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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION BARROW

Reference: Operation E10/0395

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 28 MARCH 2012

AT 10.05AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Lynch.

MR LYNCH: Commissioner, I recall Mr Jack Au.

ASSISTANT COMMISSIONER: Yes. Mr Au, could you come forward please?---Yes.

10 Mr Au, you're still on your former oath and the section 38 declaration continues to apply?---Thank you, Commissioner.

<JACK AU, on former oath

[10:06am]

MR LYNCH: Mr Au - - -?---Yes.

20 - - - you gave some evidence on 11 August last year at a private hearing of this Commission. Is that correct?---Yes, correct, but I can't (not transcribable) exact date, all right, yes, yes.

All right. Did you tell the truth when you gave that evidence?---Yes.

I tender the transcript of the private hearing which should appear at pages 330 to 372.

30 ASSISTANT COMMISSIONER: Yes, I'm not sure if I've previously lifted the suppression order in respect of this transcript.

MR LYNCH: I think you did, Commissioner so far as it was necessary for the purposes - - -

ASSISTANT COMMISSIONER: For you to refer to it.

MR LYNCH: And I think that order covers the tender of the document.

40 ASSISTANT COMMISSIONER: Well just to make certain I will release the suppression order entirely in relation to the transcript. So is it already part of Exhibit 4 or does it need to be - - -

MR LYNCH: It's not been added to the file.

ASSISTANT COMMISSIONER: No. So it will be Exhibit 7, pages 330 to 372 of the transcript.

#EXHIBIT 7 - COMPULSORY EXAMINATION TRANSCRIPT OF EVIDENCE OF JACK AU (PAGES 330-372)

MR LYNCH: And my learned friends are just receiving a copy of it now. Mr Au - - -?---Yes. Excuse me I don't have a copy of it. I should have a copy?

10 It won't be necessary for the moment, Mr Au?---Oh, okay, all right. It's okay.

You gave some evidence two days ago that the payments that you received from Ms Liang totalled \$4,000. Is that right?---Yes.

You gave some evidence at the private hearing that the payments you received totalled \$4,500. Is that right?---I recall 2,000 plus 2,000.

I wonder if Mr Au could be shown a copy of the transcript at page 21? ---Yes, thank you.

20 Sorry, it's page 350?---350.

In the top right hand corner?---Yeah, yes, 350, yes.

And halfway down the page - - -?---Halfway down the page - - -

30 - - - you were asked, "When did she pay you money for that?" Your answer was, "I remember it's two lot of money. The first one is 2,500 and at that time she say, oh thank you for all the overtime for providing the building advice. And then later on she pay me another 2,000 for, for, for that." What do you say is the amount that she paid you 4,000 or 4,500?---Yeah, is so long ago. Is, must be between 2,000 to 2,500. I, I really can't remember exactly is whether 2,000 or 2,500. In my memory is either 2,000 or 2,500. If any honest mistake, I apologise.

Do you hold or have access to any business records which identify the amount she paid to you?---Ah, I give the money to the company and then the company just record it on the diary. That is a record or is a - - -

40 ASSISTANT COMMISSIONER: The question is, do you have any business records that record what was paid?---Ah, I myself I don't.

MR LYNCH: Do you have access to any records which record the amount? ---Ah, no, that, that is a company thing, all right. Why I, sorry?

Have you asked the company if they have any records that record the amount you paid to the company?---Ah, I understand is, the company just put on the diary, that, that is the usual way it's been done.

Have you asked the company- - -?---Yes.

- - -whether they hold any business records identifying the amount you say you received?---Ah, I, I haven't asked. Usually I just pay the money and then they just record it accordingly.

Did you tell your sister- - -?---Yes.

10 - - -the amounts that had been received?---Ah, I give her the, the money was in the envelope, I just give her the envelope and then she count the money.

You didn't open the envelope?---Ah, to my memory, no, usually I just get the envelope and I just pass it on, all right, because that's company money.

How did you know it was money?---Ah, when the applicant give it to me and she mention about thank you, thank you for all the hard work, for all the overtime, all right, and there's, there's money there.

20 How many envelopes did she give you?---One envelope.

On each occasion you say when you received an envelope- - -?---Sorry?

On each occasion when you say you received an envelope from her it was one envelope, was it?---Yes, right, yes, but that, that, the first lot is one envelope and the second lot is one envelope.

Did she not give you three envelopes at a restaurant at Auburn- - -?---Ah, no.

30 - - -in the course of a meal you were having- - -?---No.

- - -with her and Benny Lam?---No.

You're quite sure about that?---I'm quite sure about that. It's always one envelope.

Did you have a meal at a restaurant with Ms- - -?---Ah, I have- - -

40 Let me ask the question, please?---Sorry.

Did you have a meal in 2010 with Ms Liang and Mr Benny Lam?---Ah, I have no memory.

You don't know whether or not- - -?---I have no memories.

You don't know whether or not you had such a meal. Is that your evidence? ---No, I have no memory about, about, about that particular dinner.

ASSISTANT COMMISSIONER: Well, what does that mean because you remember the Lions dinner and her going to that, wasn't that before this? ---Lions dinner is, is a big function, all right, we do it every year for charity, and this, like, day-to-day (not transcribable) pretty much a day-to-day thing, all right, so I, I don't have memory about, about this particular dinner in Sunny Restaurant.

10 MR LYNCH: When you say you don't have a memory of it, you're not denying that such a meal took place with you, Ms Liang and Mr Lam, are you?---I simply have no memory.

I understand that's what you've said, but by that do you mean you deny or you are unable to deny whether such a meal took place?---Ah, yes, I'm unable to deny because I have no memory.

20 And if you have no memory of the meal taking place, I take it you have no memory of what was discussed in the course of the meal, assuming it took place?---No, no.

What memory do you have of the number of envelopes you received in Auburn from Ms Liang?---Ah, two lot of money in two envelope.

You remember the number of envelopes but you don't remember where you received them apart from it being in Auburn or in what circumstances or what was said. Is that the case?

MR YOUNG: I object to that, I object to that.

30 MR LYNCH: I withdraw the question. You don't remember where in Auburn the money was conveyed to you?---Ah, the first not, I cannot remember, the second one as I mentioned before is, is, is between the police station and Auburn Council.

You do you remember the location of the second payment, Mr Au?---Yes.

Quite clear in your mind where it occurred?---Yes, that, that's very clear, yes.

40 You weren't so clear the other day when you gave evidence as to where the second payment took place?---Because after the, the private hearing I go back, have brief thought about it, all right and eventually I, I have some sort of memory about that.

When you gave evidence on Tuesday you were not so clear as to where the second payment took place. Were you?---No. I'm pretty clear now.

Now today you are?---It's because after brief thought about it. Yes.

And as to the first payment you don't know where that occurred - - -?---I have - - -

- - - except in Auburn?---I have no memory for the first payment.

And you say that you handed the two envelopes to your sister - - -?---Yes.

10 - - - on the same day you received them?---Yes, when I get the money I, I pass it to her, yes. On the same day, yes.

And did you not have a discussion with her as to what the money was for? ---Probably I mention that's for some inspection and consultancy work, all right and is, is a big one because usually we inspect a property, we charge a few hundred for that.

20 Do you have a recollection of having a discussion with your sister about the money that you say you received in envelopes which you did not open?---I cannot recall whether I mention - I, I understand there's money in the envelope but I myself haven't really open or count it and just to indicate the (not transcribable) thank you for all the overtime all those things - - -

My question was did you have a conversation with your sister about the money you say you received?---Yes, just probably a brief one.

Do you remember the conversation?---Yeah, just mention that is - - -

Do you remember the conversation?---Very blur not, not in detail.

30 All right. Did you have a conversation with her in relation to the first envelope you said you received?---Yes.

And do you say you received that in late 2009 - - -?---Yes.

- - - in your earlier evidence - - -?---Yeah.

- - - on Tuesday?---Yes.

40 Is that right?---Yes.

Did you pass on the unopened envelope to your sister on the same day you received it?---Yes.

And you had a conversation with your sister on the same day you received it about the envelope?---Yes.

What did you tell your sister about it?---I can't remember exactly, probably tell her that is - - -

When you say you probably tell her, do you have a memory of a conversation with her or are you simply reconstructing what you might have said?---I - just, just to the best of my memory because usually I give her the money, I say that's oh that's for inspection or consultancy or (not transcribable) - - -

I'm not asking you what you usually do - - -?---Yes.

10 - - - Mr Au, I'm asking you whether you have a memory of this particular occasion when you conveyed the envelope which you knew contained money - - -?---Yes.

- - - to your sister - - -?---Yes.

- - - without the knowing the amount of money in the envelope?---Yes, I don't (not transcribable)

20 What is the - you do have a memory or you don't?---I remember I don't, I don't know the amount I just pass on the envelope.

Do you, I'm asking you about the conversation with your sister when you passed on the envelope the first time to her. Do you have a memory of any conversation with your sister?---Well, I, I really have no recollection. It's - I guess I used, I just mention about our usual way, I just say, okay this is for inspection or consultancy work or pest control. Usually I very brief - - -

30 I'm just asking you whether or not you have a recollection of such a conversation. Not what you usually do but whether on this occasion you've identified when you received an envelope - - -?---Yes.

- - - not knowing the amount of money in it - - -?---Ah hmm.

- - - whether you recall a conversation with your sister? You either recall it or you don't recall it?---I don't recall it, sorry.

And when you receive the second envelope you say that - - -?---Yes.

40 - - - you say that was when?---That to my memory is, is early 2010.

Can you be more specific than that?---I guess probably maybe some time in January.

This is the envelope you say you received in the foyer between the police station and the Auburn Council?---Ah, yes.

Is that right?---That's right, yes.

And what did Ms Liang say to you when that envelope was passed to you?
---I cannot remember the, the conversation and - - -

Very well?--- - - - I guess maybe (not transcribable)

I don't want you to guess?---Oh, okay, all right. Sorry.

If you don't remember the conversation - - -?---Yeah, I don't remember, I
don't remember.

10

- - - that answers my question?---Yep.

Did your sister tell you how much money was contained in the envelope on
the first occasion?---Ah, I, I have no memory about that. Usually I give it to
her and she keep it, all right, and for the company. Usually I - - -

Well I suggest - - -?---Yes.

20 I'm sorry, I interrupted you, I beg your pardon?---Yeah, I don't get involved
in the financial thing. Usually I just get the money, pass it on.

Did your sister tell you how much money was in the envelope?---I have no
memory about that.

Have you seen an invoice relating to the payments received?---I have no
memory about the invoice.

30 Have you seen an invoice prior to today relating to payments received by
you from Ms Liang?---No.

Never?---No.

Would you look at page 216 of Exhibit 4, please? Mr Au, were you in the -
this hearing room - - -?---Yeah, sorry, sorry, sorry, just, I just - - -

Just before you go to that were you in this hearing room yesterday when
your sister gave evidence?---Yes. Ah, yes.

40 And did you hear and see on the screen a document which appears at page
216?---Ah, yes, I see on the screen, yes.

Is that the first time that you saw this document yesterday?---Yes.

Are you sure about that?---Yes, I'm sure about that, yes.

And you heard me ask your sister some questions about it?---Yes, yes.

And you heard your sister tell the Commissioner that the information contained in on that page 216 was all provided by you to her. Is that right?
---I have no memory about that.

But you heard your sister give evidence yesterday did you not?---Yes, I heard about that, yes.

That she said - - -?---Yes.

10 - - - all of the information on the form, all of the details about payments and what they were for - - -?---Yes.

- - - were provided by you to her to enable her to type out this invoice. Did you not hear her say that yesterday?---Yeah, I did hear that, but I have no memory about whether I tell - - -

I'm not asking you whether you've got a memory at the moment. You heard your sister say that yesterday?---Yes.

20 And did you have any doubts that that was accurate when she gave that evidence yesterday?---I have no memory about, about that conversation.

That's not my question Mr Au. If you attend to my question - - -?---Yes.

- - - and answer the question that I ask you - - -?---Yes.

-- - perhaps we'll be out of here more quickly?---Yes. Okay.

30 You heard your sister give evidence that you provided the details which enabled her to type out this form?---Yes.

Did you have any reason to doubt the accuracy of her answers to that affect yesterday?---I really cannot recall this conversation.

That's not my question.]

MR YOUNG: Well I object. I mean logically if he doesn't know what's in the invoice he cannot, he cannot make a comment about the accuracy of her statement.

40

ASSISTANT COMMISSIONER: Yes, Mr Lynch, I don't know that we're getting anywhere with this.

MR LYNCH: I'll approach it, Mr Au, you told your sister, did you not, that on 15 January, 2010, you had received \$2,500 from Ms Liang?---I'm not sure of the amount, yes, I mentioned it's in the envelope so I'm not sure of the amount.

Right. Did you tell her that you'd undertaken 15 site visits to the premises at Harrow Road, Auburn?---I mentioned about this is a big project, all right, well, is probably, is, is, I have to conduct many many site visits.

Did you tell her you had made 15 site visits to the premises at Harrow Road?---I cannot remember the specific number.

10 Did you give her the address of the Harrow Road premises where you say you made site visits?---Yeah, could be I give her the address.

And did you tell her that you paid, or you were charging \$400 per site visit? ---Yeah, roughly that is the going rate per- - -

But is that what you told your sister?---I'm not sure I told her or not, is, is, that's the going rate, all right, in the market is 400 per inspection.

Did you prepare this invoice yourself?---No.

20 Did you ask somebody to prepare it- - -?---No.

- - -at your request- - -?---No.

- - -sometime after 2 February, 2010?---No, no.

When did you first learn you were the subject of investigation by the ICAC? ---When ah, that day I, I, I was going to the citizen ceremony and when I see the staff I think call me and- - -

30 Do you remember when that was?---Sorry?

Do you remember when, what year, what month?---Ah, that's ah, I think sometime last year and I, I, I, I'm going to attend a citizen ceremony and they say, they, they need to see me immediately. I say, well, if that's the case then they come in and two person, I remember one is by the name of Simon and I forget the other name.

40 ASSISTANT COMMISSIONER: Mr Au, you've just been asked when you found out. You don't need to give all this other evidence?---Ah, when, when the ICAC ah, people call me.

MR LYNCH: And did you, do you know when that was? Prior to 11 August, 2011 can the Commissioner assume?---I, I cannot remember the day but I remember that particular day I'm, I, I'm going to attend a citizen ceremony.

When you received the first envelope did you immediately give it to your sister the same day?---Yes.

Your sister has recorded that the money was, I withdraw that. And the same day you gave her the envelope was the day you received the payment from Ms Liang. Is that right?---Yes.

So if your sister's recorded 15 January, 2010 as the date of the first payment, have you any explanation as to why that would be?---Ah, I, I don't know. Is, I, I, I, as I mentioned, I have no idea about this invoice so I cannot comment on that.

10 And you say the second payment was in January but your sister's recorded that you told her it was on 2 February?---Again I cannot- - -

Are you able to- - ?- - -comment on this, all right, because I don't- - -

Are you able to remember the date- - ?---Two amount there?

Are you able to remember the date of the second payment or not?---Not the exact date.

20 This is the only business record that the company has produced, I suggest to you, acknowledging this payment?---Ah hmm.

And you say that you've never seen it before?---Ah, you talking about this, this invoice?

Yes?---No.

And you say that you have no recollection of the conversation that you had with your sister about the matters that are referred to in this invoice?---Ah,
30 no.

So you're not able to say whether anything in this invoice is correct or not? ---No, I cannot comment.

You said in your oral evidence on Tuesday that you made 10 visits I think to the premises of Ms Liang in relation to the work you say you did?---Ah, yes, probably 10 or more, some long one, some short one.

40 Not 15?---I, I cannot remember whether, sometime I just in front of shop, look at it, all right, and give a (not transcribable) about it, all right, what need to be done, and some are long one, some just going up and down, all right, so, so some long one, some short one. So- - -

Your claim is that you made 10 visits, not 15. Is that right?---Ah, I don't remember whether it's 10 or 15, but anyway it should be more than 10 because I'm nearby, I always pop in there, have a quick look at that.

Well, if you're charging somebody \$400 a visit- - ?---Yes.

--it's important to know how many visits you made to the premises, isn't it?---Yes ah, should be more than 10.

And this invoice suggests that the company accepted payment for 15 site visits made by you, does it not?---I really cannot comment on, on this invoice.

10 All right. But you can't remember how many visits you made?---Ah, should be more than 10.

You can't remember how many visits you made?---I cannot remember how, exactly how many visits.

And apart from the first two, you can't remember what you did at any of the subsequent visits you claim you made?---Ah, I cannot remember details.

20 You've been in business for how long, Mr Au?---Ah, in (not transcribable) more, more than 10 years.

All right. You're an experienced businessman?---I, I'm, I'm licensed builder, licensed pest controller but I'm not, well, I'm not sure whether I'm experienced enough to be called experienced businessman.

Well, you've been managing the business which employs you for 10 years or so?---Ah, yes, roughly, yes.

30 And part of the business is to alert clients to the cost of the services you provide. Is that right?---Mmm, ah, yes.

So they know how much they will have to pay for your services- -?---Ah hmm.

--in advance of you doing the work. That's the usual way business is done, isn't it?---Ah, yes, it is, but if old client they already understand, all right, there's money involved.

Whether you've got an old client or a new client- -?---Yes.

40 --clients need to know, don't they- -?---Yes.

--how much the job's likely to cost them- -?---Ah hmm.

--so that they can decide whether or not they want you to go ahead and do the job?---Yes.

You never reached any agreement with Ms Liang- -?---No.

- - -about any agreement to do work for her, did you?---Ah, well, there's no any agreement and just based on experience, she's old client, all right, I inspect asbestos for her before, she understand I can do the building consultancy work, so based on that logic, all right, she understand I can give advice and charge money.

You never reached any agreement with her about the work that you say you did or the cost of any such work. That's true, isn't it?---Ah, no, yeah, no, no (not transcribable) agreement did we reach.

10

No written agreement?---No written agreement.

No oral agreement?---No oral agreement.

When you gave evidence in August of last year- - -?---Yes.

- - -and you explained to the Commissioner the amount of money you received from Ms Liang, how did you know the amount when you didn't open the envelopes?---Ah, I, I did not open the envelope, all right, is- - -

20

How did, how did you know the amount?---The amount is probably from the company mention to me is, is around, I really cannot remember is 4,000, 4,500.

Well who told you the amount?---Probably May.

You don't have any recollection of that do you?---She did mention about is there's some money there, all right, I haven't even count, is all in the envelope and so probably some time later and she mention about all that, that, there's 2,000 there and 2,000, 2,500 there.

30

But you never discussed the amount with your sister did you?---No, I don't, I don't discuss, because the money thing is, is the company thing, is not my business.

Mr Au, it's not true that you didn't open the envelopes that you received from Ms Liang is it?---No, no, I did not open envelope.

It's not true that you did not know how much money you received from her?---I know later on. I know later on is, is not, I haven't really open envelope and count the money.

40

ASSISTANT COMMISSIONER: I don't understand how you say you knew later on. You've given evidence about half an hour ago that your sister didn't tell you how much money was there?---Not at the time, later on, not, not when she got the money.

Well as I understood your evidence you said she never told you the amount that was in the envelope?---She, not on the day I give her the envelope, all right, and she just mention to me later on. Not, not on the day. What I mean is not on the day.

MR LYNCH: When did she mention to you the amount?---Probably some time later.

10 You don't have any recollection honestly do you?---No, I don't really recall it, yes. Probably some time later.

You provided Ms Liang no receipt for the money she paid you. Is that true?---No, I, I haven't give her any receipt, no.

You provided her no invoice?---No, I haven't give her any invoice, no.

20 There's no paperwork apart from this document at page 216 suggesting any transaction took place is there?---(not transcribable) I cannot comment on this, this is the first time I read that. And the other thing is the money is on, on a diary, record on a diary.

The diary has been disposed of hasn't it?---I don't, I don't touch her diary. I don't know whereabouts is that diary.

Your diary has been disposed of?---As I mention before my diary is very bulky, sometimes I put some paperwork there and very bulky, so usually I don't, I don't keep it.

30 You've disposed - - -

ASSISTANT COMMISSIONER: Well I'm sorry, look what is this reference to bulky? Too bulky to keep? What does that mean?---Because I got, I got paperwork I just slot in, sometimes - - -

Well I'm sorry it seems to me you don't have any paperwork. You've certainly not produced any to this Commission?---Sorry?

40 You don't seem to have a lot of paperwork lying around bulking up the place. Your business, your sister's business which you manage doesn't seem to have any proper records at all that a business should keep?---From me I, I do put paper, slot in the diary, yes. Sometimes very bulky.

And then you throw the diary away after a year?---Sorry?

You throw the diary away after a year?---Yeah, because is so bulky and is -
- -

What too bulky to leave sitting on a table somewhere?---Yeah, because is that bulky I don't, usually I don't keep it, all right. After, after I finish everything I just put it aside and then dispose it.

Well the end result is there are no proper business records available to this Commission. Would you accept that?---Well is, I, I don't have the diary now is all.

No, yes, Mr Lynch.

10

MR LYNCH: It's highly unusual Mr Au for anyone to pay you thousands of dollars without any discussion in advance as to what the money is for. Do you agree with that?---Well that's an old client and she understand that that is my career.

I wonder if you could answer my - could you answer my question?---Yes.

20

It was - it's highly unusual for a client to pay you thousands of dollars without any prior discussion as to what the money is for. Do you agree with that or not?---Yeah. Normally, yes.

I beg your pardon?---Normally, yes, but not for old client.

And did the money you say Ms Liang paid you for building advice was in respect of a business she was proposing to operate. That's true isn't it? ---Yes, that, that is the Sushi - - -

30

And the expenses for any such proposed business would be tax deductible wouldn't they?---Yeah, it should be.

And in the normal course you would expect that any payments or costs or expenses made in respect of such a business would be claimed as tax deductions by the person operating the business. Do you agree with that? ---Yes, normally that's the case, yes.

Because people are not obliged to pay tax - - -?---Mmm.

40

- - - in respect of expenses genuinely relating to their business?---Yes, right, I understand.

You agree with that?---Say it again, sorry.

People are not required to pay tax in respect of expenses genuinely incurred in relation to the business. That's your understanding isn't it?---Yeah, I understand that, yes.

And it is vital in order to prove such deductions are properly to be made to have documents such as invoices or receipts or bank statements or credit

card statements proving that the expense was incurred. That's the way business operates ordinarily isn't it?---Yes.

Cash payments without invoices or receipts or acknowledgement that money has been paid is most unusual in business isn't it?---In Asian business is frequently happen, people pay cash without any invoice or, or any receipt, it happen in Asian community.

10 You say it's a distinct practice that's at odds with normal business practice to pay money without any record of it being paid in the Australia Asian community do you?---In, in some ethnic groups and they don't ask for invoice or, or any, any paperwork they just pay it and it is - it happen to a lot ethnic groups.

They're not proposing to claim tax deductions for the expenses they incur in relation to their business then are they?---Yeah, it could be, it could be they don't, they have no intention, yes - - -

20 Well, that's the only explanation isn't it?---Yes. Maybe they have, they have no intention to do that, yes.

And secret payments made improperly would not be the sort of expense you would claim as a tax deduction could they?---Sorry, say again, sorry.

Secret payments made under the table were intended to remain secret are not the sort of things you'd claim as a tax deduction are they?---Yes.

30 The money that Ms Liang paid to you in cash was it supposed to be a secret payment until she revealed it on the 3 March. Do you agree with that?
---Yes, I understand.

Do you agree with it?---Yes.

You knew that she was paying you a secret payment to disguise the fact that it was made, did you not?---She, she hasn't asked for any receipt and, and just money coming in and then I believe the company probably go to the accountant to tell accountant this is taxable.

40 You inferred from the circumstances in which the money was paid to you - - -?
---Yes.

- - - that it was intended by Ms Liang to be a secret payment. Do you agree with that?---That, you have to ask her.

I beg your pardon?---I cannot answer that.

All right. You inferred from the circumstances of the payment or payments that it was to be a secret payment, did you not?---Ah, for us, we pay tax,

that's no secret, all right, and, and the money coming in and it's recorded in a diary and then go to the accountant.

The invoice that's at page 216 was never provided by your sister to the accountant. You knew that, didn't you?---I, I, I don't know about that.

You didn't know that?---I don't know.

10 Your sister only provides the total of the annual receipts to the accountant, so the accountant on your sister's evidence would know nothing about the individual payments?---Ah, that part you have to ask her because she's, I don't handle the financial things, as I mentioned.

The invoice is a fake, isn't it?---I cannot comment that.

When did you first learn about Ms Liang's email of 3 March, 2010 that was sent to Mr Brisby?---Ah, that from the ICAC, ICAC just (not transcribable) investigation, all right, and we (not transcribable) the case.

20 Did someone from the Council alert you to the fact that that email was sent prior- - -?---Ah- - -

- - -to contact from the ICAC with you?---I, I cannot recall any such information.

You can't recall?---I cannot recall any such information.

30 Could you look at page 225 in the bundle Exhibit 4 before you, please. Is that a Disclosure by Councillors and Designated Persons return under Section 449 of the Local Government Act which you've completed on 23 September, 2010?---Yes.

And that relates to the 12 months prior to 30 June, 2010, does it not? ---Ah- - -

Look at page 225?---Yes.

40 The bottom line just above the date and your signature?---Yes. (not transcribable)

The period covered by the return is 1 July, 2009 to 30 June, 2010?---Yes.

And you filled this in?---Yes.

And you filled it in truthfully?---Yes.

That's your signature on page 225?---Yes.

And you go over to page 226?---Yes.

Your sources of income are set out and under the heading Sources of Income- - -?---Mmm.

- - -and you describe your occupation as licensed builder, licensed pest controller?---Yes.

10 And under the heading, Name and Address of Employer or Description of Office Held if applicable, you've written, "Self-employed." That's what you've written, Mr Au, isn't it?---Yeah, that, that's an honest mistake.

You weren't, you were not self-employed in the financial year ending 30 June 2010, were you?---That, that, that's an honest mistake.

Could you answer my question?---Ah, yes, I was- - -

You were not self-employed in that financial year, were you?---Ah, no.

20 Why did you say you were self-employed?---That, that, that, that, that was a honest mistake.

And you were employed by in that financial year, AA1 Building Pest Solutions Pty Limited?---Ah, yes.

30 And you go to page 228, the subheading reads, "E, Interests and Positions in Corporations. It asks you to list the name and address of each corporation in which I had an interest or held a position at the return date at any time during a return period and you've written, "Nil." That's not correct, is it?
---(NO AUDIBLE REPLY)

Well I object to this, I mean is my friend's assertion that the person who was employed by a corporation holds within the, the meaning of that an interest?

MR LYNCH: All right. I suggest he held a position - - -

MR YOUNG: In the corporation. That, that is, that is - - -

40 ASSISTANT COMMISSIONER: Yes.

MR YOUNG: - - - a matter of corporations law not a, not a question of whether a person is employed by the company.

ASSISTANT COMMISSIONER: Yes, it's not clear but it seems to me that that is meant to apply to holding a position within the company structure as in secretary or - - -

MR YOUNG: Rather than, rather than employed.

ASSISTANT COMMISSIONER: Rather than being employed by - - -

MR YOUNG: Yes. But I mean if my friend wants to – but I just want to make that objection.

ASSISTANT COMMISSIONER: Yes.

10 MR LYNCH: Mr Au, you understood that your form required you to identify any employment which you had in the year covered by the return did you not?---Yes.

I'm sorry?---Say again, please.

Why did you not disclose your status as an employee of the company you worked for?---I give, that, that was an honest mistake.

20 Can you look at page 256 which is a return for the financial year ending June 2005, you there describe yourself as the general manager of A1 Building and Pest Solutions Pty Limited. Was that true?---Yes.

So how could you make the mistake in subsequent years suggesting you were self-employed when you were always an employee and not self-employed?---Yeah, I am always an employee, the truth, yes, yes.

I'm sorry?---That was, that part is honest mistake, self-employed, I always say I'm employee.

30 But, but you were never self-employed in those years were you?---No.

Why would you write you were self-employed in each of those years?
---That as I admit that was honest mistake.

Now did you inform Mr Francis or Mr Brisby that you were doing work for Ms Liang at any stage?---I, I haven't.

You have not?---I have not.

40 Were you aware that building was taking place on the building site at Harrow Road prior to Council approval being given?---I, I am not aware of that.

Including the compliance with conditions applicable to the deferred commencement?---I, I am not aware of that. I'm aware some material such as giprock was there and I'm not aware of the commencement.

So you had no cause to inform the council that building had already been

undertaken on the site prior to approval being issued?---Preparation, yeah, they put the gyprock there, is allowable, preparation is allowable. And, but they can see they cannot start.

Now, excuse me a moment. Now, any advice that you gave Ms Liang was related directly to the Development Application she was pursuing, was it not?---Ah, the, the DA, like, I organise a meeting or follow-up is, as the Council is a bridge between that, and anything on the side, the building and pest advice, that's separate, because I'm a licensed builder, licensed pest
10 controller, so that's a separate thing.

How was it separated?---Like, I organise a meeting between the applicant or applicant representative and with Mr Mark Brisby or Mr Glenn Francis and also follow up for, for them, that is, I act as a bridge between the applicant and the community and anything regarding the building and pest advice, that is my career. I, I, I, that is, I've been doing it until now.

You didn't tell Ms Liang that there was a separate function or two separate functions that you were engaging in for her, did you?---She understand the
20 DA is approved by Council, the planning department, and I only organise the meeting and follow it up for her. That, that's my role as a councillor, act is a bridge. And the other part, the building and pest advice is a separate thing. The last time I inspect asbestos for her, that is independent of Council role.

The asbestos inspection was in relation to quite different premises from Harrow Road?---Ah, different premises, that's right.

And months beforehand?---Yeah, months beforehand.
30

That had nothing to do with Harrow Road, did it?---Ah, no, nothing.

You told Ms Liang how to apply for a DA?---Ah, yeah, probably I did mention, yeah, you have to go to the Council to fill in the form and then there be drawing or do things, all right, and just follow the rules.

You provided some interpreting services at the meetings you arranged by conveying to Ms Liang what the Council officers discussed?---Ah, yes, because she's not able to communicate in English so, so if necessary
40 sometimes I act as unofficial interpreter.

Ms Liang asked you once about noise insulation, did she not?---Yes.

And you referred her to a noise expert, did you not?---Ah, yes.

You didn't charge her for that, did you?---Ah, well, that's a management thing, right, and- - -

Did you charge her for that advice?---Ah, I haven't verbally mentioned to her I charge her.

You did charge her?

ASSISTANT COMMISSIONER: No, he said he hadn't verbally mentioned to her that he'd charged her?---Yes.

MR LYNCH: Oh, I'm sorry.

10

ASSISTANT COMMISSIONER: But I presume that means he did, I don't know.

MR LYNCH: Did you charge her for advising her about the identity of the noise expert?---Ah, the money she pay me is included in that advice.

You weren't proposing to charge her for such advice, were you?---Sorry?

20 You were not proposing to charge her for such advice at the time you offered it?---I haven't verbally mention to her, all right but the money she pay me regardless, some of it is for (not transcribable) service.

She never asked you to attend the site on 10 or more occasions did she?---She ask me probably a few times, yeah, after that I just pass by and, and just look at how she (not transcribable)

30 Well, in business you don't undertake to provide services to a client without the client knowing about it or asking it do you?---That, that is a follow-up thing because I already start and so I know very well about, about it, so it just follow-up.

She never asked you to follow up did she?---Not specifically.

And the advice you gave her in relation to the toilet was advice to amend the DA was it not?---That is - advice is mainly the technical part, how to connect with the sewerage, it's only technical part, it's nothing to do with the council.

40 The advice you gave her about the toilet was to amend the DA was it not?---Mainly comply with the, the technical restoration, it's, it's - I don't - the DA part I haven't, I haven't really charged her for anything regarding with doing with the council but is a technical part how to connect it with the sewerage system but that part I can charge.

Isn't the truth, Mr Au, that you didn't charge her for anything she voluntarily paid you a reward for assisting her with her development application?---She did make the conversation between - when you ask Liang she did either on the email or verbally and a few things to be mentioned,

like building materials, renovation, installation, noise issue and in other emails Sushi bar, all those things be mentioned. So those things are the technical thing is nothing to do with the council.

Did you say you had some emails between and Ms Liang?---No, because Liang simply cannot understand English so there's no email between us.

10 You referred to emails in your earlier answer. What were you talking about
- - -?---No, the emails between me and, and her (not transcribable) because
(not transcribable) understand English but not Liang.

When she paid you the money, Mr Au - - -?---Yes.

20 - - - I suggest you knew that was improper for you to receive it. What do
say to that?---For the building advice and pest advice I think it's proper.
Because like on the email or, or the one should reply all those things have
been discussed like the building material, renovation, Sushi bar, toilet, all
those things have been discussed. So regarding that technical part, yes, I, I
can charge, I'm a licensed builder, licensed pest controller, when you give
out those expertise advice I'm entitled to charge.

Without telling her of the fact that you're proposing to charge for some of
the advice?---She just give it to me - - -

Is that what, is that what you say?---Yeah. She give me the money, she,
she mention about thank you for all the overtime and, so, so those are
regardless (not transcribable) I give all those building (not transcribable)
advice and so that is the comment from her, thank you for all overtime.

30 Did you say to her at some stage, "I did something for you, you have to give
me some favour"?---No.

You're quite sure about that?---No, no, no, I deny it, I deny it totally, no.

You did introduce a noise expert to Ms Liang?---Yes.

Who was that?---I cannot remember the name, so long ago.

40 And you left it to the noise expert to prepare a report about insulation as
required by the Council deferred commencement conditions. Is that right?
---Yes, yes.

You weren't involved in the preparation of that report were you?---Not (not
transcribable) no.

I beg your pardon?---Not, not in that report, no.

Not in?---That noise, noise report, no.

Thank you. And you never had any agreement with Ms Liang to pay you money in return for you providing advice about how the renovations would be undertaken did you?---We have discussion about the renovation, yes.

10 Right. You never had any agreement with Ms Liang where you would charge money in return for providing advice about how the renovations would be undertaken. That's true isn't it?---That true, but is imply that because I'm a licensed builder and licensed pest controller, I supply that, I am entitle to charge.

Did Ms Liang say to you something to this effect when she paid you the money, the first amount of money at least if it was paid separately - - -?
---Ah hmm.

20 - - - something like, "I fear – did she say something like, "I fear they might lose their jobs because of this." And left it to you to decide how much money should be distributed to Mr Brisby or Mr Francis?---No, I deny that conversation totally, no. No such conversation.

Did she say to you - did she mention to you that she didn't want the payment to lead to people losing their jobs?---No, I deny those, those conversation, no.

She did say that to you didn't she?---No, no, she did not say anything like that, no.

30 And she gave three envelopes to you I suggest on the first occasion?---No, no.

At least three?---No.

What do you say she said to you when she paid you the first envelope?
---She – I recall she mention about thank you for all the overtime, thank you, something like that.

40 She said she was giving you a reward for doing her a favour did she not?
---No, she did not mention that. I deny that. She just say thank you for all the overtime, thank you.

You never worked overtime did you for her?---Oh sometime maybe after work I just pop in there, look at the shop, all right, from outside to see how is going on, all right, and give some (not transcribable) what's the best way to decide all those like wet area such as the toilet.

You never worked overtime for her did you?---Well I, I did not, but that's in her mind.

And you knew that Mr Brisby and Mr Francis didn't work overtime for her?---No. Yeah, yeah, she mention about Mr Mark Brisby.

None of you worked overtime for her?---Sorry?

None of you worked overtime for her did you?---No. No, no. Just her comment.

10 Did you not immediately become alarmed when she said I'm paying you a reward for overtime?---No, no, she - - -

Did that not, did that not immediately suggest to you that she was making an improper payment to you?---No, no.

MR YOUNG: Well I do object because my friend has used one word of his, what he's put as being denied and another work which comes from the witness and put them together. The reward - - -

20 ASSISTANT COMMISSIONER: Yes, he denies the reward part Mr Lynch.

MR LYNCH: All right. Very well. When she made the payment to you - - -?---Yes.

- - - referring to overtime - - -?---Yes.

- - - you knew that none of you had done overtime. Correct?---Yes, I understand that, yes.

30 And none of you were entitled to a payment for overtime, particularly Mr Brisby and Mr Francis?---Ah, understand, yes.

Did you not immediately think she was paying you a secret payment as an inducement to continue assisting her in the pursuit of her Development Application through Council?---No, no, that, that's never in my mind.

40 It never occurred to you?---Yeah, when, when she mention about that she's just, I, I always relate it to the building and pest advice, so not, nothing thinking about the DA, the Council, the meeting, no, no, no, I always thinking about the building and pest advice, that's the money for.

She's, she was alarmed about the delay in the DA's consideration, wasn't she?---Ah, yes, she, she did mention something like that, it takes, takes a long time.

Did it occur to you that the payment was in order, in the hope that you might assist with resolving the delay?---No, no, that's never, never in my mind. I only thinking about strictly building and pest advice.

Now, the invoice that your sister says she prepared could only have been based on information supplied by you, could it not?---Just probably some sort of verbal briefing about all that, that's money for the project.

Are you agreeing with me or not?---Sorry?

Are you agreeing with the proposition I put to you- - -?---Yes.

10 - - -that the information in the invoice or the document at page 216 could only have been provided to your sister by you?---I cannot comment on, on the invoice, all right. This is the first time I read that, all right, so I cannot comment on the, on the invoice.

ASSISTANT COMMISSIONER: Yes. But, Mr Au, who else could have provided that information to May?---Ah, I guess- - -

20 Did she just guess it all---?- - -all right, it's probably when I give her the, the envelope, all right, probably I brief her all that that it's for the project, for the Auburn project. Could be some sort of brief, some sort of briefing to her. That's probably, that's the usual way we do. We get the money and oh, that's for the pest control, that's for the pest inspection, that's for the building inspection, that's for the consultancy work.

Mr Au, what is being put to you is that you are the only person who could have provided the information that's contained in that invoice to your sister? ---Ah, yes, probably I, I, I, there's some sort of briefing ah, ah, yeah, from, from me to her.

30 Yes.

MR LYNCH: Did you ask her to prepare the invoice or the document at page 216?---No, I, I, I deny that before, I deny it again.

Did you tell your sister that Ms Liang had paid \$2,500 on 15 January, 2010? ---Ah, as I mentioned, is in the envelope, I- - -

Did you tell- - -?---The money's not counted by me.

40 Did you tell her that you had, you had been paid \$2,500 by Ms Liang on 15 January, 2010?---No, I, I mentioned again that's in the envelope. The money's counted by her, not counted by me.

So is the answer no?---So I have no idea about, about exactly how much is the amount.

Is the answer yes or no or you don't know?---I don't know.

Pardon?---I don't know.

Did you tell her that you had visited the site fifteen times?---I, I have no memory about exactly fifteen times but I believe is more than 10 times.

No. Did you tell your sister that you had visited the site fifteen times?---I have no memory about that.

10 Did you tell her that you were charging \$400 per visit?---Yeah, that is the market rate, that is the market - - -

But did you tell her that, Mr Au, is my question?---May, may have some sort of a discussion about that.

Did you tell your sister to apply a discount?---Sorry?

Did you tell your sister to apply a discount?---I have no, no recollection about that.

20 Excuse me a moment. Excuse me just a moment. They're my questions for the moment, Commissioner.

ASSISTANT COMMISSIONER: Yes. Is there any application to examine this witness?

MR McILWAINE: (not transcribable) Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr McIlwaine.

30 MR McILWAINE: Mr Au?---Yes.

Having heard all the evidence this week do you accept that you had a meeting at a restaurant with Ms Liang and that at that meeting some amount of cash in an envelope was handed to you?---No. I, first of all I have no memory about the, the lunch.

40 No. I'm not asking whether you have a memory of it. I'll ask the question this way. Do you deny that you were present at a lunch with Ms Liang in early 2010 when some amount of cash was handed to you? Yes or no?
---No.

You don't deny it?---No.

Now in relation to the payments of money you say you received from Ms Liang \$2500 and the \$2000 - - -?---No, no, not I say, it's in the envelope it's, it's - it's eventually mention by, by, by me or - - -

Just (not transcribable) You accept you, you received some money from Ms, Ms Liang and you say it was building and pest advice - - -?---Yes.

- - - for that Harrow Road property?---Yes.

- - - Correct? And you say that was received in two separate payments - - - ?---Yeah, two, two separate money, yeah, two separate sum.

10 Do you say that both those payments were made in 2010 or do you say that one was made in 2009?---To my memory one is late 2009 and the other is early 2010.

Having seen all you've seen this week do you accept that it's possible that all the payments were made to you in 2010?---I, I cannot accept that. I, I simply to, to my mind one is late 2009 the other 2, 2010.

Do you agree that when you gave evidence at the prior hearing of this matter- - -?---Yes.

20 - - -you indicated that both payments were in 2010?---I, just my memory, my memory is, is, one is 2009, the other is 2010. That- - -

Do you accept you could be wrong about that?---Yes, could be, it's so long ago.

No further questions.

30 ASSISTANT COMMISSIONER: Thank you. Yes, Mr Young, do you want to ask anything?

MR YOUNG: Just briefly?---Yes.

Now, just in relation to a question you were just asked- - -?---Yes.

- - -I just want you to be clear- - -?---Yes.

40 - - -because I think they don't deny, you may not, I just want to make sure that you understood the answer you were giving. Do you say, what do you say in relation to the allegation that money was paid to you by Ms Shu Liang at a restaurant, what do you say about that allegation?---Ah, I, I, I deny receiving money from, from the restaurant.

Now, if you could open at page 216. Firstly you know the developer's name is Shu, S-H-U, but using the English form of S-U-E Liang?---Yes.

Now, if you have a look at the invoices by, and certainly by February 2010 you were well and truly aware that, that her name was, was in fact Shu Liang?---Ah, ah, yes. I always call, call her Shu, the English name.

The, if you have a look at the tax invoices 217, 218 and 219, 220, you'll see we have their names which are either four Chinese or four anglicised first names and Chinese surnames. Do you see that?---Yes.

(not transcribable) Raymond Lau (not transcribable) Lam- - -?---Yes.

- - -Amy, Amy (not transcribable)?---Yes.

10 Now, do you know why the invoice at 216 only has the, the name Ms Sue?
---I, I really cannot comment on that, yeah, is, I, I, I don't know, maybe some sort of record, yeah.

How do you mean, some sort of record?---Maybe is for, because I, I did ah, call the applicant, Shu is calling the Chinese name, all right, so maybe, maybe the company or Sue is S-U-E or so, so probably that is the name the company called.

(not transcribable) to record the payment?---Yeah, that's right.

20 All right. Yes. Yes, thank you.

ASSISTANT COMMISSIONER: Yes. If there's nothing else?

MR LYNCH: That completes the evidence.

30 ASSISTANT COMMISSIONER: I just thought without wanting to actually go to it I notice that you also described yourself as self-employed on at least two other of your pecuniary interest declarations?---That, that was honest mistake.

So on each occasion you say that was an honest mistake?---Yeah, that was honest mistake.

Yes?---I, I apologise for that.

Yes, thank you. Yes, well if there's nothing further you may now be excused, Mr Au, from further attendance?---Thank you, Commissioner.

40 **THE WITNESS EXCUSED**

[11:24am]

ASSISTANT COMMISSIONER: In relation to submissions, Mr Lynch, we normally allow two weeks for the submissions of Counsel Assisting, but in view of the Easter holiday, I think it would be appropriate to allow three weeks for your submissions.

MR LYNCH: Thank you.

ASSISTANT COMMISSIONER: And two weeks for any submissions in reply. The submissions will be written and I – this is the normal course, I will make a suppression order in respect of the written submissions.

SUPPRESSION ORDER IN RESPECT OF THE WRITTEN SUBMISSIONS

10 MR LYNCH: If you please, Commissioner.

ASSISTANT COMMISSIONER: Yes. Now unless anybody has any other business to raise we will adjourn at this time.

AT 11.25am THE MATTER WAS ADJOURNED ACCORDINGLY
[11.25am]