. This time both in cheques. Do you see that?---I do.

One's made payable to you and one's made payable to your wife's name? ---Yep.

Did your wife ever get that cheque?---No, no.

30 Did you get both those cheques?---No, I never got a cheque.

Mr Newman paid those things for you did he?---Yeah.

You gave him the account numbers?---Yeah.

And you asked him to put half of it into your wife's account. Is that correct?---Yeah.

40 All right. And then we've got, you go down a bit, do you see 3 September, 2008?---(NO AUDIBLE REPLY)

There's \$1,000 on the Pinnacle Traders account?---Yep.

And that goes into your credit card account. Do you see?---Yep.

And then Friday, 7 November, 2008 there's another cheque which is cashed by, on the Pinnacle Traders account for \$2,000. Do you see that?---I do.

And then, although we haven't got a broken line there, it's just an omission, you see that a week later \$2,750 was deposited into your CBA account for your credit card but at the Tuggerah branch of the CBA. Do you see that?  
---The 2,750?

Yes?---Yes.

Now that's money from Mr Newman isn't it?---Yes.

10 Because you weren't in Tuggerah were you?---No.

No. You don't like to go to the coast?---Not much.

And then finally we've got 21 November, 2008 where there's a \$4,000 cheque cashed by Pinnacle Traders and is deposited into your account on 28 November. That's correct isn't it?---Yeah.

20 Now the final, the final entry on this spreadsheet relates to the proceeds of some insurance on the ute. That's right isn't it?---Yeah.

Now the ute, the ute was a Nissan utility vehicle. Is that the case?---That's it.

And it was bought by you for \$7,800. Is that right?---Correct. Bought by me?

Well, it was bought for you?---Yes.

30 And it cost \$7,800 is that right?---Yes.

Was the cash given to you so you could go and buy or did Mr Newman go and buy it for you?---I think he just transferred it.

Transferred the money to you?---No, not to me, to Tim Furner.

Tim Furner was a mate of yours is that right, or a person you knew?---I know him, yeah.

40 A person you knew in Yass?---Yeah.

All right. And so, you struck a deal with Mr Furner, is that right?---Yes.

To buy the ute for \$7,800, yes?---Yes.

And you informed Mr Newman of that?---Yes.

Yes. And so far as you know, he, he caused the money to be paid to Mr Furner?---Yes.

Certainly Mr Furner didn't come chasing you asking you for his money?  
---No, he didn't.

THE COMMISSIONER: And you got the ute?---Yes.

What about the insurance payment, was that on top of that?---(NO  
AUDIBLE REPLY)

10 MR CAMPBELL: No, that's a different matter, Commissioner, I'll explain  
that.

THE COMMISSIONER: I see.

MR CAMPBELL: Your daughter unfortunately had an accident driving the  
ute. Is that right?---That's right.

You'd been prudent enough to insure it and that's the proceeds of the  
insurance, the \$7,100, correct?---Yes.  
20

Now, just pardon me for a moment Commissioner. Now, I want to ask you  
– you accept don't you the accuracy of that spreadsheet?---Yeah.

And you accept don't you that in addition to that there was certain payments  
of cash that you've told the Commissioner about today?---Yes.

Now, the, I want to ask you about some of these goods, Commissioner, I'm  
just searching for, you'll see this in due course, but in the financial report in  
relation to the Yass matter, Mr Lachley at paragraph 64 page 19 refers to the  
30 cheques that were cashed on the Pinnacle bank account to pay Mr Furner,  
there were two cheques, one for \$4,000 and one for \$3,800.

THE COMMISSIONER: Thank you.

MR CAMPBELL: You probably know this sir but one of the things that  
happened with this dodgy dealing was that the invoices say that the Yass  
Council bought from one or other of these entities 4000 highway guide  
posts. You know that don't you?---Yeah.

40 Now that would be many, many, many, many more than Yass would ever  
need, wouldn't it?---Oh no not really.

Not really?---No.

You see, wouldn't you agree - - -?---Over a period of time.

Well, over a long period of time wouldn't it be?---No, we used to use  
probably 1,000 to 1500 a year.

I see. Would you agree, well 1,000 or 1500 a year means that 4,000 certainly represents nearly three years, between three and four years supply. Would you agree with that?---Yes.

You know that there are Australian standards in relation to guidepost placements, don't you?---What do you mean?

10 Well, you know that there's an Australian standard that says where a road authority or how frequently or what distance a road authority should place their guideposts.---No.

They don't just put them there randomly. You don't know that?---No, I didn't actually.

All right. Okay.---I knew they had to be a certain distance apart around the corner.

20 Yes. Would you agree with me that 4,000 guideposts would be enough to cover – in accordance with the standard – a distance of 600 kilometres. Do you agree with that?---I have no idea but I'll agree with it.

All right. What's the distance from Yass to Sydney?---I don't know actually.

Sorry?---I don't know.

It's around 200 kilometres isn't it?---I don't know.

30 Don't know?---No.

In any event, that's a lot of guideposts. Do you agree?---Yes.

It's probably isn't it, that not all of those guideposts were delivered. Would you agree with that?---Yes.

That would be the over, that would be the undelivered type items?---Yes.

40 And again, a lot of heavy duty mesh was ordered?---No.

Well - - ?---Light weight mesh.

Light weight mesh. Would you agree that 210 rolls of it were ordered? ---Probably.

And would you accept that if it had all been delivered that was certainly a lot more than Yass Council would reasonably expect to use during the period that you and Mr Newman had these dodgy dealings?---Yes.

And likewise I think there were galvanised sign posts. Is that right?  
---Yes.

That's the sort of things you use for street signs like no parking. Is that right?---Yes.

222 over the period you and Mr Newman had the dodgy dealings, according to the records. That's quite a bit isn't it?---No.

10 You don't think so?---222.

222.---Yeah, no.

You don't think it's too many?---No.

How many would you use a week if at all?---It depended on the bloody vandals but we used to use about 100 a year, it varied between 90 and 110 say.

20 So it depended upon how often (not transcribable) coming into town from somewhere else would damage them. Is that right?---And the locals, yes.

You're too honest Mr Smith, I tried to give you an out there. But anyway you understand the point I'm making don't you Mr Smith?---I do, yeah.

I mean, not only has this been dodgy dealing as you put it, it's been corrupt hasn't it?---Yes.

30 It's involved you accepting bribes hasn't it?---Yes.

And it's cost the rate payers of Yass a lot more than it should have to get a reasonable level of supply for the work that Council has to do. That's so, hasn't it?---Yes.

I have no further questions Commissioner.

THE COMMISSIONER: Are there any questions, Mr Clay?

40 MR CLAY: Thank you Commissioner.

Mr Smith I act, I appear for your former employer Yass Council. Just a few matters to follow up if I can. I think when you gave your evidence very early at the outset you said that you left Yass in March 2010, you fully intended to say 2011 wasn't it the end of February 2011, this year?---Yes.

Thank you.---Sorry.

Mr Smith, when Mr Campbell asked you about other companies other than UTS that were offering incentives you named the (not transcribable) and then he took you through a series of other companies R&R and Chemsearch and Momar and so on.---Yes.

I'll just ask, are there any other companies that to your knowledge that were providing the sorts of gifts and incentives other than the ones that Mr Campbell has asked you about today?---There's, like I said, there's quite a few of them.

10

Help us if you would with some names.---

Say that one again, I'm sorry.---

Do you know how that's spelt?---

What did they supply?---Oh bloody near everything.

20

Everything?---Oh well not everything but you know, a fair bit to do with PPE gear, roadside products all sorts of stuff. I don't think they do the gift vouchers, they do bags, hats, small stuff.

Right. Anything of value greater than \$50?---No, I've seen the products, I've seen the stuff it's not worth that.

Would that be described as token, what you would think is token gifts from ?---Oh probably yeah.

30

All right. Any other companies involved in gifts and incentives of which you became aware?---

I'm sorry.---

Okay. Is that spelt how it sounds, or?---Yes.

All right. What did they supply?---Lights.

40

What sort of gifts or incentives?---Movie tickets, GPS, camera. I just can't remember.

All right. Any other company you can remember?

MR CAMPBELL: Well, I think I should object at this point, Commissioner. I'm not quite sure of the strict relevance of it to our inquiry. Doubtless my learned friend Mr Clay SC is gathering information for some other purpose.

THE COMMISSIONER: Oh, I think, yes. You can tell me Mr Clay, what is the relevance of this to our inquiry? I mean, I can certainly understand why the Yass City Council would want to know.

MR CLAY: Yes.

THE COMMISSIONER: The only problem is that the companies named - -  
-

10 MR CLAY: I understand that, yes. I won't take it any further.

THE COMMISSIONER: Yes. I think there better be a suppression order on the companies named by Mr Smith, in particular those companies which have not previously been named in the course of the inquiry. The other ones are in.

20 **SUPPRESSION ORDER ON THE COMPANIES NAMED BY MR SMITH, IN PARTICULAR THOSE COMPANIES WHICH HAVE NOT PREVIOUSLY BEEN NAMED IN THE COURSE OF THE INQUIRY**

MR CAMPBELL: May it please the Commission.

MR CLAY: May it please the Commission.

30 Mr Smith, you indicated to the Commission in response to Mr Campbell's questions that when asked about the gifts and benefits policy of the council that you weren't aware of one in the early days, in the UTS days.

THE COMMISSIONER: Sorry, Mr Clay, I am sympathetic to your need but perhaps but I can deal with it in this way, excuse me.

Mr Smith, after you've left the witness box are you prepared to tell Mr Clay the names of the companies who have been giving benefits in the past?  
---Yeah.

40 MR CLAY: May it please the Commission. Thank you.

THE WITNESS: Is that allowed?

THE COMMISSIONER: I beg your pardon?---Is that allowed?

It's up to you?---Okay.

MR CLAY: And Mr Smith, before you tell me anything further outside I'll have a further conversation with you in the presence of your own representative - - -?---All right.

- - - so that any concerns you may have about consequences to you are dealt with?---All right.

Do you understand that?

10 THE COMMISSIONER: Mr Naylor will advise you, Mr Smith?---Okay.

MR CLAY: The gifts and benefits policy, not aware of any in the early days you've described in the UTS days. Can I suggest to you that was - maybe put it this way. Council records show that you had Code of Conduct training and were provided with a copy of the Code of Conduct in December, 2006?---Right.

Now, does that accord generally with your recollection of when matters such as the gifts policy and the Code of Conduct came to your attention?  
20 ---What do you mean, sorry?

You've heard of the Code of Conduct?---Yes.

Part of the Code of Conduct, at least from 2006 included reference to the constraints upon staff of the council receiving gifts and the like?---Ah hmm.

Do you understand so far?---Yeah.

30 Council records indicate that you were provided with a copy of the Code of Conduct with your training for that purpose in December 2006?---Right.

So my question was as you sit there today does that accord with when you became aware that there was a policy about such matters?---Yeah. But I, I actually thought it was 2008 but I, I mean I'm, I'm up for being wrong.

Do you accept that if, if the council records show that it occurred at that time that that's likely to be correct?---Yeah.

40 All right. Because I'm happy to show you the documents if - - -?---(not transcribable)

All right. Thank you. And perhaps it's clear to the Commission but may I just follow this up, you were referred to 15 Pinnacle invoices, total sum of around \$139,000 and is it your evidence that of those 15 invoices some or all are what are either short orders or prices in excess of what was the proper market price for the items?---Say that again?

15 invoices from Pinnacle?---Yes.

Were, were some goods delivered for each of those invoices?---Yeah.

Right. Was it in respect of each invoice or only some of those invoices that there was either a short order, that is less delivered than was on the order, or the prices being greater than the price should have been had it been a proper transaction?---(NO AUDIBLE REPLY)

10 Were some fair dinkum and some dodgy or were they all dodgy?---Well, I thought I only done seven or eight dodgy ones.

Right, with Pinnacle?---Yes.

All right?---Well, with Newman.

Okay. So does that meant Pinnacle and PAE together when you say with Newman?---Yeah.

20 All right?---But I mean - - -

THE COMMISSIONER: Well, we've shown you - - -?---It looked like it.

You've looked at the documentary record that the Commission has prepared and I understood from your evidence that although you can't remember the individual instances you're not in a position to dispute the fact that all of them involved some kind of fraudulent practice?---Mmm.

That's correct, is it?---(NO AUDIBLE REPLY)

30 Yes?---Yes, sorry.

MR CLAY: I have nothing further, thank you, Commissioner.

THE COMMISSIONER: Yes, thank you. Any other questions? Mr Naylor?

MR NAYLOR: No questions, Commissioner, just to clarify a suppression order issued.

40 THE COMMISSIONER: I beg your pardon?

MR NAYLOR: May I clarify a suppression order issue? Just before the luncheon adjournment in answer to a question from Mr Campbell, Mr Smith gave his home address in evidence.

THE COMMISSIONER: Yes.

MR NAYLOR: Might, might that be suppressed.

THE COMMISSIONER: Yes. There will be a suppression order in respect of that.

MR NAYLOR: Thank you, Commissioner.

MR CAMPBELL: My learned friend had reminded me of that, Commissioner, but it slipped my mind again, I'm sorry.

10 THE COMMISSIONER: Yes.

MR CAMPBELL: I have no further questions for Mr Smith.

THE COMMISSIONER: Yes. Thank you, Mr Smith, you're excused?  
---Thank you.

**THE WITNESS EXCUSED**

**[3.16pm]**

20

MR CAMPBELL: Just before I call my next witness, Commissioner, I'm pleased to announce that we have the document (not transcribable).

THE COMMISSIONER: Yes. Ms Lee must have been very persuasive.

MR CAMPBELL: Yes, or something.

THE COMMISSIONER: Yes.

30 MR CAMPBELL: I call Gemma Smith.

MR PATTERSON: Commissioner, I seek leave to appear on behalf of Ms Smith.

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

MR PATTERSON: I do, Commissioner, thank you.

40 THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Ms Smith and all documents and things produced by her during the course of her evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for her 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 MS SMITH AND ALL DOCUMENTS AND THINGS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

10

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

MS SMITH: Yes.

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

20

MS SMITH: I'll give it under oath.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

Ms Smith, would you please state your full name?---Gemma Louise Smith.

10 And are you the wife of Mr Kerry Smith who's just been giving evidence before the Commission?---Yes, I am.

All right. Now, Mrs Smith, I've asked - you've been in the hearing room while I've been asking your husband questions?---I have, yes.

And you will have seen on the screen that some of the payments from what he calls the dodgy dealings went into your credit card account?---Yes, correct.

20 Did you know anything about that?---No, I did not.

Well, how did it work in the family? I mean, you'd get a statement I suppose?---Yes, we do get a statement. Normally I do BPAY every fortnight, yeah, every fortnight. I don't necessarily look at my accounts, yeah, and basically I just used to do a payment each, each fortnight on my credit card and on Kerry's as well.

Oh, right. So you say that you're always confident that you had under control, is that correct?---No.

30 The credit card debt?---No, I wasn't always confident but basically every fortnight I did so much off the credit cards through BPAY.

Well, because you were doing it that way are you telling the Commissioner you didn't have to pay any particular attention to the statements, is that - - ? ---Well, well, basically I mean I didn't scan my statements, no.

Because if you were doing it on - oh, well, someone could ask if you're doing it on BPAY that you're on Internet banking I suppose, is that right? 40 ---No, over the phone.

Oh, over the phone. Okay, I misunderstood you?---Over the phone.

So you wouldn't necessarily have any transaction record before you while you were doing that on BPAY, you wouldn't have it before you, is that correct?---No.

All right. Well I need to ask you the same, I'm sorry I'll withdraw that.

THE COMMISSIONER: When your credit card statements came in are you saying that you didn't look at them?---I didn't, no, I didn't scan them because as I said each fortnight what I used to do I had a, well a plan I suppose, with all my bills, I would go through each fortnight and pay my bills that way.

I understand that?---Yeah.

- 10 You never, you never looked to see whether the bank had made a mistake and debited amounts to your credit card which they shouldn't have?---I didn't, no. Because as I said, all my bills, I mean even the other bills, electricity bills and things like that, I know that each fortnight that I pay that amount of money.

And did you not look to see what balance was owing?---No, because a lot of the time, particularly, I'm not saying with the credit cards, but particularly with the other accounts they were always in credit by the time I'd finished.

- 20 The credit card account?---No, I mean the credit card account was never in credit.

So you never, you were never surprised at the balance. I mean you must have seen the balance. When you get a credit card each month, it shows you how much you owe the bank on your credit card?---On credit cards, yeah.

And that balance didn't surprise you?---Well probably not. What do you mean?

- 30 Well if you got payments on what's been called the dodgy invoices over and above what you and your husband would expect to earn in the ordinary course then the amount owing on the credit account would have been much less than otherwise would have been the case?---I didn't necessarily look at the, that's what I'm saying, I don't, I didn't necessarily look at the amount that was outstanding. I mean basically I knew that we used our credit card all the time, so I don't - - -

Yes, all right. Sorry, do you have an occupation Mrs Smith?---Yes, I do.

- 40 What is that?---Customer service officer at Yass Valley Council.

MR CAMPBELL: And I just want to ask you a question about, like we know in the, for instance in that, what was your credit card limit back in 2006?---I really didn't know. I really didn't know.

Well see we know that in April 2006 that, that Mr Robin Newman caused a \$1,000 cheque to be paid off your credit card at the request of your husband?---(not transcribable).

Now that must have, well can I just ask you this question about it, have regard to what the Commissioner said about what was on, looking at the statement, if there was \$1,000 coming off the card that you didn't know about, some people might think that was a pleasant surprise. Now do you remember being surprised?---I don't even remember \$1,000 coming off it. I mean, I sit up here, I didn't always look at my bank, my, I don't even look at my bank statements.

10 All right. And I suppose you'd say the same thing in relation to the \$700 payment. Is that correct? It was made later?---I do not recall a \$700 or \$1,000 repayment off my credit card.

All right. Now look you knew something about the gift vouchers though didn't you?---Yes, I did.

Because your husband would bring them home?---Yes, he did.

20 And well what explanation did he give about the gift vouchers?---He basically said that they were from a rep, a gift from a rep.

And would you use them to buy household goods?---Well I did use some of it to buy, well probably more clothes and that, probably clothes.

Thank you. Well I mean didn't it occur to you that there was something fishy about all these vouchers coming home?---Well I suppose I did. I mean he just basically said that they were from the reps as a thank you.

30 Well did you think that was the wrong thing for him to be doing?---I really don't know. I really don't know whether I really thought about it, to be quite honest.

All right. Well when the dodgy dealings came to light how did you feel when you heard about it?---Well I mean I felt devastated.

And did your husband tell you or did you hear it somewhere else?---After the, I think it was the second, the second, what do you mean? At the beginning?

40 When you first heard about it who told you?---Okay. David Rowe did.

And he's the GM - - -?---He is, yes.

- - - at Yass?---He was more concerned about Kerry's welfare. That's, that's why he just said to me to basically you know, keep an eye on him. And that's all David said.

All right. He didn't tell you any facts about - - -?---No, he didn't.

- - - that have since come out?---No.

Well when did you first hear about all the facts?---About the facts?

Yes?---Okay. After the second, I think it was the second interview Kerry had. Basically he just sort of said, you know, he's done some things that he shouldn't have done.

10 Did he tell you what they were? Just a yes or a no?---Oh.

Did he tell you what they were?---Yes, to a certain degree, yes.

Well how did you feel about it when he told you that?---Well as I said I was  
- - -

THE COMMISSIONER: You were devastated?---I was shocked, actually because it's not in Kerry's nature.

20 Did he ever tell you how much money he had got out of it?---No, he did not.

Mr Campbell, I don't think there's much point in - - -

MR CAMPBELL: So only, only the human cost, Commissioner.

THE COMMISSIONER: I think that's obvious.

MR CAMPBELL: May it please the Commission. I have no further questions of Mrs Smith.

30 THE COMMISSIONER: Any questions for Mrs Smith?

MR PATTERSON: No questions, Commissioner.

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

**THE WITNESS EXCUSED**

**[3:27pm]**

40 MR CAMPBELL: I call Adam Baker

MR WHITE: I seek leave to appear on behalf of Mr Baker, Commissioner. My name is White.

THE COMMISSIONER: Yes, Mr White. Take a seat Mr Baker. Mr White, I always seem to have to squeeze this out of counsel like pips out of a lemon, but I take it that the pip you want is a section 38 order?

MR WHITE: Yes, I do. I was about to ask for that, your Honour.

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

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

20

THE COMMISSIONER: Now Mr White, I'm sure you heard me say, as I have said more than 50 times today, sorry Mr White, I beg your pardon, I'm actually talking to Mr Baker. It's been a long three weeks. You're obliged to answer all questions asked of you and it is a serious criminal offence either to refuse to answer or to give false answers. And I'm sure you understand that.

MR BAKER: Yep.

30

THE COMMISSIONER: Are you going to give your evidence under oath or are you going to affirm the truth of your evidence.

MR BAKER: Under oath.

THE COMMISSIONER: Would you swear Mr Baker in.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Baker, would you please state your full name?---Adam David John Baker.

And by whom are you employed?---Yass Valley Council.

10

In what capacity are you employed?---Workshop supervisor/mechanic.

And as the workshop supervisor/mechanic do you have a delegation from the Council to procure supplies on its behalf?---I do.

All right. Now, and in that, in the exercise of that delegation you have dealt with NCH Australia Pty Limited trading as Chemsearch. Is that correct?---I have.

20

All right. Commissioner, Mr Baker you provided some information to the Commission in response to a notice you received under section 21 of the ICAC legislation. Is that correct?---I did.

Commissioner, could the witness be shown Folder 12, I'm sorry, Folder 12 Tab 64, page 89 behind Tab 64 do you recognise as the notice, as I've referred to. Is that correct?---Yes.

30

Go to page 94 behind the same tab, is that document, three page document bearing your signature the statement you made in response to that matter? ---Yes, it is.

Would you look at this document, you'll now be shown. You were in court when I was questioning Mr Smith?---Yes.

In the hearing room. And you'll appreciate then that this document is a schedule which has been prepared by NCH Australia Pty Limited as to the promotional items that company says has been provided to you. Have you seen this document before?---I have.

40

In this present form?---Yes, it was provided to my.

All right. Do you accept that its contents are true and correct?---Do I accept  
- - -

Do you agree with it?---Um, no I don't agree with it totally, no.

Well, which parts don't you agree with it?---There's a second entry.

A second entry?---Yes.

Yes.---Which I don't know the name of that is webbo brand provide two battery charges.

Yes, what that is sir, is it's, it's the webbo the, webbo, the combine is an instruction to the head office at NCH, you see.---Okay.

10 And it says provide two battery chargers on promotion. Do you understand?  
---(NO AUDIBLE REPLY)

So forget about the webbo, just look at the two battery charges?---Okay, I believe we received one battery charger.

All right. Who, who showed you this by the way, did your lawyers show you the list?---Yes.

20 All right. And anything else you don't agree with?---I don't agree with the clamps or the bar clamps. I don't have any recollection of ever receiving those.

All right. And you say it just didn't happen or you just don't remember?  
---I don't remember.

All right.---And one jacket.

You got one jacket or there's one jacket you disagree with?---One jacket you disagree with.

30 What's that one, the XL size is suppose is it?---I don't know.

Well, which item - - -

THE COMMISSIONER: There is only one jacket.

MR CAMPBELL: Yes.

THE WITNESS: There's a Cooper jacket and there's a one XL- - -

40 THE COMMISSIONER: Which one did you get?---I don't know which one I received. There's a jacket.

MR CAMPBELL: Now - - -?---I agree with the Sunbeam Cafe Grill which I needed to amend my statement to include that.

Have you declared that one yet?---Have I declared it?

Yes. Where to?

To the people at work?---Yes.

Yes.---And I believe we received one telephone.

THE COMMISSIONER: What do you mean we?---Oh sorry, the Council.

Not you?---Not me personally no.

10 MR CAMPBELL: Commissioner, I should draw to your attention the material behind Tab 66 in Folder 12 which is what might be referred to as a letter of support from Mr Rowe the General Manager and - - -

THE COMMISSIONER: I see, all right.

MR CAMPBELL: But I want to ask some questions about that of course, Commissioner.

20 In any event, is there anything else about that schedule Mr Baker with which you disagree?---No, sir.

Right. Commissioner, with those comments of Mr Baker being noted on the transcript could I ask that that schedule be substituted for the schedule behind Folder 12 Tab 63.

THE COMMISSIONER: It will be so substituted.

30 MR CAMPBELL: Now what you've said about this Mr Baker is that with the exception of one duffle bag you maintained each of those promotional items at your place of work. That's so isn't it?---(NO AUDIBLE REPLY)

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

And you want the Commission to accept that you did nothing wrong in receiving these things on that basis. That's correct isn't it?---Yes.

Could I ask you this Mr Baker, you didn't declare them when they were received, did you?---No, I didn't.

40 And you knew -- I'll withdraw that. You knew didn't you that the Council had a policy about the receipt of gifts and benefits of value.---I was aware there was a policy.

Well, the policy was a very important matter wasn't it?---Yes.

Especially for someone in a supervisory position. Would you not agree?  
---Yes.

And you knew that part of the policy was that if such gifts could not be refused then they had to be declared at the time they were delivered, didn't you?---Yes, I should have done that.

Of course you should of. In fact, you know that the policy provides don't you, that gifts of value must be refused unless it's unreasonable to do so. That's correct isn't it? Isn't it?---Sorry? Just repeat the question.

10 I will. You know don't you, that the policy provides that gifts of value should be refused unless it's unreasonable to do so. You know that's the policy?---I wasn't very familiar with the policy to be honest.

Well, do you know that's the policy now?---Yes, I've read it now.

You can well understand, can't you, why someone with the responsibility for procuring supplies on behalf of a council should not accept these gifts unless it's unreasonable to do so, unless it's unreasonable to refuse them. You understand that dont' you?---Yes.

20 Because quite, whatever your intent on receiving them to benefit you and your workmates at work, these, the receipt of these gifts might be seen to unduly influence the procurement officer and the exercise of his delegation. That's right isn't it?---I would assume.

Do you understand that?---Yes.

30 And you see, if Mr Rowe wanted the people in your section to have one Sunbeam Cafe Grill then I suppose he could cause the Council to buy one couldn't he?---Yes, he could.

Don't you understand that what was happening here was that Mr Ramachandran was trying to make you his friend?---I understand that now.

And what he was trying to do was trying to think of him when you thought of ordering more products. Do you understand that?---Yes.

He was trying to influence you in the exercise of your duties. Do you now realise that?---Yes.

40 What's your attitude now to these promotional items if they ever should be offered again?---I would just flat out refuse them.

And do you know the good reasons why you should do that now. Is that correct?---Yes I do.

I have no further questions, Commissioner.

THE COMMISSIONER: Yes, Mr White.

MR WHITE: Yes, thank you Commissioner.

Just dealing with these items that you've been referred to in the schedule.  
---Yes.

If I could just ask you firstly, in relation to all those items that are listed in the schedule, do you have an actual recollection of receiving these items yourself?---I recall receiving possibly three of those items.

10 All right. Which three are those?---The high pressure Karcher cleaner, I have some recollection of the Uniden Cordless Phone and the Reversible vest.

THE COMMISSIONER: Mr White, in case it will assist you, the Commission has no intention of making any adverse comment against Mr Baker.

MR WHITE: No finding of corrupt conduct, Commissioner?

20 THE COMMISSIONER: No.

MR WHITE: I don't have anything further.

MR CAMPBELL: Can I just ask one question, if I may?

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Why did you belatedly declare the things, Mr Baker?  
---Can you - - -

30 Well, you got these things, you've told us, and you've attached to your statement the entries you've made in the gifts and benefits register, do you see that? They start at 97, do you see that?---Yes.

And you've declared them all at the one time I think, is that correct?---Yes.

Well, why did you do I then?---I had a conversation with the manager, HR manager.

40 Yes?---And he, he just advised me if I had anything to declare I should do it, do so.

I'll just ask you just about the date, it's 12 July, 2011, do you see that?  
---Yes.

On the first one on page 97?---Yes.

Now, that was the date you got the notice, wasn't it?---Ah - - -

If you look at page - it's not a trick question, page 89, do you see it?  
There's a stamp on it?---25<sup>th</sup> of the 7<sup>th</sup>?

'11?---'11, 12<sup>th</sup> of the 7<sup>th</sup>, '11.

Sorry, the 12<sup>th</sup> of the 7<sup>th</sup>, '11. I beg your pardon, my numbers are hopeless.  
Did you know it was coming?---Did I know that was coming?

Yeah?---I didn't know that was coming, no.

10

All right. But anyway you had a conversation with the HR manager?---Yes.

And he counselled you as to what you should do, is that correct?---Yes.

You knew that ICAC had been asking questions around the council, didn't  
you?---No, I didn't, I didn't actually know, no.

20

You weren't aware that they might be interested in anybody who might  
have received some of these promotional items?---No. I was just, I was just  
explained in my, in my meeting if I had anything to declare that we'd  
received at the workshop.

THE COMMISSIONER: Why did that suddenly happen then?---Obviously  
because of this.

MR CAMPBELL: When you say because of this you mean because of the  
ICAC investigation and inquiry?---Yes.

30

THE COMMISSIONER: Mr Baker, this letter that has had some  
considerable influence on my attitude, the one of 23 August, 2011, I just  
want to clarify one thing, the letter refers to the current location of these  
goods. Did you ever have them in your home?---I had the vest at home.

Yes, anything else?---And the bag.

And the bag. That's all?---Yes.

So all the others, were they always at the store?---Yes.

40

Thank you.

MR WHITE: Can I just ask - sorry, could I ask a question about that if I  
may, Commissioner?

THE COMMISSIONER: Yes.

MR WHITE: Just in relation to the vest, you said you had it at home but did you use that in the course of your employment at the council?---Yes, I did.

To what extent of its use did you use it in the course of your employment?  
---Most days.

And that was sighted in the presence of all staff at the council, is that correct?---Yes, I wore it everywhere.

10 THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: I have nothing arising, Commissioner.

THE COMMISSIONER: Yes, very well. Yes, you may be excused, Mr Baker?---Thank you.

THE WITNESS EXCUSED

[3.43pm]

20

MR CAMPBELL: Commissioner, that brings today's programme to a close and we have some witnesses tomorrow morning and I expect that we'll be wrapping up the public inquiry around lunchtime tomorrow.

THE COMMISSIONER: Yes. Mr Clay.

MR CLAY: May it please the Commission, your Honour on the metaphorical warpath in relation to documents being produced. Some time back Lithgow indicated there were parts of the gifts register for an earlier  
30 period which were to be produced. They were provided to the Commission, I don't know if they're intended to be tendered but just a reminder that that was done on our part and it'll be tendered in due course.

THE COMMISSIONER: Right. Well, I was thinking about a contempt application.

MR CLAY: I'm happy to (not transcribable)

MR CAMPBELL: We're saving it up for, saving it up for 5 to 1.00  
40 tomorrow.

MR CLAY: (not transcribable) note of administration is that I have noticed today as has Mr Rowe that one of the attachments to his statement - there's two Codes of Conduct, one from 2006, one from 2008, the annexures to that 2006 one - - -

THE COMMISSIONER: Have been transposed have they?

MR CLAY: - - - a later version, I could (not transcribable) in the morning and sort that out.

THE COMMISSIONER: Just speak to - if you wouldn't mind explaining this to Ms Lee and she can fix that up. Yes, thank you. The Commission will adjourn till 10.00am tomorrow.

**AT 3.45 PM THE MATTER WAS ADJOURNED ACCORDINGLY**

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**[3.45PM]**