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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

Reference: Operation E08/2469

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY, 21 OCTOBER, 2011

AT 10.10AM

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

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: (not transcribable)

THE COMMISSIONER: Right.

MR CAMPBELL: My first witness called into the witness box is Mr Robert Roach, Ms Burke is counsel who particularly appears for Mr Roach.

10 MS BURKE: Yes, your Honour. I appear, I seek leave to appear - - -

THE COMMISSIONER: Won't you sit down, Mr Roach.

MS BURKE: - - - on behalf of Mr Roach and request a section 38 declaration, thank you, Commissioner.

THE COMMISSIONER: Yes. I certainly will make a section 38 declaration if you want me to. I don't think at the moment there's a present  
20 intention to lead evidence from Mr Roach that could result in any unpleasant proceedings for him but if you, I will nevertheless if that's what you are fearful of make the declaration.

MS BURKE: No, your Honour, I've explained that to Mr Roach but he particularly has requested a section 38 declaration.

THE COMMISSIONER: Very well, yes.

MR CAMPBELL: I think there's a feeling perhaps that there may be not so  
30 much adverse consequences of a legal or disciplinary type but perhaps at a different level, Commissioner. I think some of the officers feel although they know that we are not going to be pointing the bone at them as it were on the corruption basis they feel that they'd like to have the extra - - -

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

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR ROACH 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: Mr Roach, do you want to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR ROACH: Under oath.

10

THE COMMISSIONER: Swear Mr Roach in please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

THE COMMISSIONER: Mr Roach, would you please state your full name?---Robert Cordwell Roach, C-O-R-D-W-E-L-L.

10

And are you an officer employed by the Bathurst Regional Council?---Yes.

And in what capacity are you employed?---I am the Director of Corporate Services and Finance.

And what are the responsibilities of that role?---They're quite varied, ranging from looking after all the corporate area as well as the finance area but they have a lot of other areas covered.

20 And how many people at council report to your position?---Between 60 and 70, the exact number I'm not sure of.

And I want to take you back a little while to the time when Mr Hadley was employed at the council, I think his employment was between 13 February 1989 and 25 February, 2009, a 20 year period. Have long have you been in council's service?---I started in council September '96.

In your present capacity?---In my present capacity in May 2004.

30 All right. And when you started - I withdraw that, Commissioner. I think some time in 2004 there was an amalgamation of Bathurst Council, Bathurst City Council and the Evans Shire Council?---That's correct.

And after that amalgamation Mr Hadley's position which had been a storeman since 1996 became senior store person, is that correct?---That's correct.

And in that role he reported directly to you?---That's correct.

40 I may be wrong about this but it seems like a gap without any intervening or intermediary, intermediate managers between your position and the position of the storeman?---Yeah, that was the agreed structure at the time so - - -

But in terms of - and we know from the evidence we've heard already that - and from the evidence that we've read already that Mr Hadley had a delegation to purchase items on behalf of the council?---That's correct.

Now it's a memory test but can you tell me do you remember what his delegation was?---If I recall I think he had general, general purchasing up to \$10,000 and fuel up to about 30,000 I think it was.

Now we all know the story about how Mr Hadley abused his position. When, when did you become aware of that?---I became aware of it in, I think it was December 2008. That's when I became aware of it.

10 And what circumstances did you become aware of it?---I received an email. It was given to me and I commenced an investigation.

Now could the witness be shown, Commissioner, folder 1, page 1. Just open up that folder, sir. Have you it in front of you?---Yep.

Open over to tab 1?---Yep.

And you'll find page 1 behind tab 1. Is that the email that you're talking about?---No, I don't recall that one. No, I don't recall - - -

20 Did you ever see that one?---No, not to my knowledge.

All right. What email are you talking about? Who was the email from that you saw that caused you to start an investigation?---An anonymous one. It was about three, four lines.

The one on the screen?---That's the one.

Okay. Is that not on page 1?

30 MR CLAY: No. I can see from here, Mr Campbell see, the page is not open at the right page.

MR CAMPBELL: Sorry. Thank you Mr Clay. All right. That's the one? ---Yep, that's the one.

Now - - -

THE COMMISSIONER: Mr Clay has very good eyesight.

40 MR CAMPBELL: Obviously Commissioner. Now could I ask you this, sir, were the person who as it were fielded that email or did one of your subordinates draw it to your attention?---I believe the general manager gave it to me.

One of your superiors fielded that?---Yes.

Okay. Rightio. Now, all right, now we know as I've said, and I won't go over it, I'll withdraw that, Commissioner. So you were the Council officer responsible for initiating inquiries in response to that anonymous tip off?  
---Yes.

Right. And we've heard a lot of the story so I won't tarry today to deal with it in detail, but you, can I ask you this question, one of the burning questions is how Mr Hadley got away with it for so long. That must be a question you asked yourself as the facts were uncovered?---Yeah, you're right there.

10

And what answer did you come up with Mr Roach?

THE COMMISSIONER: Mr Roach, we're not, this is not a witch hunt. We're not asking these questions to accuse anybody, we really are trying to find out what went wrong so that we can make recommendations that will assist not only Bathurst but all councils?---Righto. In my opinion he, he knew the system well enough to, to get invoices to expense them off to a maintenance and repair type of account so that it didn't go through the stock area. When he got the invoices and made the goods received dockets out he  
20 allocated the cost centres to smaller amounts of money to various or numerous cost centres. So therefore you wouldn't pick up a large amount of money coming into any of the cost centres. Some of the invoices that I saw he had four, six, eight cost centres for each being \$1,500. And in council's overall budget it's a very small amount of money in those areas when it's done on the basis that he did it.

MR CAMPBELL: So he was smart, in terms of he knew where to hide things. Is that correct?---That's, I'd agree with that.\

30

THE COMMISSIONER: But that's one leg of it, another leg is the inventory control.---Well, it's not inventory when it comes as a direct purchase and that's where, that's where I said it's not inventory, it's a direct purchase. He would purchase the mesh, for arguments sake, and it would be expensed out against five or six or seven areas and it would not go through the stock control account.

But as a, it was stored in the Council's premises somewhere wasn't it?  
---Um - - -

40

MR CAMPBELL: May I add Commissioner, if it had been delivered in truth.---Yes.

THE COMMISSIONER: Oh yes, it hadn't been delivered. Had it been delivered it would have been stored.---Stored, but because they are minor items of equipment we expense them out and somebody will come up and say, I need a pair of gloves for argument sake - - -

What does expense them out mean?---Well, you expense them out to a cost number, you don't put them through the stock account you put them through an expense account.

And therefore?---And therefore they're not under the stock, the stock control system.

That is the documentary or computer stock control system.---Correct.

10 But the, so somebody would, in order to check whether they were there would have to be some record of them so that if someone is doing an inventory check they would need to know that these items had been purchased in order to see whether they were physically there, is that, I mean that's obvious.---No, I wouldn't particularly agree with that. What they would do is, they would take them into the store area and place them in an area and as people wanted them they would hand them out to them, like a pair of gloves for argument sake or - - -

20 But what control would there be as to whether they right them, whether a) they'd been delivered and b) whether the right amount had been removed or is there no control?---No, there was control because there was a goods received docket to say that they had received. The storeman would then put them into an area within the store under his care and control and as an employee wanted a pair of gloves or a cable tie or something like that, he would ask for one and they would remove it from that area and give them to them because they had been expensed out.

30 Yes. If someone other than Hadley had ordered them, this couldn't have happened?---That's correct.

And if someone other than Hadley had been involved in the verification of what was there – it also couldn't have happened?---That's correct.

MR CAMPBELL: See one of the things I think with respect, the Commissioner is asking you about is that, is that Mr Hadley had what's been referred to in the evidence that we've heard in this inquiry end-to-end control of the procurement process. That's so isn't it?---Um - - -

40 Do you understand what I mean by that?---I do, but that's not quite right, he had up to the value of \$10,000.

All right. We'll leave it, let's look at these delegations, go back to these delegations but in relation to goods within his delegations, he had end to end control of procurement, didn't he?---Yes.

And not only did he have end-to-end control of procurement, by that I mean he ordered them within his delegations. That's correct?---That's correct.

And he sent them off to a different department, the creditor's payments department. Is that correct?---That's correct.

When the goods were received, he was the one who signed off – I'll withdraw that. When the goods were received or not, he was the one who signed off on them as having been received on the green copy of the order form. Is that not right?---That's correct.

10 And then, his signature that the goods had been received was what, was what told the credit payment clerk, creditors clerk that payment was authorised?---That's correct.

And then of course because he was the storeman he was the one who was responsible for keeping the store records, that they were, that they'd been signed out for either general use of workers or for the specific job in respect of which they were ordered?---That's correct.

20 And even when it came to a stock take he was the one, I'll withdraw that. He was involved in the stocks take. That's so isn't it?---I believe so, yes.

And one of the credit clerks would come down, but Mr Hadley and perhaps his offsider were also involved in the counting. That's so isn't it?---I believe so, yes.

THE COMMISSIONER: He was in control of it wasn't he?---No. I don't think so. My recollection of the stock take, it's done with my, in my department but another one of my officers actually coordinates the stock take.

30 But who's supervising it?---Well the officer that I appoint.

You sure?---Well - - -

In practice?---I believe, you're testing my memory but certainly the people I've appointed in the last three, four years have definitely controlled the stock take, yes.

40 MR CAMPBELL: But you weren't present on stock takes, Mr Roach?---No, no.

And the person that comes down from the Civic Centre to supervise a stock take is necessarily going to be heavily relied upon the store staff to, to find where the nuts and bolts are stored?---Oh, I don't disagree with that, no.

And when it came to actually counting the nuts and bolts the store staff would be responsible for that. That's so isn't it?---Oh, they count, they did the counting, yes.



Yes. And what's more as you've said already one of the things that show how smart Mr Hadley was was how he expenses these items out as non-stock items rather than stock items. That's so isn't it?---That's correct.

And the non-stock items were not included in the stock take. That's correct isn't it?---That's correct.

10 And that comes back to the question the Commissioner asked you I think, with respect, that that was a problem in inventory control wasn't it? The problem – firstly my question is that was a problem in inventory control wasn't it?---For the, for the non-stock items, yes.

Yes, but if Mr Hadley in his smart way was concealing his fraud by using this technique of expensing them out as non-stock items then they'd just entirely allude the stocktaking process wouldn't they?---That's correct.

And the fact that they alluded the stocktaking process is in essence a problem with inventory control isn't it?---Yes.

20 And indeed your investigation uncovered didn't it instances where not only had Mr Hadley used this technique that we've been discussing but also he was smart enough to try and cover his tracks by signing out the very bogus items that never had been delivered. Is that correct?---That's correct.

Because he had authority to do that as well. Is that correct?---That's correct, yes.

30 Anyway, now you were the finance manager and you had a lot of responsibilities. Amongst other things you were responsible for finance and you had a lot of other responsibilities and a lot of other staff for whom you were responsible. You told me that?---Yes.

I mean just talking about this management structure I assume Mr Roach that you weren't responsible for establishing that management structure? ---That's correct.

You might have been part of the leadership team, but that was a structure within which you had to work. Is that correct?---That's correct.

40 With the benefit of hindsight, anyway, there was a big gap between your responsibilities and the man on the ground, Mr Hadley, who had the responsibilities we've discussed in relation to procurement?---I agree with that.

It must have been very difficult for a man in your position, being his direct line supervisor to have any effective supervision on him?---I basically agree with that, yes.

I mean how often did you see Mr Hadley?---I saw him once a fortnight.

What would he attend upon you in your office to give you a report. Is that the way it was?---No. I called at the depot on a reasonably regular basis, once a fortnight. But I would have contact with him over the telephone on a weekly basis.

10 But you would be the first person to tell the Commissioner, wouldn't you, that really it was impossible for a man in your position, anyone occupying your job, to have effect hands on control of what was going on the store?---I agree with that.

And certainly you couldn't, and nobody could, you know, scrutinise every single invoice that Mr Hadley approved for payment?---Oh, I agree, totally agree.

20 Now just about his delegation and I need to just ask you about this, could you - I'll ask the Commissioner's associate to take that folder away from you and to give you folder 4. Just while it's coming to you, Mr Roach, I mean you had no option but to trust Mr Hadley?---No.

That's correct, isn't it?---It's totally correct.

And in fact he was a long standing employee of the council as we know by the time he got, by the time he left he had been there for 20 years?  
---Correct.

In a variety of positions?---Yeah, I believe so, yes, yeah.

30 Not only in the store but he started off I think as a, as a labourer but you probably don't know that because you weren't there?---No, no.

I'll just double-check I've got that right, Commissioner. Yes, labourer in the parks and gardens department. And in fact I suppose you'd say you did trust him, is that right?---I definitely trusted him.

Yeah. Now, you've got that folder 4 in front of you, is that correct?---Yes, that's correct.

40 I just want to take you please to page 12. This is - behind that tab which is numbered 23 and page numbers are at the top right-hand corner of the page, do you see that?---Yeah.

Now, this is Mr Brian Dwyer's statement which has been tendered in evidence on behalf of the council and he - following the reorganisation which has taken place he is the manager, corporate governance, is that correct?---Yes.

Now, we know this, I think, Mr Roach, that every single one of the Robin Newman Pty Limited invoices was entirely bogus in the sense that not one glove or cable tie was ever delivered, that's so, isn't it?---Oh - - -

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

Well, assume from that's correct?---Okay.

10 Now, we can see - we're talking about the delegation and this is in reverse order but the last, the last one was 16 September, 2008. Now, that was in an amount of \$26,202. Now, on anyone's understanding of it that's well above his delegation, isn't it?---That's correct.

Now, for instance why wasn't that picked up?---I can't answer that.

You see, the system, the only check that the old system had was that the credit payment clerks, the creditor payment clerks, were supposed to know who had what delegation. That's so, isn't it?---That's correct.

20 And if something came from Mr Hadley not being fuel items over 10 grand then they were supposed to refer it to you as his direct supervisor, is that correct?---No. It would have been referred to their, their supervisor who was the management accountant and then the management account would have referred it through to me.

Well, I mean, this is, this document I'm asking you to look at is a document prepared by the council itself from the council's own records?---Correct.

30 And if you look down just that page 12 you can see that there are very many instances of Mr Hadley ordering goods or let me say this, issuing fraudulent purchase orders in respect of goods that would never be delivered in excess of his delegations. That's so, isn't it?---That's what the document says, yes.

Yes. Well, it's not my document, sir?---No, no, that's plain.

And in some instances well and truly above his delegation?---Yeah, I agree.

40 So that the one, may I say with respect, that even the one flimsy cheque that the system allowed for back in those days failed?---Correct.

And it may have been likely that if, if Mr, if that system had operated then this fraud would have been discovered earlier?---I don't disagree with that.

He might have just got smart I suppose and made sure that they were all under his delegation, that's one possibility.---Yes.

THE COMMISSIONER: Well, he did split orders, there has been evidence in this inquiry of orders being split so that they come under the relevant delegation.---Okay.

Was there any system designed to scrutinise the orders to at least to make an attempt to ensure that this wasn't happening?---No, not that I believe.

10 MR CAMPBELL: Just to labour the point, could I take you to page 15 of Mr Dwyer's statement. Now we see here we've got invoices from PAE Industries. Do you see that, those, the Commission has very, would you assume from me that the Commission has every reason to believe that no glove or cable tie or any product was ever delivered pursuant to these invoices. Do you understand?---I understand the question.

Yes. Again, one can make the same point about the frequency with which on this document prepared by the Council he seems to have exceeded his delegation.---That's clear.

20 THE COMMISSIONER: Do you look at, just look at the four items for 26 November 2007.---Yes.

I mean, we are looking at something that looks like about \$45,000 in total. ---Yes, I can see that.

So anyway this was a, I suppose if there was somebody being alert who's task it was to examine orders to make sure that this wasn't happening, that's the kind of thing that I suppose could well have been picked up.---If, yes.

30 Yes, I you, it was suggested to you that if, if the, if someone had checked the delegation properly this might not have happened but I'm a bit ignorant of that so I wonder if you could just explain to me why that is so, I mean someone sees that, if someone saw that Mr Hadley was going over his delegation and he'd say, well you can't do that, someone else has got to authorise it, then Hadley would say, yes, all right, would you authorise it. How would anyone find out that something wrong was happening?---Well, if they checked the delegation and they that the order was above the delegated amount, they would refer the – the creditors clerks would then refer back to their supervisor.

40 And then?---The supervisor will then raise questions why it was, his delegation had been exceeded.

Well, if he said, if he would say simply we need the goods.---He could say that, yes.

And then?---If, and if he, if that's the management accountant considered that an inappropriate answer he would then refer the matter on.

Yes. But how would he know whether it was inappropriate or appropriate?  
---Oh, by using his own judgement I would believe.

Well, on what would he be based? What facts would be based?---I don't,  
without talking to the people concerned, I don't really know the answer to  
that.

10 MR CAMPBELL: I mean the only way it would work Mr Roach isn't' it  
possibly is that if somebody picked up his delegation then noticed a pattern,  
questions might have been asked?---Yes.

Might - - -?---If it was consistently over the \$10,000 yes.

But even so, you would agree wouldn't you, it would be like using an elastic  
band to drive a Mercedes Benz. Do you agree?---Quite possible.

20 Because as the sole check, even just checking the delegation as the  
Commissioner's have elicited, would have been entirely inadequate to  
protect the Council against this massive fraud.---Yes.

THE COMMISSIONER: Well how do you think the system should be  
changed to overcome this particular aspect, can you think of a better way of  
doing things?---Oh, yes. Certainly, even with the delegation certainly to  
take the person who makes the order or requisitions the order is not  
permitted to goods receive the stock.

30 Yes.---And also to introduce a review process of the ordering system, that is  
what, as you're aware, Council's in that process now and certainly the  
review process is carried out by senior officers with people with the  
authority to ask the appropriate questions.

40 Can I just ask, there's something I think had intrigued all those who don't  
really know how these work in this case and that is, that some of the orders  
seem preposterous, barrier wire and so, huge amounts that the Council could  
never have needed or take three or four years, on an optimistic basis to use,  
and I think probably more so that anybody looking at the order with any  
knowledge of the background would have picked up immediately that this  
order, there's something very strange about the order. You under what I  
mean?---I understand.

Now is there any way in which that issue can be dealt with, do you  
understand what I mean, I mean by having some sort of control over the,  
some sort of inspection of the invoices even if it is only spot checks or some  
other system which does trigger a red flat. Is there some way of doing this?  
---Just to explain the first part of your question, once the order and the  
goods received and the invoice is matched by the creditor's clerk, a  
creditor's clerk does not have the experience.

No.---And once the, the transaction has been processed and the cheques are drawn, that is a process that takes place in an office environment and the creditors clerk do not have that experience and they wouldn't know whether 100,000 cable ties or whatever it is that has been ordered is an excess amount. They would not know that.

I u understand that.---To introduce another level of review of every document it becomes a very onerous task and a very expensive task.

- 10 Is that impractical?---It's quite impractical I believe. To do spot checks, whether you'd pick it up, I'm not sure that you would. Given the infrequency of these transactions in the overall number of documents that we process in a month it may occur. We have, we now have an internal auditor and we now have external auditors so they do review all these documents, it's again, a very difficult area to pick up what is excess and what is not excess.

Because it's so specialised?---Yes.

- 20 MR CAMPBELL: Of course, one thing, you can come back to it what has happened now that a more sophisticated style of inventory control so that more was in the stock rather than non-stock process would be more likely to disclose that you had 444.55 kilometres of barrier tape supposedly on hand or at least you know you didn't have it and where was it?---Yes.

Is that correct?---That's totally correct.

- 30 All right. Now I think, if I may be permitted to make a comment Commissioner, that we did acknowledge in the opening statement that Bathurst Regional Council has done a lot of work since this fraud was uncovered to bring into effect a much more sophisticated and more effective system for procurement. Is that so Mr Roach?---That's correct, yes.

And I'll be asking Mr Sherley, the general manager some questions about that. But I'm very glad to see you in the witness box Mr Roach, because there's a question I've been dying to ask someone in your position for three weeks and it goes to the gifts and benefits part of this inquiry. Now you're, you're the chief financial officer of the Bathurst Regional Council. Is that correct?---That's correct.

- 40 All right. Now what would you rather have, I think I know the answers, but would you tell me, would you rather have an extra \$1,000 in Council's coffers or having your storeman spend \$1,000 worth of Coles Myer vouchers at the supermarket?---Oh, the obvious answer is, you know.

Well give it to me, please so it's on the transcript?---The Council.

Yes, of course. And of course what would you rather have? Would you rather have your procurement staff determined to negotiate the best possible price for consumables or would you rather have them become good mates with the salesmen? Which would you rather have?---The first one.

10 Yes. Okay. And we've heard this evidence for instance, I mean leave aside the large chemical companies who have given evidence, we've heard evidence from a number of suppliers of consumables used in road works like barrier mesh and riggers gloves and the type and we've heard that they have a business model, for instance where they work on the basis cost to them plus a percentage. That is to say there was no fixed price list. They say, and R&R Tapes is one whose evidence we've heard, well they say cost to us plus a minimum of 43 per cent mark up. And if you can talk the storeman into 50 per cent, 60 per cent or even 100 per cent, go for your life. Now how do you feel about, about Council staff dealing with people who have that type of business model?---I'd object to it very much so.

20 Because, especially I suppose if they were giving relatively junior employees on not very high salaries cash vouchers to go with it I suppose. Would that be correct?---Correct.

Because you could have no confidence in those circumstances that the employee wasn't being influenced in his purchasing decisions by the gift to him. That's so isn't it?---That's correct. That's correct.

30 And in those circumstances if you had known about their business, the suppliers business model, you could have no confidence whatsoever that Council was getting the best price available. That's so isn't it?---That's, that's correct, yep.

Would you agree with me about this that there are three key factors in terms of Council's commercial operations in securing these suppliers. The first one is the quality of product, the second is reliability of supply and the third is competitiveness of the price?---They're the three main areas, yes.

40 And that kind of business model coupled with the giving of personal gifts and benefits to the officer responsible for placing the order subverts those three cardinal principals in forming good procurement in the public sector. Do you agree with that?---Yes.

And so not only do we have a problem with corruption itself, but that corruption of that type, the gifts and benefit type of corruption interferes with the efficiency of Council's business operations in a very significant way?---I believe that's so.

I suppose you'd say that it's not necessarily the cheapest price because you've got to look at the three factors. Is that correct?---We always look at, you know, quality as you can see, I mean - - -

Quality of product, reliability of service - - -?---Yes.

- - - might mean you pay a little bit more as a fair competitive price?

---Correct.

I have no further questions for Mr Roach.

10 THE COMMISSIONER: Is there any merit in requiring suppliers to provide a pricelist?---In some cases, yes. We certainly do have pricelists for a lot of our suppliers. We certainly go to tender and, and ask for quotations on an extensive amount of our normal materials, yes.

But throughout these three weeks, and this is not Bathurst alone, it's everybody, they seem to be dealing with suppliers who have no pricelist?---Oh, right. Oh, well - - -

So I mean you may - - -?---I really can't comment on that.

20 Well, what I'm really asking you is would it impractical to say that unless there's special circumstances that council should require suppliers to submit pricelists?---I'd agree with that, yes.

And, Mr Roach, throughout these three weeks we've seen even though the councils concerned have pretty good Codes of Conduct and where their officers have actually read them, they've never been complied with so - by these individuals in the particular circumstances and there have been very many so there seems to be a big difference in the practical effect between just sending out written documents which are Codes of Conduct on the one  
30 hand and giving face to face talks to people on the other. Is that something you've thought about at all?---Possibly over many years, yes. Unfortunately or fortunately people that you employ all have different standards and different morals - - -

Of course?--- - - - and it's very, very difficult to - - -

Well, that's in every business and every profession?---It doesn't matter what you're in.

40 But there are ways of reinforcing the ideas that are better than simply requiring giving them a Code of Conduct when they're first employed?---I believe Bathurst Council does try to educate our staff regularly in Codes of Conduct and various policies that we have.

(not transcribable)?---Well, we certainly do it during induction and we certainly do it through a newsletter, a weekly newsletter that we send. I don't know what more you can do.



Oh, you can give lectures?---Yeah.

You can call people in, you can give departments talks, you can give reminders once a year?---You could, yes.

Do you think that's practical?---Well, ours is quite a diverse council and they're located over a wide area, it's - - -

10 All the more reason to do it, isn't it?---Yeah. But it's, yeah, I don't know whether it's overly practical but the end result is that it may have to be done.

Well, I mean, nobody wants to - we certainly do not want to make recommendations that are impractical but we have a situation here where it seems that the Code of Conduct is simply ignored, through no fault of the council. Well, when I say through no fault of the council I put in the reservation that the council doesn't seem, as far as I can tell and I may be wrong, emphasise and teach the Code of Conduct at regular intervals to individuals and I'm really asking you whether that is practical and I can see  
20 something that has to be done?---I wouldn't be against any education and improvement but it's certainly - the degree of practicality is something we would really have to look at to see what the end result will be.

Yes, that's true. All right. Thank you.

MR CAMPBELL: I have no further questions, Commissioner.

THE COMMISSIONER: Yes, thank you.

30 MS BURKE: No, questions, thank you, your Honour.

THE COMMISSIONER: Yes. Thank you, Mr Roach, your evidence is finished, you may be excused?---Thank you very much.

**THE WITNESS EXCUSED**

**[1.54am]**

40 MS BURKE: May I be excused, your Honour?

THE COMMISSIONER: Yes, thank you.

THE COMMISSIONER: Commissioner, I call David Sherley.

MR CLAY: Commissioner, while I appear for the council, I don't formally appear for Mr Sherley although he has been the person giving me instructions on behalf of the council and he's asked me to indicate that - - -

THE COMMISSIONER: It's a kind of a tangible relationship.

MR CLAY: There are political winds that flow in many local governments and for those reasons he is seeking a declaration under section 38.

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

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR SHERLEY 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: Mr Sherley, do you wish to give your evidence under oath?

30 MR SHERLEY: Under oath, Commissioner.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Sorry, Commissioner, thank you. Pardon me, Commissioner.

10 Sorry, Mr Sherley, just getting my paperwork in order. Mr Sherley, are you David John Sherley?---I am.

And that's S-H-E-R-L-E-Y?---Yes.

And are you the General Manager of the Bathurst Regional Council?---Yes.

And for how long have you held that position?---Substantively since February 2004.

20 I think you started off as an acting general manager, is that right?---That's right.

And you were permanently appointed to the position in June 2005, is that so?---Yes.

I think that during the course of the Commission's investigation the principal officer who's been providing information on behalf of the Bathurst Regional Council has been Mr Brian Dwyer, is that correct?---Yes.

30 And he holds the position of Manager, Corporate Governance, Bathurst Regional Council?---That's correct.

You, you have chosen to come today to give this evidence on behalf of the council, is that so?---Yes.

But you have read Mr Dwyer's statement of 31 March, 2011 which is to be found in folder 4 at tab 23, Commissioner, at page 1, is that so?---Yes.

40 And do you adopt that statement as your own?---Yes, as far as things are with my knowledge.

But you know of its structures?---Yes.

And he's the one who's done the investigation into things like invoices and the like, is that so?---Yes.

And you've relied him to compile that information accurately?---Yes.

All right. And certainly what you can tell us about is what Bathurst Regional Council has been doing in relation to these matters, I'll put it generally, since Mr Hadley's fraud was uncovered?---Yes.

Now, I think you've also prepared a memorandum which sets out your professional qualifications and attainments, your curriculum vitae and brings things up to date since 31 March, 2011?---Yes.

10 This is an unsigned document but perhaps if I handed it to you with a copy for the Commission would you tell me whether that's the memorandum you've prepared and while you're on your oath whether you adopt it?---Yes.

I'm not sure, Commissioner, whether we need Mr Sherley to sign it but I tender it.

THE COMMISSIONER: Yes. Exhibit 63 is Mr Sherley's memorandum.

**#EXHIBIT 63 - STATEMENT OF MR SHERLEY (UNDATED)**

20

MR CAMPBELL: I really do want you to explain to us, sir, what Bathurst Regional Council has been doing to improve its procurement systems but could I ask you this question, when the Hadley/Newman fraud was uncovered and its extent started to become known how did you feel? ---Shocked.

30 And you've been here for some time I think Mr Sherley, hearing the evidence?---I've been here a number of days, yes.

And, and I think you've been here since Monday?---Tuesday.

Since Tuesday. And you would have heard the evidence that, that we've heard in this public inquiry that suggests I think fairly, that not only were all the Robin Newman Pty Limited invoices fake, but there's every reason to believe so were the Pinnacle Traders invoices, so were the PAE - - -

THE COMMISSIONER: Industries.

40 MR CAMPBELL: - - - Industries invoices?---Yes.

And it's been a massive fraud has it not?---It has been.

Now I know that, and I know that you're here to tell us about what you've done about it, may I say with respect commendably. But what, what do you think the basic problem was, if there is a basic problem?---Look I think the basic problem was that Geoff Hadley had end to end, to use the terminology that's been used, capability.

And we've heard from Mr Roach, and do you agree with this, that the only, the only thing that could be called to check was the fact that an unrelated creditor clerk was supposed to pick up when he exceeded his delegation? ---Yes, in the end that appears to be the only real major check.

Yes. And we know from the information Mr Dwyer has put together for us that that, I called it a rubber band earlier, broke?---Yes, it did.

10 And the, and can I ask you this about the delegation system, as the Commissioner pointed out to Mr Roach when he was giving evidence, there was one occasion in particular where over \$40,000 worth of goods were ordered in a single day simply by splitting the orders. Was that within the spirit and intent of the delegation?---Definitely not and it's not a practice that the Council encouraged.

Yes. We'll I understand that we can fairly say of Mr Hadley that he was a bad apple, but that may always happen I suppose. Is that correct?---There are always people who will look at ways of trying to beat the system.

20

So what have you done to improve the system?---Well as soon as we became aware of the fraud, and you've seen the anonymous email that came through, we first sat down and couldn't believe the figures. And then after that as soon as we got some idea, we ceased the capability of the storeman to raise orders, so that was blocked. And at the same time we moved, because we realised then that there was a scope with the purchasing officer who had the rights to do goods received. So we blocked the goods received from the purchasing officer but the storeman was blocked for the raising of orders. Once we got that in place we were in the process of getting ready to change our computer system. And our computer system was basically, whilst it had computerised creditors and stores, the actual requisitioning process was manual. And that of course is highlighted by this, that there are people who are required to pick up things manually, haven't picked them up. So we've introduced an electronic E-procurement system. The system that we're utilising won't suit all councils, but the part that we've used allows that anyone can be authorised to raise a requisition, but then that requisition has to go to the purchasing officer who does not have goods received rights to authorise that requisition to create an order.

30

40 We've heard for instance, well not for instance, we've heard evidence from a Mr Phill Scott, who's an expert with local government procurement and he's told us that these days there both at the TAFE level and at the university level qualifications one can receive or attain in procurement practice. Have you, in terms of having this specialised procurement role, have you looked for somebody who's got that sort of relevant training experience?---Yes, our procurement officer has been trained. I'll just say we've always had a procurement officer, but there was also the delegated authority to the storeman to get in the stores for stock, but also some of the

items for the direct servicing of jobs. But certainly, yes, there is that course and our procurement officer has gone through that course.

THE COMMISSIONER: Mr Sherley - - -

MR CAMPBELL: I beg your pardon, Commissioner.

THE COMMISSIONER: I'm sorry to interrupt. Mr Sherley, I just want to ask you about this requisition officer, the new, I think that's what you call  
10 him, the new post that's been created.---Sorry Commissioner, just to clarify. We haven't created a new post, every employee, if we wish to give them the right to seek goods can raise a requisition on the computerised system.

Yes.---They can't raise an order, that requisition then must go through to the procurement officer - - -

So it's the procurement officer.---Yes. Now that position has always existed and I have to, ironic as it sounds, the procurement officer used to be based with our storeman and we physically separated them to try and reduce the  
20 opportunity of fraud.

MR CAMPBELL: Forgive my inappropriate response with a throttle. I can understand the irony that you're pointing out to us in relation to that.---It wasn't lost on us.

THE COMMISSIONER: But the procurement officer, will he have the experience and knowledge required to at least pass some sort of check over the genuineness of the orders?---I'd have to say not on all items but certainly utilising the example that you did with the barrier mesh. If the  
30 items had come through store and the items had been certified off by the procurement officer who is physically separated, I'm sure he would have asked the question why the volume but - - -

I'm sorry, I didn't mean to interrupt. Have you finished your answer?---Yes Commissioner.

You decided, you decided that you should separate the procurement officer from the store to reduce the opportunity of fraud, is that because you thought that the connection between the two might become too close?  
40 ---Yes, Commissioner, that was done in 1998 when I was the director of corporate services but I remember being involved in the discussions at the time.

That to me is not an unreasonable attitude, I mean, the, I can see that there is a potential for that happening. Have you returned to that situation now?  
---We've maintained that separation and as Mr Campbell said, it seems quite ironic now, but we have maintained that situation where the purchasing officer is physically separated from the storeman. The big

difference we've got now is that the storeman does not have the right to actually raise a purchase order. If he wishes to requisition goods, like he says, I need these, he has to fill the requisition out and it goes up to the procurement officer.

10 So I mean, one can't, I really do appreciate that one can't cater for every situation but in theory and I, this is completely in theory and I'm not suggesting it's not based on anything else except supposition, but there is nothing, what would stop the, the, a person having requisition rights and the procurement officer from conspiring to order false goods. Is there any, is there any other safeguard that 's there, that acts as some kind of deterrent to that?---Becomes extremely difficult.

20 I understand that.---In terms of the store system, so in terms of the items going through the stores we now have implemented whereabouts, we've always had a min/max system for the stores, it's always been in place but the systems accountant now each quarter gets a list of the movement through the stores, to look to see how they compare to the min/max system which gives us an idea there but in terms of items directly purchased out to the job, so say someone wants four trucks of concrete, there is potential for collusion between the storeman and the procurement officer, one would expect that the third step in that protection should be the manager or the person in that area signing off on the invoice to say that they actually got that product.

Yes, I can see that is a third step, it is a third safeguard isn't it?---Well, you would hope so, albeit that I must say that this case shows that that hasn't been fool proof either.

30 MR CAMPBELL: Just going back a little step, I mean, perhaps part of the irony in relation to the physical separation of the purchasing officer from storekeeper was that you unintentionally divided functions in terms of you created two purchasing officers rather than one?---Correct.

And the one you left behind had that end to end control that we've spoken about?---That's correct.

40 And not only do you have the end to end control of the procurement process but he (not transcribable) the storekeeper he was also, he also had a substantial control over the store and the processes if not in name but in substance of counting it?---That's correct. But, can I say, that the fraud appears to be as Mr Roach said mainly with the direct to job items rather than with the store items.

And that's an issue about inventory management, isn't it?---Would agree, yes.

And I think initially that - I'm not being critical and if you disagree with my question please tell me, Mr Sherley, initially the council was a little bit resistant to changing that system of inventory management because it saw certain efficiencies in relation to non-stock, non-stock job specific procurement processes?---That's correct.

10 But I think one of the things you talked about since March is you've come around to the idea that those job specific items ought to be kept to a bare minimum?---I would agree and also I would say that the electronic system that we're moving towards, some of the concern earlier is the amount of paperwork you create, the more that it can be electronically created reduces the labour time in administration so they can get on more with the product.

All right. Now could I ask if Mr Sherley could be shown folder 4, tab 23. I just want to take you through quickly so you've got the chance to tell us what details were done. This is Mr Dwyer's statement, if you turn over to page 8 I think from paragraph 19 - - -

20 THE COMMISSIONER: What page of the bundle is it?

MR CAMPBELL: I'm sorry, Commissioner, it's page 8 of the bundle.

THE COMMISSIONER: Page 8, thank you.

MR CAMPBELL: And it's paragraph 19. Now I should say that you didn't think - it wasn't as though you felt you'd done nothing before the allegations became known, as you said you had the - there was supposed to be a check on delegations?---Yes.

30 You did train Mr Hadley in purchasing in a government environment?  
---Yes.

And you of course had the Code of Conduct?---Yes.

And you had the stock take system?---Yes.

40 But you'd be the first to agree that those standard measures adopted across your industry in the government sector proved entirely ineffective?---In this case, yes.

Yeah. And that's because - I'm not talking about systemic across local government but within your system there were systemic problems, they were not effective to give you a better opportunity to detect this type of crime at an early stage?---Yes, the opportunity for end to end created a problem.



All right. But if we just go through Mr Dwyer's statement quickly, you've told us about buying the new software system, that's in paragraph 20, is that right?---Yes.

And it's the purchasing officer who now has the only delegation for procurement, is that right?---There are four officers - - -

Yes?--- - - - who in the whole organisation have the right for procurement - - -

10

Yes?--- - - - but certainly there is no procurement rights with the storemen.

The four officers, are they in a hierarchy?---Yes, they are.

All right. Including yourself, I suppose?---No.

No?---I don't have purchasing rights.

20

That's very commendable Mr Sherley, it shows you how much you've taken this to heart?---I've never had purchasing rights.

THE COMMISSIONER: And you don't want them?---No.

MR CAMPBELL: All right. But I think paragraph 20 to 22 explain all of those, all of those steps that you've said earlier, is that correct?---Yes.

30

And then, then of course 23 there's the hierarchal command, he reports to the manager of financial services and as you said in your evidence he can order but he can't receive, is that so?---Sorry, no the - - -

He can order, he's authorised to order goods requisitioned by somebody else but he's not authorised to receive the goods, the purchasing officer?---Oh, purchasing, sorry, correct, yes.

All right. And the store person, to make it clear, is permitted to receipt goods intended for the store, is that correct?---That's correct and he answers to the manager of corporate governance.

40

So there's a division of hierarchy there?---Yes.

Which would reduce the opportunity that the Commissioner raised earlier about collusion between people in the hierarchy?---We'd hope so.

It reduces the opportunity, can't eliminate it?---No, can't eliminate it but reduces it.

All right. And of course – when the Hadley fraud, the Hadley/Newman fraud was discovered, did you go and have a look at the store yourself, Mr Sherley?---Yes, I did.

And what was it like in terms of its physical organisation?---I would have said probably okay, but we've done subsequent changes.

10 Was it systematic or did it seem to be organised in a rather idiosyncratic matter which might have suited Mr Hadley's own person preference?---To me it seemed reasonably systematic. But after talking with Brian and we went through the processes, there clearly were layout issues that allowed or facilitated what he did.

All right. And they have been addressed?---Yes.

Right. And, and I think the stock take process has been entirely overhauled?---Yes. The main item with the stock take process is that after we found the fraud out and, and then we put Brian down there, we found out the finance or the creditors clerks were doing, well were writing the figures  
20 down and the storemen were doing the counting. And that's a fundamental problem.

Yes. And what you've done now according to page 10, paragraph 25 of Mr Dwyer's statement is that the new procedure that sets out three teams are now assigned to undertake the stock take. Is that correct?---That's correct.

And, and each member of the team has a separate responsibility. Is that so? ---That's correct.

30 And the stores staff is still involved but they're split. Is that right?---That's correct.

And they're not in charge?---That's correct.

You also have spot checks. Is that so?---They've started. Look doing spot checks and as I mentioned before the min/max check is happening every quarter.

40 And the, I think I asked you about your perhaps gradual conversation to, to a system of inventory control which reduced non-stock items?---Yes.

I think one of the things that you have done is that, as is said at paragraph 26 of Mr Dwyer's statement is that in concert with Dubbo and Orange Council's an internal full time auditor has been employed?---Yes. We employed as at 2009. We did try to do it a bit earlier, maybe he might have found the fraud, but until, it's very difficult getting people in that position.

Now it's going to be said no doubt in some respects that it's harder for regional councils to adopt some of these measures because they're smaller, they have a smaller tax space and they have to do more work with less people?---Look I think there's two issues. There is the ability of funding and the number of staff. I mean I've been at councils like Bogan Shire and that and your total staff is about 50 staff. So that's difficult. The other thing I think that will make it difficult and I noticed you talked to Mr Roach about people coming in and talking about requisitions and whatever else, a lot of companies produce five or six products. Councils produce such a wide  
10 range of products. It's very difficult to have people who have good knowledge of everything. And as an example we have around 3,600 creditors, so that does create difficulties.

Hard for the accounts payable department to be familiar with every product supplied by or every service rendered by every one of those creditors?---I would agree.

But one of the things about banding together is that Bathurst Regional Council couldn't possibly justify having a full time auditor, but with three  
20 councils in the same region doing it, you can have that service now in that cooperative manner?---Agreed. Two benefits, cost and also hopefully he picks up the best of the best from each of the councils and transfers those ideas.

Now with holding up, one of the things that brought you around to the idea that you had to reduce the amount of non-stock items I think was the March report of the internal auditor. Is that right?---Yes.

It's not in the statement, could I, could you look at - - -  
30

THE COMMISSIONER: Mr Campbell, do you want to adjourn this morning or do you want to go straight on?

MR CAMPBELL: Subject to your ideas, Commissioner, I'm happy to flow on this morning.

THE COMMISSIONER: Yes.

MR CAMPBELL: Is that satisfactory to the Commission?  
40

THE COMMISSIONER: Yes.

MR CAMPBELL: If you look at this document. Is that the, is that the document, it says final draft but is this the document you've provided to us Mr Sherley. Is that correct?---Yes.

And that's the, that's the version on which it was adopted. Is that correct? ---Yes.

And just to illustrate the point, I think, if we go to page 3, page 4 I'm sorry.  
---Yes.

And this is, in your, it says (not transcribable) of inventory registry, do you see that?---Yes.

Then it goes onto to observation 1, the first bullet point.---Yes.

10 And it goes on to say well, those jobs specific items are, are, make it hard to account for them in the issue at the bottom, it gives it a little bit of accountability over, over items that are not considered just part of store inventory.---Yes.

And following these recommendations. At the foot of the page, you decided to establish a record of sort of material items which are not considered as part of the inventory and regularly review the holding. Is that so?---Yes, those are carried over, yes.

20 So that that's, although you can't entirely eliminate non-stock items you've created an inventory within the inventory to help control that?---Yes, so you can see quantities going through, yes.

All right. I tender that Internal Audit Memorandum Commissioner of 22 February 2011.

THE COMMISSIONER: Yes the Internal Audit Memorandum of 22 February 2011 is Exhibit 64.

30 **#EXHIBIT 64 – INTERNAL AUDIT MEMORANDUM PREPARED BY BATHURST REGIONAL COUNCIL**

MR CAMPBELL: Mr Sherley, before I move to gifts and benefits, as I've said to you the Commission welcomes the opportunity for you to come along and explain what you've done. Is there anything else you want to add to the questions I've been asking you?---No, the only comment I'd make is the issues with respect to dealing with suppliers on other varieties of product, I think there is defiantly a problem whereabouts they can only get to one person but I think it would be extremely difficult even in our size  
40 Council say that everything gets targeted purely to procurement officer, he just wouldn't have enough hours in the day. My general feeling would be that where there is someone who is wanted to offer an alternate product would want to get involved at our manager level who may be interested and talk with one of the guys on the field. I mean, the good example has been the Momar products where everyone says that they are very good. You want to be able to deal with those, but I don't know whether you could deal with them all through the one location, there just wouldn't be enough hours

in the day but that's really what your managers are there. The other thing that I would say too, that in a Council like ours, we don't, we have a lot of tenders, we don't do our tenders necessarily through the procurement officer, we do them through our engineering department where the engineers have project management experience and so those items that are over \$150,000 we often through the engineering department. Plus also, those items that we think that may be a really regular large item, gravel, a lot of our pipes, sand and that, we do them, as either annual or bi-annual tenders and then we get the pricings in from those and then we'll just make a select list of those and then we go down from our mixture of those three items at how they can deliver how good they are and price and we do that and I think that that's something that should be made use of if other councils aren't making use of it.

In relation to that process where those large items are deal with in the engineering department where the mangers have the expertise. Is there a check on them, I mean, do they still deal with it, do they make the recommendations to some other department?---For those items to actually get the sale agreed to, it must be a resolution of the Council.

Yes.---And then those items now under the GIPA Act must be reported on a public register on the website to show what's been released and that gets it then out into the public domain.

That would itself be the clear light of day is also a strong protection.---It is and in looking at that, as I said, we've got 3,600 creditors but to give you an idea of that \$150,000 range. I had a look at how many went through in the last financial year and we had about 100 creditors in the \$150,000 plus range and that included the Tax Officer and the banks for loans.

All right. I want to ask you some questions, I want to move onto now to gifts and benefits, is that's convenient to you.---Yes, that's okay.

Now we've got a, I ask Mr Roach this question, I see you've got a Bachelor of Economics, you'd rather have the money in the coffers than in the hands of Coles. Is that correct?---Definitely.

And indeed you've mentioned Momar Australia as having good products but had you known that they were operating in the way in which they've shown to operate in this inquiry in terms of their travelling salesman getting access – not only to the procurement people ie in the old days, the store person but also to the end use of the product and favouring them with these gift cards. If you'd known that, what would you have thought about it?---I wouldn't have allowed it.

And you accept, you've heard me ask these questions no doubt Mr Sherley, but a gift card's just cash isn't it?---To myself personally but I have to say I think a lot of people dont' see it as cash. A very simple example of that is

when you go to buy presents for people at Christmas, you don't give them an envelope with cash in it, you give them a gift card and that's why I think a lot of people don't see it as cash but personally, I agree with you.

10 Especially, I mean if I give my son \$500 at Christmas time or something because I don't know what he wants, and I wouldn't be so generous, it's just for the example, there's no ground for corruption because I don't want anything from him and I wouldn't be stupid enough to expect it?---Dare I say you're the buyer and therefore you've got the sole right to give it to him, yes.

Indeed. Or if I don't know what a friend's son and future daughter-in-law want for wedding present and I give them a gift card from David Jones there's no hint or suggestion of any corruption there because it's entirely personal gift.---Agree.

20 The problem really becomes when you have that kind of – and I'll call it gift giving – in any sort of commercial environment?---It is extremely difficulty, yes.

THE COMMISSIONER: It creates a conflict.---It does, particular with the people who are either recommending product or buying it.

MR CAMPBELL: And if we, if you could draw the examples but even if we look at say the, the Chemsearch approach of not giving you gift vouchers but giving you quite valuable consumer items, that, that's just as bad in terms of its effect on staff morale and Council's operations doesn't it?---Agreed.

30 I mean, if you wanted the treatment works to have an iPod to play music, you'd be happy to buy it wouldn't you?---If the relevant manager thought it was appropriate and didn't create OH&S issues, yes.

And if you thought that the staff at the depot could use a Webber Q for legitimate sustenance and perhaps for legitimate celebrations like at Christmas time and the like, you'd buy it wouldn't you?---They've already got one, so I wouldn't need to.

40 All right. That's the point isn't it?---Yes.

Provided by Council?---Um, Council gave them permission a number of years ago to actually build one so that they've got one, yes.

And I mean, in terms of your business model, do you think it's the right thing for some outside supplier to be imposing it's idea of what would be useful to your staff and even their work time on you?---No, but, my main issue is that I'd like to know that they were doing it in the first place so I could make a judgment call.

I mean, it must add to the cost of supplying to Council?---It has to.

And we also, I mean, part of good procurement training is the officer should be alert to the possibilities of negotiating a better price?---Would agree.

And if you entice him with Apple iPads an iPods and iPhones, he may lift his eye from the ball?---It would cloud judgement, yes.

10 And apart from clouding judgment it might induce him to continue to deal with you rather than just to check the market?---Oh, yes.

And they're all bad things?---Definitely.

And I've been saying in the questions I've asked people that to give somebody a gift voucher in this procurement situation of local government is a form of corruption, do you agree?---I would agree.

20 Now, can I - I withdraw that question. How do you stop it?---I've tried to think about it, it is extraordinarily difficult. I think the - in terms of gift cards and probably no one's every turned their mind to it, they are like cash and there should be a total blanket ban on them. The concern I've got is more in the token gift side and also the, the Commission's toolkit that they issued in 2006 on gifts which talks about gifts of gratitude. The gifts of gratitude are fairly, can be difficult. For instance, you might have an old lady whose dog has gone missing and comes in and they found it for her. Normally they're things like, you know, boxes of chocolates (not transcribable) just as a token gift, they let me know and then I'll just say to  
30 the department, yeah, you have it amongst you but you've got to be careful how you handle those personally. In terms of the other token things like you will get biros, rulers, those sorts of things, if you completely ban then and everyone has a biro or a ruler on their desk everyone's going to think well, who's corrupt, it creates that climate and in fact a lot of those are accessed through game - a good example, go to the shires conference, go to the Local Government Association conference and they always have all these stalls there of suppliers that you can go and talk to and they provide those sorts of items. So that's at least under a bit of controlled circumstance but if you do a blanket ban and the people get these from there it will create issues. Certainly in terms of the larger gifts, yes, you've just got to get rid  
40 of them. The problem is that the people who take them without letting you know are going to be corrupt anyway so there has to be some form of system to at least record them. I think in our case over the last four or five years we've probably had about 50 declarations on the register so it's working but the trouble is the ones it's not working with are the people who are intending to beat the system.

THE COMMISSIONER: Mr Sherley, can I take you up on what you've said, I'm a prohibitionist, absolute prohibitionist?---Yes.

I don't see the problem of embarrassment. All you have to do is to explain we've got an absolute ban on this, there's no - it's not personal and we can't accept it. What's the problem with that?---When you deal with some of these people, particularly say the, the gifts of gratitude, they are exceptionally emotional people and it can create difficulties. What I'm saying is if you have those they still need to be recorded and at least they can be handled that way.

10 Well, why should you be - there's such a thing as emotional blackmail. Are you suggesting that because somebody is emotional you should bend the system?---Well, I'm not saying bend the system, I'm saying the system should allow for it.

Why?---If you've been in the situation of working in these small communities and whatever else you have to have some sensitivities.

20 But it's not insensitive to say to a person, I'm sorry, we can't accept gifts? ---Well, we, we do that in a lot of case but I'm just saying there are those situations that from the experience that I've seen that makes it extremely difficult, we don't have a lot but then we handle them via them being declared to the general manager.

What happens if you put a big notice up in the officers where, where the public come saying no gifts allowed?---Well, you can do that but the - I suppose the gift of gratitude one is not the sort of person who would be coming in because of that situation.

30 And the story about the ballpoint pens and the rules, I mean the council can afford to provide its own staff with ballpoint pens and rulers, I mean, it's like children?---No, Commissioner, my comment wasn't about the council not being able to afford them. I'm saying these - you get staff who will go to various trade shows and whatever else and they will go to the different stalls, get different items. My concern is - - -

It's different, that's not somebody giving a gift - - -?---Oh - - -

40 - - - in the process of making an order?---Oh, no. I don't disagree with you there and I agree with you that those who are doing ordering and that, they shouldn't be receiving any gifts at all. I'm talking about but you get a range of things across the organisation that may be different.

Well let's, let's talk about procurement?---Yes. Procurement though should not be receiving any items.

Of any kind whatever?---No, not of any, of any kind.

All right.



MR CAMPBELL: I suppose if you have that absolute prohibition then the operations people like the dog catchers who found the old lady's dog - - -?  
---Yep.

10 - - - are only like to be recipients of those gifts of gratitude you referred to, which might be a box of chocolates or something?---Look I would agree with you. I mean can I just say, we, in terms of our planners we have an absolute prohibition on our planners. So it's not that we haven't done it before. So those in my planning department who determine DA's have absolutely no leeway whatsoever.

But see even in those areas and there may be other areas I suppose where one could identify that prohibition was the appropriate policy?---Yes, you've got to, I suppose turn your mind to it.

20 Yes. I mean one of the things that you mentioned earlier was you don't want to engender the attitude in the employee that you may as well be (not transcribable) as a lamb?---I would agree.

But at the same time in those key sensitive areas you say well so what?  
---Would agree and we do that as I said already.

Now one of the things which, which has been addressing our minds is the appropriateness of these travelling salespeople wondering all over the councils worksites?---I would agree with you. They shouldn't be allowed to  
- - -

30 What do you do about that?---Well the difficulty with us is that we need it to be brought to our attention and I know as recently as this week there was a wondering salesperson who Mr Roach was aware of and he got on to that guys company and banded him from the site.

I know that the Bathurst Regional Council from Mr Dwyer's statement some years ago adopted a Code of Business Ethics?---Yes.

40 What do you do to draw that to the attention of your suppliers?---Well we probably don't do enough now in hindsight. The Business Ethics is on our website and we also provide it to all new creditors. So everyone who signs up as a creditor we provide that document. But we don't do a follow up, say 12 months, two years later. I haven't turned my mind to it as to how you would do that, the difficulty being if you could do an automated letter that the system could generate, I think you could handle that. If it requires though that the secretary has got to sit down and type up 3,600 letters, so it's something that we'd to look at, could it be done.

THE COMMISSIONER: You just need a form don't you? Why don't you get the supplier to sign it, no gifts?---Sorry, Commissioner, I don't disagree

with that. I was taking the question to be what have we got in and then I was raising on about regularly reminding those people.

Yes?---Okay.

MR CAMPBELL: Well you've told us that you send new creditors your Code of Conduct?---Yes.

10 It includes the statement of no gifts?---Yes, it has a comment, well it has a comment about gifts that we have in place, a gifts policy and that there may be an issue if there is gifts. It doesn't absolutely prohibit it. The other thing, could I just add in there, we also with new creditors will check their ABN number against the website of the external government body that has it to ensure that the ABN's now valid.

THE COMMISSIONER: See Mr Sherley, this inquiry has shown that there is a gradual progression starting from small gifts of about \$20 to gifts of about \$50 to gifts of about \$150 to gifts of 500 to 1,000 and more dollars to fraud?---Yes.

20

And it is a letter and it is either intentionally or unintentionally a gruelling process when one can just, we've sat here for three weeks, you can just see how it works?---Yes, Commissioner.

So that's, that's the concern that the Commission has about gifts. But I accept your limitation to procurement?---Yes.

I think it's absolute in that area?---Yes.

30 MR CAMPBELL: Now I think that's all I have for Mr Sherley.

THE COMMISSIONER: Mr Clay?

MR CLAY: (NO AUDIBLE REPLY)

THE COMMISSIONER: No. Thank you for your evidence Mr Sherley?  
---Thank you.

40 **THE WITNESS EXCUSED**

**[11.39am]**

THE COMMISSIONER: Mr Campbell, before I forget do we not have to make, make the documents produced by NCH exhibits and then also just make it clear that those documents are subject to a section 38 order.

MR CAMPBELL: Yes, yes, Commissioner I was - - -

THE COMMISSIONER: You can do that at a later stage.

MR CAMPBELL: I hadn't forgotten that I thought I'd deal with Mr Rowe and then I've got a small number of tenders.

THE COMMISSIONER: Yes, very well.

MR CAMPBELL: Thank you. I call David Rowe.

10 MR CLAY: I don't appear for Mr Rowe and apparently the proverbial winds aren't as strong in Yass as they are in Bathurst.

THE COMMISSIONER: You don't appear for him but you make certain submissions on his behalf.

MR CLAY: Sir, he's not asking for Section 38.

THE COMMISSIONER: He's not?

20 MR CLAY: No.

THE COMMISSIONER: No.

MR CLAY: The winds aren't as strong in Yass.

THE COMMISSIONER: I see.

MR CAMPBELL: Mr Sherley must be jealous of his power and prestige.

30 THE COMMISSIONER: Mr Rowe, do you wish to give your evidence under oath or do you wish to have your evidence affirmed?

MR ROWE: Under oath.

MR CAMPBELL: Mr Rowe, please state your full name.---David Jackson Rowe.

And can you tell us, well I'll ask you. You're the general manager of Yass Valley Council?---Yes.

10 And for how long have you held that position?---Since July 2008.

And I should know your CV but did you work at Yass before that date?  
---Yes, I did.

And in what capacity?---I was the director of operations since 1998 and prior to that I was the works manager since 1992.

All right. And you've spent a career in local government?---Most of my life.

20

Yes. You, Commissioner, the relevant folder is Folder 7.

THE COMMISSIONER: Thank you.

MR CAMPBELL: And Mr Rowe's earlier statement is behind the Tab 32. Please open that up please Mr Rowe. The, behind Tab 32 we find your statement of 23 February 2011, correct?---Correct.

30

And there are a number of other statements from your subordinates at Yass Council but before I get to those, it's fair to say isn't it, that at the time you made that statement on 23 February 2011 the Council's response to what it discovered about the operations of it store and the probably fraud of the store keeper was in its infancy. Is that right?---That is correct.

And that you have prepared an new statement or a supplementary statement rather explaining what's been happening since February in terms of the new systems that you've put in place to secure the Council against such things in the future.---Yes, that's correct.

40

I tender, it's dated 19 October, Commissioner, I tender that statement and I ask that Mr Rowe be shown a copy of it

THE COMMISSIONER: Yes. Mr Rowe's supplementary statement of 19 October 2011 is Exhibit 65.

**#EXHIBIT 65 - SUPPLEMENTARY STATEMENT OF MR ROWE**

MR CAMPBELL: Now Mr Rowe, I said secure the Council against recurrence but that's impossible I suppose. You have a smart enough, determined enough morally bankrupt enough person. Would you agree?  
---I would agree it's a matter of minimising that risk of any potential corruption.

It's a matter of trying to erect firewalls I suppose to corruption.---Correct.

10 All right. As a, the Council - I'll withdraw that. May I say that the Commission has already noticed as we did in the opening statement that like Bathurst, Yass has done a lot to, to put its house in order if I could put it, or put the store the order perhaps, if I could put it that way.---Yes, that's correct, we've had a big emphasis on procurement.

All right. And perhaps if we could just take you through some of the things and I think that perhaps the logical place to look is at your new statement. Would you agree with that?---Yes, it would be.

20 And if we go down to paragraph 3, you, you in fact consulted an organisation called Local Government Procurement to carry out a view of your procurements in November 2010. Is that correct?---That's correct.

And they provided you with a number of recommendations which you've set out in a, in the balance of the statement. The first recommendation on paragraph 4 page 2 of your supplementary statement is to cease the practice of allowing staff without a delegation to purchase goods and services. You've said well, that never happened but there was a problem wasn't there, would you agree, and I want to give you the same opportunity I gave Mr  
30 Sherley with the end-to-end procurement system in relation to the store.  
---Yes.

I mean, Mr Hadley, sorry, I beg your pardon, Mr Smith was a long standing employee who'd over the years acquired that position.---That's correct.

And until, until the Council was approached I think by the Commission you were unaware of what was going on.---That's correct.

40 Because he was long standing and he was trusted.---Correct.

But you'd agree wouldn't you, from the evidence you've heard this week and from what you know because of the work you've been doing that there were, that he was allowed to do what he did because of deficits in the Council's then system.---The deficit in the system failed to pick up his actives, that's correct.

Well, there was a failure to pick them up because of a deficit in the system, I think.---Yes, but we didn't allow it to happen.

No, I didn't say you did, I said your system allowed it to happen - - -?  
---Correct.

- - -because it's deficient. That's correct?---I agree.

And indeed, if you had the nearest whiff of it, you would have put stop to it earlier.---Correct.

10 Now in following the recommendations you received, you've, you've implemented what's called an electronic purchasing system. Is that correct? You've described that at paragraph 5?---We're in the process of doing that, we're a little bit behind Bathurst but we're getting there.

You might say, not competitively of course, they've had a little longer.  
---True.

20 But what's the advantage of that system do you think, what will the advantage of it be?---Certainly electronic procurement will 1, it will control delegations, nobody will be able to buy outside their delegation and any orders will have to be approved and that process will also allow us to have a separation of duties and it will also allow reporting mechanism in relation to our orders so we are able to track what's happening in our system, who's ordering what and what sort of quantities would be going through there.

THE COMMISSIONER: Is that the same system as Bathurst?---Yes.

30 MR CAMPBELL: And so as, I don't want to deprive you of an opportunity Mr Rowe but as Mr Sherley described it to us, one person requisitions, one person orders, another person acknowledges receipt of the goods.---It's the same software system but our system will be a little bit different because we are a smaller Council and we won't have a separate requisitioning phase but it will be that no one can receive the goods who actually approves the order.

Now, you've separated the delivery function. How are you going to manage, will that be enough protection against the person who requisitions being the person who also orders?---The person that actually initiates the order won't be able to approve it.

40 Yes.---They can actually receive the goods but there's that step in the middle that actually approves the goods itself.

THE COMMISSIONER: Who approves, who does the approving?---It would depend who has the delegated authority. If we're talking about their stores officer for example, he hasn't got any delegated authority now which that position previously did so a superior to him, either his manager or another person above him has to actually approve the order.

MR CAMPBELL: And who is that person, I mean, for the store, say, who is the person who must approve the order?---It could be a number of people because we're not, not going to operate on a centralised system, it could be anybody that has the delegated authority to make that order. In most cases it would be the manager who would know what that particular order is about so he can authorise it.

10 THE COMMISSIONER: And so, Mr Rowe, the storeman in - he requests that an order be signed and he requests the person with authority, with delegation - - -?---Correct.

- - - to order and the delivery is dealt with by somebody else?---No, he can receive delivery because he hasn't approved the order.

20 But you know we've seen in these three weeks a number of cases where you have had a person in a superior position to the storeman whose task it is to approve and if my memory serves me correct there was a particular case where there was - let's call him a manager, would have three storemen or three persons who could requisition an order and over the years he always requisitioned, he always authorised the order. He just put a - it was accepted by the person placing the order, his subordinate, that he was just a rubber stamp. Now, why is your system different to that?---Well, I guess - the onus needs to be on people checking orders. If people aren't checking them then obviously the process is, is going to fall down but there needs to be other checks and balances in the system as well in terms of being able to report on usage so that you can actually track any anomalies in the system. Plus there's, there's also the other check when on actual payment of the order where there has to be a goods received checked out prior to actual payment so that that's making sure the whole process is complete.

30 Yes. I must say I'm uneasy about it for the reason that I've described. I also don't think it has, there is much control over price in this way? ---There's certainly - there will be control over price because there'll be requirements for - in certain instances of quotations so to making sure you actually get a competitive price. In other cases they may be buying actually under contract but still ordering.

40 Are there rules about getting quotations?---We do have minimum rules for, for quotations and certainly some quotations haven't been obtained for goods in the past and we're making sure that every item that we stock now goes through a quotation process so that we know that we're actually delivering value for money for all the items that go through our store.

Now, the man, the manager, how important is the task of approving the requests for orders? I mean, how much time has this person got for doing this?---Well, part of the electronic procurement, they don't have to make time because the order will not be able to be processed until that person authorises it. I think that is the - one of the advantages of electronic

purchasing. It brings that element of approval much more into the focus because the system will not operate without that being enacted.

But if you've got a person who's very busy with other things there must be a big temptation just to sign off?---Oh, well, I think from a management point of view we would make sure that didn't happen.

10 How will you do that?---Well, one, we'll make sure from a reporting mechanism, exception reporting to find out who's actually approving the orders, that's what we'll be able to do through the electronic system. If we see that there's a lot of orders coming from a particular person then we'll be able to raise questions with that particular person, whether we need to whether it's just a routine that we go through, through the performance view. I think we'd assessed that on a case by case basis but being a small council there's - we probably know most of the people that will be authorising the orders anyway so we can take it up directly with them to make sure that they take their responsibility seriously.

20 MR CAMPBELL: How big are you, Mr Rowe, the council?---In people? Yeah?---150 staff.

30 THE COMMISSIONER: And how many are involved in procurement and then store delivery and the warehouse?---In the, in the actual procurement in the store function there's only one but because we decentralise it means that any other managers could be ordering materials but there's only one dedicated person involved in, in the stores. We've since created an overview role in our finance section to monitor these whole processes because we've gone at great lengths to develop a number of procedures and part of the role of that person will be to monitor our system, do spot checks to make sure those procedures are being adhered to.

40 Well, how much, how much is dependent on the integrity of this one person for the proper working of the system?---No, I don't think, I don't think the system relies on the integrity of that, that's, that's just basically spot checks. The system of separating the - having a separation of duties, in not having, allowing any delegation for the storeman to start with where somebody else can actually - has to sign and approve the order before it's even made should provide sufficient security for us.

Well, it hasn't in other cases?---Well, we certainly didn't have it in the past so I can't, I can't comment on other places.

I'm telling you it hasn't and we've had evidence of that?---Well, I'm confident that the system that we're proposing to put in place will have enough checks and balances in to ensure that we minimise the risk of any sort of this event happening again.



Well, it really does depend upon the manager who places the orders doing a proper, doing proper research and thinking about each request that's made?  
---Certainly it does need the manager to check that what is being requested has the appropriate background information, yes.

And what happens if he doesn't?---Well, he shouldn't sign it off.

10 Well, I know?---If he doesn't do the checks and if it becomes a regular thing, that's something that we would pick up through our monitoring and we would have to take up with that individual.

How would you pick it up in the monitoring?---One, either through the spot checks or through our exception reporting that we hope to be able to get through the electronic system where we can track who was placing all the orders, who's approving the orders and from that we can do the checks as to whether the manager has been diligent in their responsibility of making sure that they are approving the right thing.

20 And whose responsibility is that?---To do the monitoring?

Yes?---That will be the senior finance officer's role that we've created, this procurement overview to do, to do those spot checks.

Now, is this additional duties to the persons or are they - have you employed new people to do that?---No, we've, we've restructured our section to create that as part of their key role and divested a few other roles.

30 MR CAMPBELL: I think one of the things - well, one of the things you've definitely done is that the storeman, for instance, has no delegation though?  
---Correct.

And have you made it clear to your management team that the effect of operation of these systems is a priority for the council's business mode?  
---Yes.

40 And you've mentioned the checking you're checking, I'm just looking at paragraph 14 of your supplementary statement, sir, and one of the things that you've done is you've separated the accounts payable from creditor maintenance functions, you say that?---That's correct.

What's the importance of that?---That's - yeah, that's created to ensure that there's a total separation between paying any invoices and the creation of new creditor. If that function is completely separated then there can't be a phantom creditor created in the system.

So if a salesman comes along from a non-existent company then there are three, there are three things that he's got to negotiate if he wants to set up a

fraud. One is the person that pays, one person has responsibility for accepting him as an accredited supplier?---Correct.

And a procurement officer has the obligation to place the orders if satisfied they're required?---Correct.

And a third person has a say about whether the invoice gets paid?---Or whether it's actually approved, whether the order is approved.

10 Whether it's approved. And then, and then another person again actually does the accounts payable. Is that right?---Correct.

And of course someone in the field or in operations has to in the first place I like the look of this product. Is that correct or not?---Well there has to be a need established somewhere in the system.

Yes, yes. All right. So that although you don't have requisitioning procurement delivery separations there are other separations you've incorporated in your system?---Correct.

20

And you've told us about the delegation. Just speaking about stores, one of the things that happened at Yass according to the evidence in the Commission, it was a little different from Bathurst in this regard, was that there tended to be overcharging or undersupply for things?---Correct.

Now how do your new systems address those issues?---The inventory control would be one of the key systems. We haven't run our minimum/maximum to any specified limits. We've identified the need to look at realistic limits for those so that it can create a realistic monitoring system. The, can you just ask me the question again?

30

Let me ask you the question this way. I'll give you an example. One of things that was relevant about Mr Smith's admitted fraud was that invoices overstated supply, which that led to this example which we are rather fond of, I am anyway, of 4,000 highway guide posts supplied over a relatively short period of time which according to our calculations was enough to line the highway between Sydney and Yass three times. Now I'm not sure if you agree with our arithmetic, but assume we're right about that, how are you going to stop that in the future with your new systems?---There's two ways that that could happen. One, the items could be brought into the store and they could be booked out and be fictitious bookings. One of the ways that will not be able to be happening in anybody that collects them will sign for them. That didn't happen in the past.

40

Yes?---The other way that it could happen is if they were non-stock items and booked out directly to the job. In that case we're looking at similar to Bathurst in actually getting them into the inventory system and so you can

track the actual usage. So under those circumstances if you had an abnormal usage you'll be able to pick that up.

And we heard some evidence, you may not have been here Mr Rowe, last Thursday from a Mr Phill Scott, who's with local government procurement about the absolute importance of inventory management systems and I assume seen as you have consulted them you've received that advice from them as well?---And I've also read Mr Scott's statement and I would agree with his comments in related to inventory control.

10

Yes?---And we've certainly taken on a lot of steps along the lines that he suggested.

All right. Now I know the one thing that you have developed is you've looked not only at systems and their operation, but you've looked at policies as well and having clearly stated policies such as a procurement policy?  
---Yes.

20

And what are the key features of your procurement policy?---I think the policy is, the key things in that is outlining the need for quotations, value for money, I think is probably the biggest thing that we need to make sure through the policies, procedures, systems and process that we'll need to get in place.

30

One thing about the value for money I wanted to ask you about, the fraud that we've been examining here and the other forms of corruption we've been examining here all relate to the acquisition of consumables. Now is it really practicable for local government to get quotes in relation to those type of recurring supplies?---Yes, I believe it is. And I think, bringing them into the inventory system will then bring that price into your computer system which will then allow any anomalies to be tracked by, by the office staff.

40

All right. Now can I ask you is there anything else you'd like to say to me in relation to systems?---Only that I believe the development of those systems, the separation of the duties, the inventory control and the electronic purchasing are probably the key elements of the system and, and training, to implement those. If we can do that I believe, and the same for other small councils, I believe it is possible to develop those systems without an enormous cost that would minimise the risk of such an event happening again.

THE COMMISSIONER: What training do you have in mind, Mr Rowe?  
---The training I think the emphasis is to get the systems right. Then it's a matter of in a lot of cases internal training, however we were also looking for the person overseeing our roles to do some recognised training. The current person is enrolled in a certificate course with the New South Wales Procurement, but there certainly is an opportunity for more training to be available I would think in that field.

Adductive measures that you are adopting as well as is that you've established through external auditors a fraud risk assessment. Is that right?  
---Yes. It's really to look at our whole systems and processes to see whether, if there are any other risks. I mean this one has been established. There may be some other risks in our operations that we need to be made aware of.

10 Obviously in relation to corruption prevention you've got to use foresight rather than hindsight?---Yes.

And, and you've also established within council an audit committee. Is that right?---We're in the process of establishing the audit committee.

20 And who's going to sit on that committee?---Well we're readvertising to make sure that we do get independent members. It was discussed at length with council and a decision was reached that we should make sure that they are fully independent with no connection with any staff or councillors, which is, was seen as important in a small locality.

20 All right. And we've had (not transcribable) on purchasing and the like but we've seen that, and with no disrespect to honest working people who fill these roles that both Mr Hadley and Mr Smith came up through the ranks as it were from labouring type functions really to a position where they wielded enormous authority on behalf of the council in terms of procurement within the stores environment. Now have you done anything about getting somebody to run the stores who's got specific training, knowledge and experience in regard to inventory management?---Yeah, well we were, yes we were fortunate to appoint a storeman with quite a wide  
30 ranging experience in procurement and he commenced in July. He's actually provided a lot of guidance in some of the systems and things we're setting up.

And I think that paragraph 17 of your supplementary statement on page 6 there is that you undertook an extensive recruitment process to find that person. Is that correct?---That's correct.

40 Yes. And, and you've said in your statement, if I can read it out, that you were looking for the right mix of skills and experience to implement not only the new processes but to bring about what you regarded as a necessary cultural change. Is that so?---That is correct.

MR CAMPBELL: One of the things - I withdraw that. Now, when Mr Smith's fraud became apparent to you did you actually go yourself and look at the store?---Yes, I did.

And what condition was it in?---It was perhaps you'd say it was a little bit disorganised.

And did you think that that degree of disorganisation may have contributed to Mr Smith's ability to cover his tracks (not transcribable)?---Yes, yes.

So have you done something about that?---Yes. It's been totally reorganised and quite systematic.

And you've done it with the help of the new man?---Correct.

10 Now, I assume it's a man, I beg your pardon?---Yes, it is.

All right. Now, can I - another feature of not only the out and out fraud part of this case but also in relation to the gifts and benefits component has been the number of people who've been able to get the ear of people with delegation to introduce themselves to councils as new suppliers. Now - and we've had a situation where in the fraud cases of course non-existent suppliers have got themselves treated as suppliers and paid as such. Now, how do we get, how do we guard against that risk?---That's a difficult issue. We certainly created a situation or were leaning towards a situation where  
20 sales representatives can only appear by appointment and to get that appointment they need to demonstrate that need or we need to clarify that need to confirm that appointment.

Now, I suppose if you need a can of paint you don't necessarily want to go through an accreditation process for the local paint store to sell you one but do you have an accreditation process for these recurring suppliers of consumables these days?---No, we don't have an accreditation process.

30 I'm just looking actually at attachment 1 to your statement when its headed Important Notice to Current Suppliers, do you see that?---(NO AUDIBLE REPLY)

Now, my first question is, when you've it, is how do you become a current supplier?---This is becoming a, to become a new creditor you mean?---Yes.

Well, is that what that means? I'm asking you?---Well, a currently supplier is one that's listed in our creditor system.

40 If I wanted, if I wanted to sell you some guide posts how do I become a current supplier?---Well, if you use guide posts as the example you will only become a current supplier if you provided quotations and on the basis of your quotation you're providing the best and most competitive product and then you would be selected and then you'd have to go through the process of getting on our system.

THE COMMISSIONER: I'm sorry, process of what?---Of getting our system as a creditor.

MR CAMPBELL: So I wouldn't go to the storeman and say I've got these guide posts, I'd have to go through a more formal process - - -?---Correct.

- - - to say I'd like the opportunity to sell Yass Valley Council its guide posts?---Yeah, that's, that's right.

And now would that go to the new procurement person or somewhere else?  
---No, depending on the product, if their contact was made with the storeman he would refer them to the manager, the manager of that area who  
10 would be dealing with that particular product not, not the procurement person.

All right. Okay. Now, you've got - you've sent this letter out to all of your current suppliers, is that so?---That's correct.

And this is something you've heard us discuss in the evidence in the inquiry of course and you have - this is 28 September, 2011 so you obviously think, Mr Rowe, that this type of letter making it clear to people that want to deal  
20 with you, what your policies are has got something to offer?---I think particularly with all the evidence we've heard it's very important that the suppliers are aware that we won't tolerate gifts.

I mean, some of the suppliers have professed innocence on the basis they didn't know it was wrong to give people some of these gift vouchers and the like. If we - for the purpose of the argument accept them as face value that's - this ought to assist them to know if they're dealing with you what your policy is?---It should, yes.

And do you - can I ask you this question, is it the policy that if a supplier  
30 breaches these rules that you've set out for them, what happens? What's the sanction?---Well, we haven't really dealt with that particular issue. If they send us some goods we'd either let them know that they'd been disposed of or we'd send them back, if it's a cost to council we're not going to send them back but we'd let them know that if they wanted to still do business with us that is not what they can do, they can't send us gifts.

All right. I just want to go over something I didn't ask you about. How  
40 have you dealt with the aspect of inventory management concerning the distinction between stock and non-stock items?---There's, there's a couple of issues there. There are non-stock items in the store which we're making sure they are all brought into store - - -

Ah hmm?--- - - - so that there is no discrepancy, everything in the store will then be in stock. The other items I touched on before in terms of those non-stock items that are actually expensed directly to the job, they were looking at similar to Bathurst bringing them into the inventory system so that the orders themselves are recorded through the system even though the stock doesn't go through the system, you're able to track the usage. So

again if there's something untoward it should be able to be - pick it up as a anomaly.

Now, do you think - Mr Rowe, have I given you every opportunity to explain what you're doing about this at Yass Valley Council? Is there anything else you wish to add in relation to, to the systems that might create the firewall against this kind of corruption in the future?---No, I think as far as Yass Valley goes we've come a long way in eliminating the end to end control that's been referred to. We are a small council, I know that in  
10 Mr Scott's statement he referred to two and three step process, our, ours would be a two-step process rather than a three-step process but I believe we now have enough checks and balances in the system, or will have once the electronic purchasing is in place, to ensure that we will at least find anything, any anomalies in the system that might arise in the future.

THE COMMISSIONER: So do you think you are now an example to small councils?---I believe we would be in - I don't believe that small councils could set up a centralised processing system and most of them would have been operating under similar systems to us and they, they key is probably  
20 that separation of duties and inventory control that would improve their systems.

Yes.

MR CAMPBELL: I want to ask you about gifts and benefits. The Commissioner, has asked this morning and you will have heard this point raised a number of times in the inquiry, what happened at Bathurst and Yass started small with the provision of a Drizabone say by a supplier leading to  
30 in some case rewards points systems, developing into the provision of attractive consumer products to the employee for his personal use or on the other hand for the provision of substantial amounts of these gift vouchers to the employee responsible for either using the product or ordering it. Now, firstly, do you agree that the way that developed was a form of corruption?  
---Yes.

Do you agree that that type of process was entirely amicable to good business practice in the government sector?---I'm not quite sure what you mean by that.

40 I'll withdraw the question, let me put it this way. My simple understanding of economics is if you're looking at the supply of consumable items you want a quality product, you want a reliable supply and you want a competitive price. Would you agree with that analysis - - -?---Yes, yes, definitely.

- - - as simple as it may be and well, do you think that that process I've described to you in my last question helps or hinders the application of those principles in local government procurement?---In terms of gift cards?

Gifts cards or even, even consumer products?---Yeah, it compromises the process entirely.

Because it (not transcribable) off particularly the competitor of price, doesn't it?---Yes.

It introduces a fourth undesirable factor of the salesman - the buyer eventually getting to the position of thinking what's in it for me?---Yes.

10

And so what can be done about, about making sure, you've got your letter we've seen that - I'll withdraw that. You've got your letter, we've seen that. It's obvious you've adopted a prohibition in terms of dealing with current suppliers?---In terms of procurement prohibition, not in terms of the token gifts in terms of across the whole of Council previous, the Bathurst General Manager explained the difficulty with token gifts but certainly in the case of procurement, yes.

20

And we heard that Mr Sherley say that also in the planning department? ---Yes.

Has Yass got an attitude in relation to that?---Yes, similar attitudes.

THE COMMISSIONER: Mr Rowe, is there any ambiguity in the question whether someone is part of procurement or not?---If there is any ambiguity then we needed, we need to spell that out to the individuals and we'll give them direction so it's absolutely clear.

30

MR CAMPBELL: But Mr Rowe, I need to ask you some questions about the consumable, the consumer items as opposed to the cash. And please accept that I'm not being in any way critical of this but in addition to the statement you've made about the new systems, you also provided a statement in relation to Mr Baker's position, or a letter. Is that correct? ---Yes, that's correct.

40

And now I'm not questioning your judgement as the general manager in relation to how Council dealt with that matter I suppose you'd say he's a young man, he's a promising employee and he's done his job very well. Is that correct?---Yes.

But in absolute terms, and let's not talk about Mr Baker's case, in absolute terms do you think it's desirable even for an honest employee to receive a sandwich maker that he's going to leave in the lunch room at work?---No.

And because it leads to the same problem of even if he's honest and diligent in his work, it may have some subliminal influence on how he makes decisions about how he does his job. Do you agree with that?---Correct.



Yes. And, all right. Now the issue that and indeed if somebody said to you, there's a need for a sandwich maker in the mechanics lunch room. What would you do about it?---I'd think we could afford that within our budget to go and purchase one.

10 Yes. And somebody said the blokes down at the road works area need a barbecue for cold winter days in Yass when they come in for their smoko or for a legitimate Christmas function at the end of the year. What would you do about that?---Same thing, if it was a, if it was a need that was identified we'd authorise to purchase.

And indeed, I suppose, and I've asked this question this morning and a number of times to other people but if it came down to it, you'd rather have the \$100 cost of the sandwich maker in your coffers by way of getting a \$100 off the price from the supplier wouldn't you?---Yes.

And it could never, ever, on any occasion be any question about that, could there?---No, not at all.

20 Now the, Mr Sherley mentioned the, the aspect of gifts of gratitude and I guess, you'd agree that nobody could really object to the, to, I've said the old lady, I perhaps shouldn't use that pejorative language to the lady who's dog is found by the dog catch giving, giving him a box of chocolates, that seems like, if you like, a common courtesy on view but do you accept that even the dog catcher should declare the box of chocolates?---I agree, yes. In a small community we need to be aware we are working with the community on these issues.

30 And as general manager I suppose you'd say, the dog catcher can keep the chocolates?---Depending on the circumstances, we'd make that call.

All right. But it's a call not for the dog catcher but for management. ---Correct and that's part of our change in processes, it's clear that I make the call on all those.

40 I've got one final question for you and that's this, that anyone who's read the evidence or been in the hearing room when these council officers have come along and told their stories I think could not fail to be touched by the human cost of what's gone on in terms of gifts and benefits as well as the fraud. Do you agree with that?---I agree.

And so, do you agree whether it's the gifts and the abuse of the incentives or it's the out and out fraud, it's not just the economic cost to local government but the human cost in terms of staff morale and indeed, the loss that many of your officials have suffered through of loss of job and promotion and the like - - -?---It's not only that, it's just the creditability of us and councils as a whole has been put in jeopardy but sort of one action which could have been generated by these cards.

You see and we talk about generation, it's been generated by the suppliers, hasn't it?---Correct.

And it's, would you agree with what I said in my opening that what the Commission has uncovered here at the incentives level as well as the fraud level has been widespread abuse?---Yes, I would.

10 And would you accept as I said in my opening, that it's been insidious in terms of the way it's operated?---Yes.

And especially with having regard to the grooming aspect that the Commissioner has referred to?---Yes.

And would you agree that it seems to be pervasive or it seems to have been pervasive in terms of the number of cases we've examined.---Yes.

I've got no further questions Commissioner.

20 THE COMMISSIONER: Are there any questions for Mr Rowe? No. Mr Rowe thank you for your evidence, you're excused.

THE WITNESS: Thank you Commissioner.

THE WITNESS IS EXCUSED [12.27PM]

30 THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: That brings to, I have no further witnesses Commissioner I have some documents tender before I conclude the inquiry.

THE COMMISSIONER: Yes. And perhaps I see that are some Councils still here, can we just, shall we just deal with the things that they may be interested in and the if they wish to leave, they may.

40 MR CAMPBELL: Yes, Commissioner. I don't think that I'm dealing, the things I'm dealing with are general. I've got the, I will be saying something Commissioner in relation to the 95 other agencies that have been dealt with differently.

THE COMMISSIONER: All right. All I really want to do at this moment is just to deal with the, the issue of submissions. Mr Campbell, when will you be in a position to file your written submissions.

MR CAMPBELL: I'll be in a position to start working on them on Tuesday Commissioner and subject to members of the team having an input into them I'd hope to be in a file them two weeks from today.

THE COMMISSIONER: Very well, and then I propose that Council who wish to file their own written submissions should have two weeks from the time that they receive Mr Campbell's submissions. Does anyone here have any objection to that? That will be the order then.

10

**COUNCIL WHO WISH TO FILE THEIR OWN WRITTEN SUBMISSIONS SHOULD HAVE TWO WEEKS FROM THE TIME THAT THEY RECEIVE MR CAMPBELL'S SUBMISSIONS**

MR CAMPBELL: Thank you Commissioner. Looking at, apart from, I don't think any of the people working, currently in the room are going to be affected by the documents I'm about to tender Commissioner.

20 MR CLAY: I just want to make sure those Lithgow documents are tendered, Commissioner.

MR CAMPBELL: He's on my case Commissioner. Mr Clay might have an interest in staying. I'm obliged my learned friend, Commissioner, and start with the complete and unabridged and un-expunged Lithgow City Council gift register.

MR CLAY: Thank you.

30 THE COMMISSIONER: Yes, I'm, well just explain to me why it's relevant.

MR CLAY: I wish I could refer to the page where Commissioner, you asked for the period of the gift register from 2006 I think to - - -

THE COMMISSIONER: Did I ask for it, did I?

MR CLAY: Yes.

40 THE COMMISSIONER: Well, I can't think of a better reason. All right.

MR CLAY: Nor can Mr Clay.

THE COMMISSIONER: All right. The Exhibit 66 is the Lithgow Gift Register.

**#EXHIBIT 66 – LITHGOW CITY COUNCIL GIFT REGISTER**

MR CAMPBELL: Commissioner, you heard evidence in relation to a Mr Harris who worked for Botany Council. Botany Council have provided us with great respect to them, what must be about the 90<sup>th</sup> of the model Code of Conduct that we've got. But to oblige them I'm happy to tender it, Commissioner.

10 THE COMMISSIONER: All right. Exhibit 67 is Botany Bay Council gift, sorry, model of Code of Conduct. Why it's a model Code of Conduct, but their Code of Conduct.

MR CAMPBELL: Code of Conduct, yes.

**#EXHIBIT 67 - BOTANY BAY COUNCIL MODEL CODES OF CONDUCT**

20

MR CAMPBELL: Based on the model code I think, Commissioner.

THE COMMISSIONER: Yes.

MR CAMPBELL: Perhaps I'll give a copy of this document to, I tender a letter dated 19 October, 2011 from Mr Steve Orr, the acting chief executive of the division of local government in Department of Premier and Cabinet in relation to, in response to Dr Waldersee's letter dealing with possible recommendations in the Commission's report.

30

THE COMMISSIONER: Yes.

MR CAMPBELL: And perhaps Mr Clay may be interested in seeing that.

THE COMMISSIONER: Exhibit 68 is letter dated 9 October, 2011 from Mr Steve Orr of the Department of Local Government, division of local government I think it is, dealing with the, with possible recommendations by the Commission.

40

**#EXHIBIT 68 - LETTER FROM MR ORR TO DR WALDERSEE DATED 19 OCTOBER 2011**

MR CAMPBELL: Commissioner, I, I regret I only one copy of this at the moment, but any interested party can - - -

THE COMMISSIONER: I don't, yes.

MR CAMPBELL: - - - I will make a copy available to. It's a letter from Mr Paul Hickey, who is the general manager of Ballina Shire Council dated 14 October, 2011 and it's in relation to some aspects arising out of the evidence of Mr Glen Lapham. Substantially, Commissioner, the matter was raised by Mr Hickey, I think I can say with confidence were put to Mr Lapham in his evidence.

10 THE COMMISSIONER: Exhibit 69 is a letter from Mr Paul Hickey, the general, dated 14 October, 2011, the general manager at Ballina Shire Council.

**#EXHIBIT 69 - LETTER FROM GENERAL MANAGER OF BALLINA SHIRE COUNCIL REGARDING GLEN LAPHAM**

20 MR CAMPBELL: Commissioner, I have a folder of material under cover of a letter of 5 September, 2011 from GIO General Limited relating to the insurance claim on the ute bought for Mr Smith by Mr Newman.

THE COMMISSIONER: Sorry, who's the letter from, Mr Campbell?

MR CAMPBELL: It's from, it's from an officer of GIO General Limited.

30 THE COMMISSIONER: Right. Exhibit 70 comprises a letter dated 5 September, 2011 from GIO Insurance Company and a folder sent under cover of that letter dealing with the ute bought by Mr Smith. I think that's sufficient, yes.

**#EXHIBIT 70 - LETTER FROM MR MORSO OF GIO GENERAL LIMITED RESPONDING TO NOTICE TO ATTEND AND PRODUCE DOCUMENTS**

40 MR CAMPBELL: Thank you, Commissioner. And I tender a letter from Mr Luke Hastings, a partner of Messrs Freehills, solicitors, dated 20 October, 2011 - - -

THE COMMISSIONER: The 20<sup>th</sup>?

MR CAMPBELL: 20 October, 2011 and if I could do it, there's two letters bearing that date, Commissioner.

THE COMMISSIONER: Both from Mr Hastings?

MR CAMPBELL: Both from Mr Hastings. I tender them as, as the one bundle attaching yet further documents and yet further attempt to comply with the section 22 notice including, Commissioner, and I have marked that page for your information, what we have referred to as the Dallas Directive.

THE COMMISSIONER: So are the documents referred to in those two letters?

MR CAMPBELL: They are, Commissioner. And I suppose - - -

10

THE COMMISSIONER: That's including the Dallas letter or is it a letter?

MR CAMPBELL: It's an email.

THE COMMISSIONER: Dallas email.

MR CAMPBELL: Yes.

THE COMMISSIONER: All right. I think it's sufficient if I say that  
20 Exhibit 71 comprises two letters from Mr Hastings of Freehills, both dated 20 October, 2011, which attach documents enumerated therein including the Dallas email.

**#EXHIBIT 71 - 2 LETTERS FROM MR LUKE HASTINGS OF FREEHILLS BOTH DATED 20 OCTOBER 2011 WHICH ATTACH DOCUMENTS NUMERATED THEREIN INCLUDING DALLAS EMAIL**

30

MR CAMPBELL: Didn't I say about that, Commissioner, may I say firstly that an application was made by Freehills on behalf of their client for a section 38 declaration in relation to this tender.

THE COMMISSIONER: Well yes, I think they're entitled to that and there's, the production of those letters is subject to Section 38, subject to the standard order that this Commission makes in relation to documents produced under section 38 of the Independent Commission Against Corruption Act.

40

**THE PRODUCTION OF THOSE LETTERS IS SUBJECT TO SECTION 38, SUBJECT TO THE STANDARD ORDER THAT THIS COMMISSION MAKES IN RELATION TO DOCUMENTS PRODUCED UNDER SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT.**

MR CAMPBELL: Commissioner, you'll see from the second letter of 20 October, 2011 that Mr Hastings makes reference to a suppression order under section 112, however he's informed us by email that that application is not pressed.

THE COMMISSIONER: Very well.

10 MR CAMPBELL: Could I say before I hand these up, Commission, or just  
as I hand them up, because I think it's important that the Councils who are  
still here know this about the Dallas Directive, that although as it was  
described in evidence, and I'm not making any adverse submission against  
anybody, it sounded like a rather global policy that had been issued from  
NCH's parent company at its head office in Dallas. Now no doubt it came  
from there but in fact, Commissioner, we see from its context that it was a  
directive of 17 January, 2003 in relation to Australian conditions  
specifically. And that the law which it discusses is again specifically the  
law of New South Wales. And lest that important matter gets lost in the  
great number of exhibits that we have, the, it should be pointed out that at  
20 the very least it's said that any loyalty programme should be directed to the  
customer not the agent and you'll remember Commissioner that the original  
rewards programme of NCH made that clear. And it certainly said this  
Commissioner, about giving benefits to the buyer or the agent rather than  
the customer and may I read this out, it says this, it does not matter whether  
the benefit is an item that can be used in the customers workplace or not.  
The benefit can be a drill given to a carpenter or a Mercedes Benz given to a  
waiter. And either, in the opinion of the author, will be a crime if the  
principal does not know and will not be a crime if the principal does know.  
And as the evidence before you, Commissioner, and I'm not making a  
30 submission, I'm just making an observation, clearly established a feature of  
not only NCH's programme, but the programmes of the other suppliers was  
that the gifts and benefits provided were to remain a secret between the  
agent or buyer and the sales representative and his employer.

THE COMMISSIONER: Yes. Thank you, Mr Campbell. There's no explanation provided by NCH other than that. I think briefly alluded to by Mr La-Vite in relation to his own conduct. That explains why NCH didn't comply with that directive.

40 MR CAMPBELL: Well that is so, Commissioner, and as I said, you know, I'm not making a submission at this stage, but the evidence seemed to be it was a rather general global direction. And, but in context - - -

THE COMMISSIONER: Directed specifically to New South Wales.

MR CAMPBELL: Yes, yes, yes, Commissioner, that's correct. And may I say with respect given that the documents included in the supplementary compliance by NCH included that email from La-Vite of February this year

referring to the Dallas Directive, it's a little difficult to understand why we weren't favoured with it at the time of that supplementary compliance.

THE COMMISSIONER: Right.

MR CAMPBELL: I make that observation only as counsel assisting, Commissioner.

10 THE COMMISSIONER: Yes. Thank you, Mr Campbell. Yes, those have been admitted as Exhibit 71.

MR CAMPBELL: Commissioner, I have a supplementary report from Grant Brian Lockley, he Commission's Forensic Accountant Investigator correcting some figures in the earlier reports. That statement is dated 21 October, 2011 and we'll make copies available to any interested parties.

THE COMMISSIONER: Yes, Exhibit 72 is a report from Mr Lockley dated 21 October, 2011. Did I say 71, it's Exhibit 72.

20

**#EXHIBIT 72 - CERTIFICATE OF EXPERT EVIDENCE  
PREPARED BY MR G LOCKLEY**

THE COMMISSIONER: Thank you.

30 MR CAMPBELL: Pardon me, Commissioner. Would you just pardon me for a moment, Commissioner. Commissioner, I did want to say something in concluding the inquiry about the other councils who were included in the, in the 95 that were not the subject of the evidence at this inquiry. The first thing I'd wish to say, Commissioner, is that the - is that as you know and as everyone knows what's been uncovered by Operation Jarek has been going on for a long time and the records we've uncovered go back at least 10 years if not longer. So in that time there have been some amalgamations of some of the organisations identified in the evidence so we can say that the number is not 95 but in fact 91.

40 Now, the second thing that we can say, Commissioner, is that - and may I say very commendably that in response to the particulars involving them given to each individual organisation amongst the other organisations we have received 43 responses so far informing the Commission of what steps they have taken in relation to the information we have provided and telling us in some cases that they've concluded their investigations and either decided that, that in their particular circumstances no wrongdoing was exposed or in other circumstances that they have taken what might be said to be appropriate steps in relation to the information they've received.



We expect that although we did ask for any - I'll withdraw that. You recall, Commissioner, that when I made a statement about this on the second day of the inquiry that we gave today as a deadline for giving us information that they wanted us to take into account, I also said when I made my statement last week that we didn't expect it was necessary that submissions should be made because the Commission was relying upon the good sense and judgment of the councils to take the appropriate action in relation to the information we had provided. The responses we have received will be taken into account and I might say that that confidence the Commission reposed in  
10 the organisations seems to be well-placed because from what we've seen and what we've been told it's been dealt with, as I've said, in a very sensible way by the organisations concerned on the whole. But if any further correspondence is received we will, of course, consider it but as I'm now about to close the public phase of the inquiry we're not expecting any submissions in relation to it.

THE COMMISSIONER: Yes, thank you, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.  
20

THE COMMISSIONER: Yes, thank you.

MR CLAY: Commissioner, before you adjourn on behalf of Bathurst and Yass I wish to publicly acknowledge their appreciation of the assistance of the staff of the Commission, particularly Mr Grainger, Ms Kenny and Ms Lee in dealing with the issues they have over a good many months now, it is appropriate that that be publicly acknowledged and I also thank on behalf of myself the legal representatives, Ms Lee and Mr Campbell for  
30 their assistance during the inquiry.

THE COMMISSIONER: That statement is much appreciated, Mr Clay, thank you for that. The Commission will now adjourn.

**AT 12.44 PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[12.44 PM]**