

CENTURIONPUB00050
18/02/2010

CENTURION
pp 00050-00078

PUBLIC
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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION CENTURION

Reference: Operation E09/1994

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 18 FEBRUARY 2010

AT 2.05 PM

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

ASSISTANT COMMISSIONER: Yes, Mr Farmer.

<DAVID PYO, on former oath

[2.05pm]

MR FARMER: Thank you, Commissioner. Mr Pyo, when you were living in New Zealand, did you give any gifts of money to any government officials?---I did not do that. Further, I was not in that kind of position.

10

Apart from working as a cleaner in New Zealand, were you or your wife engaged in any business in New Zealand?---My, my wife was involved in shop like stationery.

And did you have any dealings with any local government or other government body in New Zealand in relation to the stationery business?---No, not at all.

20 When you and your family came to Australia, I understand your evidence to be that your wife set up a restaurant. Is that right?---Yes. Still doing.

Is that restaurant owned by a company?---Yes.

Are you a director or shareholder in that company?---No.

Have you been involved with any dealings with any local government officers in relation to that restaurant business?---No.

30 Has your wife to your knowledge?---No.

Since coming to Australia you have set up a cleaning business. Is that right?---Yes.

Is that business owned by a company?---Yes.

What's the name of the company?---PNS Pty Limited.

And are you a director?---Yes, my wife is the director.

40 The sole director?---Sole director.

Are you a shareholder in that company?---I'm not sure (not transcribable) just working as a manager.

On 23 December you said that you had made a payment of some money to a person who was in charge of a shopping centre?---Yes, I did.

Is that the only payment of money you've made?---That's right.

And how much money did you pay to that person?---I do not recall or I do not remember the exact amount of money but I think just for sake of dinner for the whole staff I think I gave about \$300.

Did you consider that to be a small gift?---Yes, I, to me, yes, at that time there were about ten or more staff so that money was appropriate for them to have a Christmas party.

10 Are you still working with the person that you paid that money to?---I do not have any further association with him because the other company took over that one.

Since coming to Australia you have also joined a number of associations. Is that right?---Yes, even at the moment I have, I'm involved in many different associations.

One of them is the Australian Korean Welfare Association. Is that right?
---Correct.

20 You're also a member of Lions Club. Is that right?---For the past three years I have been a President for that Lions, Sydney West Lions.

As the President are you required to speak English to the other members?
---Probably in other groups, yes. But in that particular association like Sydney West Lions Club all members are composed of Korean background.

30 In relation to the Australian Korean Welfare Association do you hold any particular position with that group?---I'm one of the Directors at that association.

How long have you been a Director of that association?---Since last September.

Mr Pyo, you are aware of the expression of interest you lodged with the Council in relation to Pomeroy Street are you not?---Can you please tell me again what you exactly mean?

40 You made an application to develop the site at Pomeroy Street, Homebush, didn't you?---I did.

You received assistance to help you write documents didn't you?---When I, when I noticed the sign on the wall and I lodged an application and then afterwards I received a great explanation about that.

Right. And did you see on the screen then a document with a picture of the premises and a lot of writing? Do you see that document?---Yes.

Did you obtain a copy of that document?---Yes.

And did you get someone to explain that document to you?---After I expressed, expressed my interest about this development I entered in that property with other people only once.

Did you get someone to explain what this document means?---Yes.

10 Yes, that's Exhibit 9, thank you, Commissioner, for the record and could Exhibit 2 be put on the screen. Yes, just scroll down the bottom.

Do you see there your signature, Mr Pyo?---Yes, I see now.

All right. Did someone create this document for you, someone write this document for you?

THE INTERPRETER: You mean someone signed on behalf of him?

20 MR FARMER: No, did someone write it for him in English?---I cannot recall exactly but one of my, one of my friends or maybe one of, or maybe my son did it because I am not good at English.

All right. And you submitted that to the Council?---Yes, I post, I sent it by post.

Indicating that you would be prepared to spend in excess of \$1,000,000 to develop this site?---Yes.

30 Did you receive a letter from Council - - -?---Yes.

- - - telling you that your application was late?

THE INTERPRETER: Did you say late?

MR FARMER: Late?---Correct. According to my son that letter was saying that even if it was late please don't give up.

40 And do you say that on 28 August, 2008, you went to Council and met some people?---I cannot remember the exact date, but the concept was correct.

Do you remember who was with you?---Yes.

Who was that?---General Manager, one lady, Michael Chau.

And you were there?---Yes, and myself.

And your solicitor or your son?---My solicitor.

Your son?---No. My son was not there.

All right. Did you meet the general manager?---Yes.

Is that the first time you'd met him?---I, previous functions, previous gatherings I saw him (not transcribable) but face to face meeting was first time on this date.

10 And can you remember what was said by the general manager on that night or that day?---Just he said hello.

And then he left?---After five minutes he left.

And were you told at that meeting to pursue your application to develop this premises?---No.

What were you told?---He say, please express what you want.

20 Who said that?---Probably general manager. And then he left.

Did you express to him what you wanted?---I was drawing the picture.

What else happened at that meeting?---Nothing else.

After that meeting did you submit a business plan to the Council regarding your plants for Pomeroy Street?---Yes, I did.

30 All right. And who prepared the business plan?---My accountant and my solicitor made it.

And did you read it before it was submitted to Council?---Actually I did not know much English at that time, so I, somebody read it to me roughly including the project, including the money. So I agreed with the reading and then submit it.

Thank you. Might he be shown the business plan received at Council on 10 February, 2009. Can you say by looking at the front cover of the document and looking at the information inside it quickly (not transcribable) that's the document you submitted to Council?---Identical, yes, it is.

40 All right. I tender that document, Commissioner.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 14.

**#EXHIBIT 14 - BUSINESS PLAN PYO FAMILY TRUST DAVID
PYO**

MR FARMER: Mr Pyo, were you subsequently told that your application was being submitted to Council for consideration?---I was told to submit this application that's why consequently I submitted this application to be considered.

And were you subsequently told that Council had recommended that your application be considered further?---O.K. I cannot recall exactly but after I lodge it, this application, long afterwards there was a letter from Council, from the Council. So soon after that whatever they required for (not
10 transcribable) I comply, I complied with their request.

Can I remind you that on 23 December you tendered to the Commissioner your letter dated 14 September, 2009 and Council's letter dated 30 September, 2009 which related to a meeting that you had attended on 10 September, 2009 at Council's office?---Yes, I did mention about these two relevant letters.

Yes. Commissioner, I tender the letters of 14 September, 2009 from
20 Mr Pyo to the Council and a letter of 30 September, 2009 from the Council to Mr Pyo.

ASSISTANT COMMISSIONER: Yes. The letter from Mr Pyo to the Council will be Exhibit 15 and the letter from Mr Pyo to the Council will be Exhibit 16.

#EXHIBIT 15 - LETTER FROM STRATHFIELD COUNCIL TO MR PYO DATED 30 SEPTEMBER 2009

30

#EXHIBIT 16 - LETTER FROM MR PYO TO COUNCIL DATED 14 SEPTEMBER 2009

MR FARMER: Mr Pyo, do you remember meeting Mr Rob Bourke on 10 September, 2009?---I remember, yes, because I'm reading this letter now, I remember this meeting.

All right. And when you met him, by that time you knew that you had been,
40 I'll withdraw that. You were discussing with him the length of the licence agreement?---Can I speak something now?

Yes?---At that time this letter was, all this letter was intending was to contain the result of our meeting and it was written by the solicitor.

Thank you?---At that time it was not, not the meeting only between Mr Bourke and myself, not only for two people.

Yeah. The solicitor was there with you helping you?---My son and my solicitor were there. From Council there was Rob, James and Michael.

And you were told that the, the driving range could not be part of the plan anymore?---I was told, yes.

10 But you agreed to continue with the rest of your proposal?---No. At that time there were many people discussing about the convenience of the public because that area is located in the public residential area so it is dangerous to see the ball flying over. I proposed just one more time. Whenever there is any plan, any, any development plan I will cancel it. Also, further, I will, I will equip with the safety net.

All right. And then after that meeting and your letter you received a letter back from the Council?---Yes, I did, yes.

20 And did you have someone read that letter to you?---My son did, yeah. My son clearly reminded me that on the bottom of the letter it said, strongly indicate that driving range will not be possible.

Right. Some time after that were you approached by chartered accountants to carry out a, an assessment of your business plan and your financial position?---Yes, I was told. I was approached by accountant to cancel the (not transcribable), to give up.

No, not your accountant, another independent accountant? I'm sorry, I may have misled you, yeah, it was actually before this meeting on 10 September? ---I don't remember, I don't recall.

30 Do you remember providing information about your businesses and the Pyo Family Trust to a firm of accountants, chartered accountants?---I understand what you mean, yes.

Yes, all right?---Yes. At that time different accountant came to me.

Right. Mr Pyo, did you tell the chartered accountants that your cleaning business employed 20 employees?---My accountant provided information to the other accountant. I didn't do that by myself.

40 Did you tell your accountant that your cleaning company employed 20 employees?---I did. Further, I'm now employing some 20 employees.

When you gave evidence here in December last year, it's recorded that you said in my cleaning business one person is helping cleaning.

MR GRIFFIN?: Where's this?

MR FARMER: Sorry, page 7. First line, second line?---I'm sorry, I could not catch you.

You gave evidence last year that you, that to this effect, in my cleaning business one person is helping clean?---I did.

Can you explain the difference between 20 and one?---I was explaining about my own cleaning job, so for that particular job only one person is helping me. But for my wife, is different story, PNS, yeah.

10

The company PNS employs 20 people does it?---That's correct.

They're not all cleaners though are they?---Yes. They are all cleaners.

For the restaurant?---They are totally different from restaurant employees.

In relation to your expression of interest do you recall that some time in November last year you were informed that your application had been accepted?---Not precisely. I was not, I was accepted, I don't remember that. But after the month of November there were more meetings about that.

20

Do you remember attending a meeting in November?---I don't remember, I don't remember whether it was in November or end of October, but anyhow was on couple of occasions, yes.

Could the letter of 12 November be put on the screen? Yes. I don't have the Exhibit number. Mr Pyo, this is a letter which in broad terms said that if you sign this letter you can get the keys to the premises. Do you remember that?---I do, I do remember.

30

Right. At that time, 12 November, did you understand that you had been chosen as the preferred candidate for, to enter into negotiations with the Council to lease or licence the premises?---So nobody, nobody told me that, but I just received the keys.

And after the meeting on the 12 November, you wrote a letter to Council confirming what you understood to have occurred at the meeting?--- Probably, yes. Even if I don't remember clearly.

I tender Mr Pyo's letter of 16 November.

40

ASSISTANT COMMISSIONER: Isn't it already Exhibit 5?

MR FARMER: I thought the, the letter in relation to the key had been tendered as well.

ASSISTANT COMMISSIONER: Yes. It's Exhibit 6.

MR FARMER: Exhibit 6. Thank you. Mr Pyo, when you met the Council officers and on 12 November, 2009 and you obtained the key to the premises, you knew by then didn't you that you had been selected as the preferred applicant?---I did, I realised that.

And you were negotiating, negotiating with the Council officers about the length of the licence agreement?---Yes. I simply thought that length of the licence is small matter, just part of the big licence.

10 A big matter so far as the licence agreement was concerned was how much it would cost you every year. Is that right?---In the beginning because that total investment is very much outstanding, very much, big money so my initial offer was \$12,000.

But money was an important issue still to be agreed between you and the Council, wasn't it?---Yes.

You offered \$12,000 per year?---In the beginning, yes.

20 And Council replied by offering that you, that you pay \$75,000 a year. Is that right?---No. I have never heard of, I have never heard of 75K, 75,000.

Did you have any discussion with Council that what you should pay per annum should be less than \$75,000 because you were investing so much capital?---Not in writing but verbally, verbally at one of the meetings I said that.

Right. After the meeting you wrote another letter to Council, didn't you?
---I did.

30 In that letter you offered to pay \$16,000 per year, didn't you?---In the second chance, yes, I did.

How did you come to the figure of \$16,000?---This figure is not the result of precise calculation or whatever but this is just my counteroffer without any deep consideration simply because the Council kept asking me to make a offer.

40 How did you arrive at \$12,000 per annum?---I simply thought per month I have to provide \$1,000 so per month, that means annually 12,000.

And the letter that you wrote, 16 November, offering \$16,000 - - -

MR JONES: I object to that question. My friend has got to establish that he actually was the draughtsman of the letter. He hasn't done it.

MR FARMER: Right. Just leave it up the screen please.

MR JONES: Well, why don't you ask him the question?

MR FARMER: I will ask him the question.

Do you see the signature on the left-hand side of the page?---That's correct, that's my signature.

Thank you. Who, did you write that letter or did you have someone write it for you?---I cannot read, I cannot write this kind of letter. I think my
10 solicitor wrote this letter.

Right. Did you discuss with your solicitor the offer of \$16,000 a year?---I simply asked him to put 16,000 in the letter.

It was your decision alone to offer \$16,000 a year?---Correct.

Right. Now after you offered \$16,000 per annum, did you receive a
counteroffer from the Council?---I have not received any letter with
counteroffer. I remember there was an email from Council, from the
20 Council, attention to my accountant saying that 16,000 is relatively too
small.

Who sent that email, do you know?---I was told that a man by the name of James at the Council sent it.

Mr Pyo, do you recall that at the end of December, I'm sorry, at the end of, sorry, the beginning of December, the Council sent to your solicitor a draft agreement?---That's correct.

30 And did you get your solicitor to translate it to you?---I did.

Right. And do you recall that the yearly licence fee was not in the document?---Yes. I remember. There's only blank, not stated, blank.

Square brackets with the words "insert amount". Do you remember that?
---I do remember.

Now did you get this whole document translated into Korean?---I did, I
40 receive.

Right. And did you read the translation?---I did.

And, I'm now showing you page 11 on the screen. Now it says basically that the document will be signed by you as the licensee. Do you see that?---
(NO AUDIBLE REPLY)

And that on behalf of the Council it would be signed by the general manager. Do you see that?---(NO AUDIBLE REPLY)

You have told us that you met the general manager on 28 August. Is that right?---Which year?

2008?---I don't remember the date, but I remember I met him anyway.

In accordance with an appointment that had been made?---*Yeah.*

10 After you met him and he said hello and said please express what you want, did you meet him again?---No, I didn't meet him again.

And apart from that one meeting you never had any discussions with him about your expression of interest in developing Pomeroy Street?---I didn't meet him.

Did you know that he was the person who had been delegated to sign the agreement on behalf of Council?---Yes.

20 How did you find out that?---After reading this letter I realised that he is the person.

And by reading this letter you mean the draft contract, draft agreement?--- Yes, after reading the (not transcribable), yes.

Now do you see there Mr Ng sent that agreement to your solicitor on 2 December at about 10.19am. Do you see that?---Yes.

30 Thank you. And then the following day your solicitor sent back your response to the draft licence agreement. Do you remember that?---I don't remember exactly.

Right?---Maybe yes.

Do you see Exhibit 8 that Mr Hong on 3 December, 2009 at 3.20pm sent a reply to James Ng at the Council?---Correct.

And do you see number 4, insert about of \$16,000?---Yes.

40 You were, you were sticking firm on your offer of 16, 000 per annum. Is that right?---I demanded my solicitor, I requested him to fix it, 16,000.

All right. Now you, you have not signed a version of the licence agreement and have, have Council sign the same document have you? You haven't entered into a contract with Council yet have you?---I understand, it was sent by email.

You, you have not formally signed the contract with Council for the licensing of this premises have you?---I haven't.

You haven't agreed on the yearly amount of money that has to be paid have you?---That's right. You are correct.

All right. Now Mr Pyo, in circumstances where your agreement with Council has not been finalised - - -?---That's right. I was told last night, yes.

10 Yes. But in circumstances where your agreement hasn't been finalised you paid \$2,000 to Mr, or gave \$2,000 to Mr Backhouse didn't you?---Correct.

Commissioner, I tender copy of the envelope, the card, the handwritten note and photocopy of the money paid by or given by Mr Pyo to Mr Chau on 2 December.

ASSISTANT COMMISSIONER: Yes. Well, that copy of the card and the contents will be Exhibit 17.

20 **#EXHIBIT 17 - COPY OF CHRISTMAS CARD AND CONTENTS**

MR FARMER: Now, in your evidence in December last year you said that you'd had two meetings with David Backhouse. Do you remember giving that evidence?

THE INTERPRETER: Did you say Backhouse?

30 MR FARMER: Yes, Backhouse, the general manager?---I never said that. I never speak exactly.

Well, I'm reading from the transcript and you say, you're asked this question.

MR JONES: Where are we?

MR FARMER: Page 17, 15, sorry. Have you spoken to or dealt with David Backhouse? Answer, Apart from two meetings, no?---Yes.

40 You told us about a meeting where you met with him and others at the Council. I want to know your recollection as to the other meeting if there was one?---Annual meeting of Korean Welfare Society, Welfare Society, is held in either September or October.

Why did you put \$2,000 inside the Christmas card?---As a gift solely for Christmas dinner party.

Who was the gift for?---At that time my English was very poor so all I could express was \$2,000 for whole entire staff of the Council so that they could have Christmas dinner party.

So your gift was for all of the staff at the Council to enjoy a Christmas party?---That's, that was my intention, yes.

10 How did you arrive at the figure of \$2,000?---Because I simply thought there is about 100 staff in the Council and per head it could be \$20 so that is about \$2,000.

Did you discuss your idea of giving a gift to Mr Backhouse and his staff with anyone else?

THE INTERPRETER: How do you spell Backhouse, please?

MR FARMER: B-A-C-K-H-O-U-S-E, the general manager.

20 THE INTERPRETER: Oh, it's surname.

MR FARMER: Yes, that's his surname?---No, I didn't.

Did you discuss it with anyone in the Australian Korean Association?---I didn't.

I meant the Australian Korean Welfare Association?---No.

Did you discuss it with your wife?---No.

30 Your son?---No.

Your lawyer?---No.

Is there any reason why you did not discuss it with anyone before giving the money?---This is my usual lifestyle. This is my usual practice because I actually give a lot of donations to various organisations but I don't discuss it with anybody.

40 Mr Pyo, the donations you give to other organisations are donations to charities, aren't they?---Not only charity but sometimes, you know, bushfire victims.

Mmm. Bushfire appeals, those sorts of things. Is that right?---No.

You don't expect the people that you give the donations to to spend it on themselves, do you?

THE INTERPRETER: I'm sorry?

MR FARMER: You don't expect the people that you give the donations to to spend it on themselves, do you?

MR JONES: I object to that question.

ASSISTANT COMMISSIONER: Well, just see whether the witness will answer it?---I honestly believe and truly believe that my money goes to the victims always, whatever it is, bushfire or charity organisation, I don't
10 expect those people, the first people spend this money.

MR FARMER: Do you see on the screen is an image of the envelope?
---Yes, I do.

Is that a stamp or is that a printed envelope?---Stamp.

Did you put the stamp on the envelope?---Because at that time the envelope was not available to myself so there are so many envelopes like this and card so I used it.
20

Right. But you did not have the permission of the Association to give money to Mr Backhouse?---I didn't get any approval.

And then on the other side of the envelope the words "from David Pyo". Is that your handwriting?---Correct.

And now, then the exhibit is a handwritten note. Is that your handwriting?
---Yes.

30 And the symbol in the top right-hand corner, what does that refer to?---I simply picked from leftover in cleaning premises so I just picked and then use it, utilise it. This one is logo of my own company long time ago but now this company, this company does not exist.

In this note you say to David, "Thank you for your advice and help." You see that?---Yeah.

According to your evidence Mr Backhouse has not provided you with any advice?---Correct.
40

What were you referring to when you said, thank you for your advice?
---I, I simply thought he is representing the whole entire family of the Council. That's why even if his subordinate, one of the subordinates advise me or help me, I simply express my gratitude to the top man.

Mr Pyo, at this time you were still negotiating with Council weren't you?
---Yes, I, I recognise that previously, yes.

And did you think that if you paid this money Council might approve your offer of \$16,000 per annum?---If that is the case, I would have given that money to James or other staff, so this is not worthwhile to discuss about at this particular time.

When you gave the money to Michael Chau to give to Mr Backhouse - - -?
---Yes, I did.

10 - - - you did not know what Mr Backhouse would do with the money did you?---I didn't know.

Did you think about what would happen if Mr Backhouse kept the money?
---I didn't think about it.

Did you not think that if he, if he kept the money that you would know that he had kept the money?---Next morning, next day I receive a phone call from the general manager.

20 Yes. I'm just asking you about what you were thinking about at the time you handed the money over?---I wouldn't know about that. If he didn't call me I wouldn't, I would not know. However, I trust him.

You wanted to keep the payment of the money secret didn't you?---I did not keep it secret because if I really intended to keep it in secret, I should have given it directly, but at time I gave the money through Michael.

But you did not expect Michael to open the envelope did you?---That's right.

30 Why did you choose Michael to be the person to receive the envelope from you and give it to Mr Backhouse?---There was no special particular reason.

All right. And just in relation to Mr Backhouse, if he didn't tell anyone about the \$2,000 it would be a secret between you and him wouldn't it?--- I usually understand that this manager give the money at the end of the year must be used for the function, for the family, not for just one person. The entire family of the Council.

40 Where do you have that understanding of that?---That's, that's the usual practice and tradition of Korea, because I have lived in Korea for long time.

You don't have an understanding that that's a practice in Australia?---I didn't think about it. This time I learn a big lesson.

The question I asked you before was that if Mr Backhouse didn't tell anyone about receiving the money, it would be a secret between you and him wouldn't it?

ASSISTANT COMMISSIONER: Excuse me, could you wait one minute.
Thank you. Yes.

MR JONES: It's a hypothetical, if (not transcribable) assist this
Commission (not transcribable)

MR FARMER: It goes to intention.

10 MR JONES: What, intention about what he thought about what somebody
else might think?

MR FARMER: About the purpose of the money.

ASSISTANT COMMISSIONER: Well, I think what's being asked is the
factual situation, that if Mr Backhouse had not said anything factually they
would've been the only two people who knew about it. I don't think it's
improper to put that to the witness. He hasn't answered it on the previous
occasion. Have one more go.

20 MR FARMER: Translate the question?---If he saw that way, could be.

You mean, sorry?---Number 1, okay, there are two things. Number 1, in
Korea that is usual practice. Number 2, that money is not that big amount.
Also I did not expect anything in return.

Well, at the time you gave that money over, as I understand your evidence
from December last year, you had to work very hard to make \$2,000, didn't
you?---That's correct.

30 So \$2,000 is a significant amount of money for you?---That's right.

You knew that Mr Backhouse worked for the Council?---Of course.

You understood he was paid a salary by the Council?---Yes.

40 And that whatever he did in relation to your application was part of his
normal work?---Again, as I said, if I really intended to utilise this money to
the maximum extent I should have done through a working level but again I
simply thought that this money will be used for the, for the entire staff
dinner.

For everyone?---That's right.

All right. Commissioner, I seek to tender a transcript of a call intercepted
between Mr Backhouse and Mr Pyo on 4 December, 2009. I also seek to
tender the disc of the call and to have it played.

ASSISTANT COMMISSIONER: Perhaps the translator can translate it as it's played for Mr Pyo?

THE INTERPRETER: Which one, which document?

ASSISTANT COMMISSIONER: We are going to play a tape-recording of a conversation between him - - -

THE INTERPRETER: Oh, I see.

10

ASSISTANT COMMISSIONER: - - - and Mr Backhouse and perhaps you could translate it as it's played as best you can.

THE INTERPRETER: Okay.

ASSISTANT COMMISSIONER: A transcript will be coming up on the screen.

20

TELEPHONE INTERCEPT PLAYED

[3.36pm]

MR FARMER: Can I have exhibit numbers?

ASSISTANT COMMISSIONER: The transcript and the disc will be Exhibit 18.

30

#EXHIBIT 18 - TRANSCRIPTION OF LISTENING DEVICE OF DAVID BACKHOUSE AND DAVID PYO DATED ON 4 DECEMBER 2009

MR FARMER: Thank you.

Mr Pyo, do you remember that telephone call?---I do.

40

Do you see down the last entry on the page, the first page, sorry. Oh no, sorry, I've got a different one. Keep going. Mr Backhouse said, "That um, was a lot of money, \$2,000." Do you remember that? And you say, "Ah, that's right, it's for the paperwork." Do you remember saying that?---I sincerely tried to say that this, this is the money for your hard work so far, so far you have done good work so far.

Yes. But I'm asking you about what you actually said?---Because again my English is, I mean, in the lack of English knowledge, that's why sometimes I'm confused myself, whether, whether I express right or wrong.

But do you recall saying to him these words, “So do you spend for your family”?---So can I explain about it?

First of all, did you say or you heard yourself say, didn’t you, “So do you spend for your family”?---When I say, when I say family that simply means Council family, not his own family.

10 Well, I suggest that what you meant by that was that Mr Backhouse should spent it on his own family?---Again, I expressed my gratitude to him saying that you have done, so far you have done good work to me so spend the money for your staff, not for your family at home, for your staff.

Mr Pyo, you said to him, “Because long time helping me and my family, everything, - - -

MR JONES: I object.

MR FARMER: - - - so do you spend for your family?”

20 ASSISTANT COMMISSIONER: Objection.

MR JONES: I object. My friend if he is going to put it fairly the witness should read the whole of the document, it refers to paperwork and families because long time helping. The construction that my friend seeks to prefer is to bring one little piece out to satisfy the position.

MR FARMER: I’ll put it all. Just to stop - - -

30 ASSISTANT COMMISSIONER: Counsel’s going to put the question again.

MR JONES: Yeah.

40 MR FARMER: Look, My Pyo, Mr Backhouse said to you, “That was a lot of money \$2,000.” Right. You said, “That’s right, is for the paperwork” and then something that couldn’t be heard, “families because long time helping me and my family everything.” And then you said, “Sir, do you spend for your family?” As at 4 December last year you knew what the English word family meant didn’t you?---In Korea the concept is a little bit different because when you say family that covers not only the real family back home but also the family in the organisation.

So the English word family that you used on 4 December, 2003 meant you, your wife and your children didn’t it?---I just expressed general (not transcribable) because it improved my son, my wife and myself.

That's right. Your family not any staff members or cleaners or cooks or waitresses or waiters that worked in any of the family businesses?---That's right.

Yeah. Member of the Pyo Family Trust, that's who you meant isn't it?
---That's right.

10 And when you said, "so do you spend for your family" you meant Mr Backhouse and his family, his direct relatives?---No, I didn't mean that.

Why didn't you say then "for all the staff"?---If my English is good enough, yes, I should've done that way but unfortunately my English was bad so I just simply (not transcribable) my poor English.

THE INTERPRETER: Excuse me. Can I have quick toilet break please?

ASSISTANT COMMISSIONER: Yes.

20 MR FARMER: All right. That might be a convenient time anyway. I may just clarify if there's anything else to put.

ASSISTANT COMMISSIONER: All right. We'll have a brief adjournment.

SHORT ADJOURNMENT [3.46pm]

ASSISTANT COMMISSIONER: Thank you.

30 MR FARMER: Thank you. Mr Pyo, in circumstances where you were still negotiating did you think that the payment of \$2,000 to Mr Backhouse would put him in an awkward position?---I didn't think about it because I already received the key and I simply wanted to express my gratitude to him for his past work.

And when you say his past work do I take it you mean all of the staff members' past work?---That's why.

40 Had you ever had dealings with Council staff before?---No.

Did you at any time access Strathfield Council's website?---Yes, I, I visit it about three to four times.

And did you see that on the website they had various links to different documents?---Yes, I noticed.

Yeah. Did you see a link to the Business Ethics Policy?---I didn't see that.

Did you see a link to the Gifts and Benefits Register?---I didn't see.

What did you see when you went to the website?---There's, there's a news, Council news in Korean version.

Right. Did you speak to your solicitor at all about whether you should give a gift to the Council or any of its staff?---I didn't.

10 Were you ever given any documents by Council staff which had been translated into Korean?---No.

Did you ever get your son to sit with you at the computer while you went through the website of the Council?---No, we didn't sit together and view together, we didn't.

All right. And prior to giving the card with the money in it to Mr Chau had you ever heard that it was illegal to give money to Council staff?---Again, again because of my lack of English I did not know about that.

20 And prior to giving this money to the Council staff had you ever heard of the Independent Commission Against Corruption?---In fact this was the first time for me to get to know about ICAC.

Commissioner, can I just tender three policy documents of the Council. One headed Code of Conduct adopted 5 August, 2008. Another Purchasing and Tendering Operational Guidelines as at March 2007. And another Gifts and Benefits Register Staff Policy (not transcribable) Performance Policy as at 3 December, 2009. I note that it has an operational date of 15 August, 2008 and it was revised on 3 December, 2009.

30 ASSISTANT COMMISSIONER: Yes. The Code of Conduct will be exhibit 19. The Purchasing and Tendering Policy exhibit 20 and the Gifts and Register Policy exhibit 21.

#EXHIBIT 19 - CODE OF CONDUCT ADOPTED 5 AUG 2008

40 **#EXHIBIT 20 - PURCHASING AND TENDERING OPERATIONAL GUIDELINES MARCH 2007**

#EXHIBIT 21 - GIFTS AND BENEFITS REGISTER STAFF POLICY PEOPLE PERFORMANCE POLICY AS AT 3 DECEMBER 2009

MR FARMER: Do you see on the screen, Mr Pyo, a document in English, Gifts and Benefits Register Staff Policy?---(NO AUDIBLE REPLY)

Were you ever given a copy of that document in the Korean language?
---No, I've never seen this.

All right. And I'm just going to have another document put on the screen,
the code of conduct. Again, were you ever shown a copy of a document like
that which had been translated into English?

10 ASSISTANT COMMISSIONER: Do you mean to say translated into
Korean.

MR FARMER: What did I say?

ASSISTANT COMMISSIONER: Translated into English which may not
be far from - - -

MR FARMER: I usually only operate till 4 o'clock.

20 ASSISTANT COMMISSIONER: I'm sorry. Counsel said translated into
English, he meant translated into Korean, has he ever seen a copy of that
translated into Korean?

THE INTERPRETER: He said no, that's why. He already said no, never.

ASSISTANT COMMISSIONER: All right.

MR FARMER: Thank you. I should tender that Code of Conduct as well.
Oh, I have done that, haven't I.

30 ASSISTANT COMMISSIONER: You have tendered it.

MR FARMER: Yes, thank you.

Yes, thank you, Commissioner, that's all.

ASSISTANT COMMISSIONER: Yes, Mr Jones?

MR JONES: Yes, thank you, Commissioner.

40 Mr Pyo, do you have a transcript of the listening device still before you?

MR FARMER: No, it can be put on the screen.

THE INTERPRETER: I'm sorry?

MR JONES: I'm just going to get a document put up on the screen if that
would be convenient, the transcript of the listening device and if I could
take you to that point that counsel assisting sought to make there?

THE INTERPRETER: Where about?

MR JONES: If I can just take you to the point that counsel assisting took you to where it says, you said, Mr Backhouse said, "Yeah that um, was a lot of money, \$2,000." And you reply there, "Ah, that's right." And you gave evidence before that you agreed it was a substantial sum and you go, further you say, "Is for the paperwork"?---So I mean the paperwork so far not in the future but so far.

10 And then there's something further, it says, it's unintelligible and then it refers to, "Families because long time helping me." Now, the question I have for you is Mr Backhouse or his wife or children, have they ever helped you?---I don't, I don't even know whether Mr Backhouse has his wife, has his children or what kind of family members does he have, I don't know but when I used the word, the version family that means the staff.

Yes. Well, unfortunately if you don't know we don't know either and Mr Backhouse gave a statement and nobody knows whether he's a father, a single person or otherwise so I won't take that further. You gave evidence
20 on 23 December last year, and I think you've said what you've said there was true and correct subject to matters you've clarified today?---I understand.

You gave evidence on 11 December, that on 11 December, 2009 you paid for and presented 13 scholarships to the Homebush Primary School?
---That's correct.

And as I understand the position, not only do you not have children at that school but none of your children ever went to that school?---That's right.
30

So did you expect to get anything out of your 13 scholarships that you donated to that school?

MR FARMER: I object to that, sorry?---Not at all.

I object to the relevance of this line.

ASSISTANT COMMISSIONER: Yes, Mr Jones, I must say I, I cannot see the relevance of what could be termed charitable donations as opposed to a
40 payment to someone with whom one is in a business relationship. I don't know whether your client has ever made any donations to somebody with whom he's in a commercial relationship but that would be closer to the mark.

MR JONES: Most certainly but a long way from the mark of an assertion that he's paid a lot of money to a Council delegate to get an advantage and that's going to be assertion of the Mr Farmer, I assume.

ASSISTANT COMMISSIONER: Well, and I don't see how that's countered by saying that he's a charitable person who makes donations when this is a very different situation where he was a business man who had a certain commercial agenda. It, to me, it's entire irrelevant that he is a charitable person who makes donations to people who can't help him in a commercial situation. I don't really see the relevance.

10 MR JONES: But for the fact that it occurred some, within seven days of this event, it was Christmas time and his assertion is this was a Christmas gift and it's a generous time and I give at that time. So I can't (not transcribable) anything that you put to me, Commissioner, but there are other bases upon which it would have some degree of relevance and the eventual submission would be put at the end of the day.

ASSISTANT COMMISSIONER: Well, the evidence your client gave about the scholarships is already in the transcript which has been tendered and is part of the, the proceedings here. We've tendered now the private hearing transcript. I don't know that there's much more to be said about it. I just - - -

20

MR JONES: That be the case I don't have anything further.

ASSISTANT COMMISSIONER: Thank you. Do you wish to - - -

MR GRIFFIN: I have no questions.

ASSISTANT COMMISSIONER: No. All right. Well, Mr Pyo can be excused at this stage, I take it, Mr Farmer?

30 MR FARMER: Yes, thank you, your Honour, Commissioner.

ASSISTANT COMMISSIONER: Yes. Mr Pyo, you are now excused from further attendance, thank you, and you and the translator may leave, thank you. You're welcome to stay in the hearing room but you can leave the witness box?---Thank you very much.

Thank you.

40 **THE WITNESS WITHDREW** **[4.13pm]**

ASSISTANT COMMISSIONER: Now, Mr Griffin, I presume you won't want to make oral submissions, am I right in that?

MR GRIFFIN: As long as I can be assured that there is no prospect whatsoever of adverse finding against my client I would not wish to make any submissions.

ASSISTANT COMMISSIONER: I'm sure, is that correct, Mr Farmer?

MR FARMER: That's, that's my position. I won't be submitting to the contrary of what Mr Griffin has just indicated.

10 ASSISTANT COMMISSIONER: Yes, all right. Well, I think at this stage we do have time to proceed to oral submissions. As I said, the evidence has been in short compass so I want to allow people to say what they want to but perhaps you could start, Mr Farmer.

MR FARMER: Thank you. I may, if I am allowed, do a very briefly, Commissioner. This is a matter where there is no dispute, in my submission, that Mr Pyo, through his family trust, was engaged in a commercial transaction with the Council. It was a transaction of some significance. He had indicated that he was prepared to put \$1.1 million
20 towards this project which at that time included the golf course, take away the \$300,000 indicated to be spent on the golf course or the driving range. It was, as Mr Bourke indicated this morning, an investment of some \$800,000. In addition to the capital negotiations had been on foot as at 2 December where Mr Pyo was indicating he'd be prepared to pay \$16,000 per annum plus a percentage thereafter for the benefit of leasing or licensing these premises.

He had proposed in his business plan that he would do that for the purpose of obtaining or running a business which he would profit from. As I say
30 they are significant matters and at the time when negotiations had really come to the sharp end Mr Pyo having offered \$16,000 and the Council indicating in its correspondence to itself or internal memoranda that something in the order of \$20,000 per annum might be suitable that there was a closeness between the parties in relation to the agreement. The documents sent to the Council on 3 December, 2009, the day after the payment indicated that Mr Pyo was sticking to his guns in terms of \$16,000 and had incorporated into his side of the bargain an arrangement whereby he would be in a position to have first option should the Council so agree at the end of the five years.

40 So it was a significant point of time so far as the commercial arrangements were concerned when Mr Pyo arranged for a payment of money to Mr Backhouse. As has been made plain in the evidence today Mr Backhouse himself really had nothing much to do with the day-to-day arrangements and the only thing that he had to do at the end of the day was upon being satisfied about the arrangements or agreements that could be reached he would sign-off on this instrument on behalf of the Council. Even on Mr Pyo's evidence there is no indication whatsoever that Mr Backhouse had

given Mr Pyo advice or indeed any help of any personal nature. Notwithstanding that situation that is indeed what Mr Pyo writes in his note to Mr Backhouse, "Hello, David, thank you for your help", sorry, "thank you for your advice and help, thank you, from David Pyo." And enclosed with that note was \$2,000 in cash.

10 The question to be determined is whether Mr Pyo or anyone else for that matter has engaged in corrupt conduct. In my submission it has not been established in any way at all that anyone else has been engaged in corrupt conduct. In terms of section 249(b) of the Crimes Act "Corrupt commissions or rewards include any agent corruptly receiving or soliciting from another person a benefit as an inducement for doing or not doing something or having done or not having done something." Or "If any person", sub-section (2), "If any person corruptly gives or offers money or any benefit as an inducement or reward for or otherwise on account of the other persons doing or not doing something a serious offence has been committed and it carries with it a term of imprisonment of seven years."

20 It is in my submission plain that what Mr Pyo intended in relation to the money was that it be kept secret. Although he uses the intermediary of Mr Chau as the evidence is before you that the money was in a sealed envelope addressed to - it may not have been address to anyone as a matter of fact but just to be handed to Mr Backhouse. My Pyo did not say anything in particular at the time he handed it over, just made arrangements for it to be given to Mr Backhouse. Now, Mr Pyo says that small gifts are acceptable in Korea, even small gifts to public officials. And it seems that although he had not personally been engaged in that situation he was aware of the practice.

30 Now, that's in my submission to be contrasted with the situation here where he comes to Australia and the first time he has a dealing of any significance with a Council he makes a payment in cash to the General Manager of the Council. He denies that he intended to receive anything from it but in giving his sworn evidence both on 23 December and today he states that what he intended was a payment to the General Manager for distribution or spending on the Council staff by way of a gift. In my submission that doesn't stand with the information obtained in exhibit 18, the intercepted telephone call. Nothing is said about, in my submission, spending it on the other Council staff. It is, in my submission, fairly plain that what can be
40 heard is firstly an admission by Mr Pyo that he sent the money. Secondly, an indication from him that it was a lot of money and something to the effect of saying "Families because long time helping me and my family, everything." And then, "So do you spend for your family." Now whether that's a question or a statement is neither here nor there but it seems to me it makes it open to the conclusion that Mr Pyo was intending that the money be given to Mr Backhouse personally and not as he said in his evidence on oath that it was to be spread about amongst the Council staff.

So far as the expectation that something would be done or not be done it is clearly as I indicated at a time where Mr Pyo is expecting a result from the Council, ultimately Mr Backhouse would be required to sign-off on that result and again in the circumstances it seems to me that it's open to the conclusion that Mr Pyo was expecting that something would be done. What was outstanding at the moment was agreement as to the amount per annum, agreement as I understand it in relation to other matters which may not be of such moment but was still outstanding including the car park and so on. And what also was outstanding was the signature on the licence agreement.

10

Based on the plan lodged by the Pyo Family Trust there was somewhat of a significant benefit flowing to them should the deal be sealed and again what I say is that it's open to conclude that the payment was handed over in the expectation of something being done in exchange for the money. The nub of it is that there is sufficient evidence there for a jury properly instructed to come to a conclusion that the money was a corrupt payment and in those circumstances it would, in my submission, be open to you to conclude that the matter be referred to the Director of Public Prosecutions for consideration and prosecution under that section.

20

It is not, in my submission, a matter where based upon the information before you you are in a position to conclude that there was no way possible that this money being paid in the way it was paid was for any non-illegal purpose or for any legal purpose I should say.

The crucial facts in relation to that are, in my submission, the secret way in which it was paid and that there was, so far as Mr Pyo was concerned, a measure of trust placed in Mr Backhouse for some reason or other as to what he would do with the money. In all those circumstances I would submit that it's open to the Commission to refer the matter to the DPP for investigation.

30

In more general terms, there are some concerns in relation to the files presented by Council in response to the investigation of the complaint. They are matters that can be picked up, as I understand it, through dealings between corruption prevention officers at the Commission and the Council at a later time and unless you wish I do not propose to say anything more about those matters. So they'd be my submissions, thank you, Commissioner.

40

ASSISTANT COMMISSIONER: Yes, thank you. Yes, Mr Jones?

MR JONES: Madam Commissioner. If can address you firstly on what is the nub of counsel assisting's address about the secret way in which this transaction occurred. He puts the money with a Christmas car and the handwritten note from him personally into an envelope, he doesn't address it to anybody, he rings up Michael Chau, puts his name on the front of the envelope and says, "Michael, can you give this to Mr Backhouse." It's not a

secret. Indeed, it's probably lucky it got to Mr Backhouse. It hasn't even got his name on the envelope. Some of the evidence given by the Council officers I don't cavil what counsel assisting has said, you know, there's fairly inexact proofs and indefinite testimony about important dates and important times but it doesn't change the nature of this case. There's no secret about what he did in any way, form or manner but there's no doubt he did do it and but for his evidence on 23 December and but for his evidence today and but for the level of consistency, appreciating the dynamics of the translation, I don't cavil what counsel says, there would be a case to answer and the matter should properly be referred.

When there is cogent sworn evidence before this tribunal, this Commission, and you accept it, and I submit there's no reason not to because on matters which didn't do him any favours he was frank, he was forthright and he accepted the proposition and indeed, I don't think for one minute, I think the \$75,000, I think that was all wrong. I think Mr Bourke might have been clutching at straws in the witness box. I anticipate that might have been \$75,000 over five years but neither here nor there, I'm not going to take that a great deal further because Mr Pyo, in my view, was frank and forthright. He said it was an innocent, possible we might say naïve, but we can say that because we know what the law is. This Commission's experienced, terribly experienced in these matters. There's no doubt an inquiry was warranted. There's no doubt this is a most serious matter and there is no doubt that the message should get out to the community and the greater community in general, including all our cultural communities that it's not appropriate to hand cash or gifts over to anybody in the public domain. It might have been something accepted 20 years ago by all and sundry, but times have changed. But this man comes forward, he was frank and forthright, in my view you could accept what he says.

Some other things really come to play when you consider his evidence and that is that if he did want to influence somebody he's not giving the money to the right people. He knew full well that the people to influence, stage 2, was Mr Bourke and well, if he did want to do something at stage 1 but that's well, a long time ago, it was somebody different and indeed the final document I think produced, which is the parties to the agreement, it says for the purposes of negotiation in relation to any disputes that arise under this agreement. They had yet to make the agreement. He knew he had to get through Mr Bourke and his staff to get the agreement before they got to that point otherwise there is much validity in what counsel assisting has said, in my submission, the Commission would not be satisfied on the required standard that the payment of the money was a corrupt payment. I appreciate everything that counsel assisting has put but it's a submission I would make and I think I make it with some degree of weight because in my submission everything he said was quite frank, it was forthright, quite often against his own interests but if accepted provides a valid defence. I can't assist the court any further. I can do written submissions and repeat that five times over.

ASSISTANT COMMISSIONER: Yes. Mr Jones, I would, because of the difficulties which you obviously face with your client's lack of English, I am happy for you to be given 14 days to put in written submissions. If anything arises in further talks with your client that you think needs to be placed before the Commission, you're welcome to do so within 14 days because I do appreciate that there is the language issue to be dealt with so I'm happy to accept your oral submissions on this occasion, feel free within 14 days to lodge any further written submissions that you may wish to
10 makes.

Fear of not wanting to repeat what I've said orally is that there be available a transcript of today within the next 14 days?

ASSISTANT COMMISSIONER: Yes, I'm sure that can be made available. And I might just say that - you can address this now or later if you like. It seems to me that the timing of this payment is something that your client may need to address in that it appears on the evidence he was sent a copy of the draft agreement which indicated that the General Manager was the
20 person who would approve this on behalf of Council or sign the document in the morning of the 2nd and it does appear that this payment was made on the afternoon of the 2nd and whether any fair inference can be drawn from that, that that is why this payment was made to the General Manager.

MR JONES: I can address you on that now.

ASSISTANT COMMISSIONER: Yes.

MR JONES: And in very clear terms. The Commission has broad powers, the email of the 2nd was from the Council to his solicitor, he neither reads
30 English nor writes English. There is nothing here before the Commission in any of the evidence to say his solicitor consulted him about the contents of that email and document, nothing at all. Indeed his position is that I've locked my position in on 16 November, sorry, yes, on 16 November (not transcribable) exhibit 5, I've said \$16,000 is the mark and the reply says exactly that, \$16,000 but there's not a scrap of material that can satisfy the Commission that there was any discussion between his instructing solicitor on 2 December or on 3 December when his solicitor, not my instructing
40 solicitor, his solicitor sent the email in reply.

ASSISTANT COMMISSIONER: Well, I don't think that's quite true because he gave evidence that he did go through the draft document as I understand it prior to giving instructions to his solicitor, that he had it read to him and in particular he was asked by counsel assisting was he aware of the paragraph that referred to his, as the licensee being the person who'd sign the contract and the General Manager being the person who'd signed the agreement on behalf of the Council and he said he was aware of that provision.

MR JONES: Most certainly 3.20pm the reply was sent, I can't assist this Commission as to when he did that and it wasn't challenged by counsel assisting and I shouldn't point, that's the rudest thing anybody can do. But my submission this Commission then can't go and assume or conclude that he was aware of this document and the timing that the whole thing had to be signed off by the General Manager. Indeed his evidence bring, and he repeated on a number of occasions except in the translation issue that it had to be Mr Bourke and the others if he was going to validly bribe somebody or pay a corrupt payment to them. They're the people and if you go back to Mr Bourke's evidence he said, Yeah, that's right, I'm in charge of stage 2 and we still haven't finished stage 2. So the timing on the face of it is a real issue but when you delve into it a little bit deeper in the evidence the issue dissipates. I don't cavil with that and I saw that and I addressed it, the difficulty was that this Commission is left to assume one set of facts one way, one set of facts another way that before handing the money to Mr Chau that he was aware of the proposed draft agreement and that it had to be signed-off by the General Manager. I just can't draw that conclusion on the material before this Commission and in my submission nor can the Commission. And this is why I raise the point Justice Sully repeated in a case called The Queen v Mock and it's down in the New South Wales Law Reports now, I'll get that authority. But it repeats the Briginshaw Standard which is the standard in my view this Commission needs to get to and I might be wrong about that but inexact proofs and indefinitely testimony are not going to create the case. Hopefully I've addressed that short point.

ASSISTANT COMMISSIONER: Yes. All right. There's nothing else you want to say at this - - -

MR JONES: No, not at the moment, I'll obtain a transcript and if there's something else I validly assist with I will.

ASSISTANT COMMISSIONER: All right. Thank you for that, Mr Jones. Well, that would seem to conclude the proceedings at this stage. Obviously the Commission will consider all of the evidence and the submissions that have been placed before it and make its report in due course. Thank you for your attendance and this inquiry is now adjourned.

AT 4.36 THE MATTER WAS ADJOURNED ACCORDINGLY [4.36]