CITATION: Police v Reed *[2011] NTMC 007*

PARTIES:	POLICE
	v
	NOUVELLE DENISE REED
TITLE OF COURT:	Court of Summary Jurisdiction
JURISDICTION:	Criminal
FILE NO(s):	21028724
DELIVERED ON:	22.6.11
DELIVERED AT:	Darwin
HEARING DATE(s):	7, 8, 28 & 29 March 2011 & 18, 19 & 20 May 2011
JUDGMENT OF:	Daynor Trigg SM

CATCHWORDS:

Criminal Code Act – section 81
Words & phrases – "remuneration"
No case to answer – Zanetti v Hill (1962) 108 CLR 433@442 - Attorney General's Reference (No 1 of 1983) [1983] 2VR 410

REPRESENTATION:

Counsel:

Prosecution:	Ms Armitage
Defendant:	Mr P Elliott

Solicitors:

Prosecution:	DPP
Defendant:	Nil

Judgment category classification:	B
Judgment ID number:	[2011] NTMC 007
Number of paragraphs:	54

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21028724

[2011] NTMC 007

BETWEEN:

POLICE
Complainant

AND:

NOUVELLE DENISE REED
Defendant

REASONS FOR DECISION

(Delivered 22 June 2011)

Daynor Trigg SM:

1. On 6 September 2010 the defendant was charged on information with the following offences:

> On the 5th March 2009
>
> At Darwin in the Northern Territory of Australia
>
> 1. by a deception obtained property, namely $100, of another, namely the Northern Territory of Australia.
>
> Contrary to *section 227(1)(a)* of the *Criminal Code.*
>
> AND FURTHER
>
> On the 5th March 2009
>
> At Darwin in the Northern Territory of Australia
>
> 2. being a person employed in the public service furnished a statement, namely, a petty cash reimbursement form dated 5/3/09, knowing it to be false in a material particular.
>
> *Section 81* of the *Criminal Code.*

AND FURTHER

Between the 27th January 2010 and 5th March 2010

At Darwin in the Northern Territory of Australia

3. by a deception obtained property, namely the use of a Darwin City Council car-parking bay:

Contrary to *section 227(1)(a)* of the *Criminal Code.*

AND FURTHER

On the 8th February 2010

At Darwin in the Northern Territory of Australia

4. being a person employed in the public service furnished a statement, namely, submitted transaction summary form 112647, knowing it to be false in a material particular.

Section 81 of the *Criminal Code.*

AND FURTHER

Between the 28th April 2010 and 6th May 2010

At Darwin in the Northern Territory of Australia

5. by a deception obtained property, namely a head cap brand name “Aerial” to the value of $16.95, of another, namely the Northern Territory of Australia:

Contrary to *section 227(1)(a)* of the *Criminal Code.*

AND FURTHER

On the 6th May 2010

At Darwin in the Northern Territory of Australia

6. being a person employed in the public service furnished a statement, namely, submitted transaction summary form 117092, knowing it to be false in a material particular.

Section 81 of the *Criminal Code*

2. This matter was allocated for a 2 day hearing before Mr Cavanagh SM commencing on 7 March 2011. It appears that the matter was not listed in court before Mr Cavanagh SM at any time prior to the hearing commencing. Mr Cavanagh SM disqualified himself on the first day of hearing and then stood the matter down. Hence the file was directed to myself. The matter commenced before me at 12 noon, and at that time the defendant pleaded not guilty to all 6 charges.

3. Ms Armitage (counsel for the prosecution) provided an opening of the prosecution case, and also provided a written document headed "Elements & Particulars" following a request for particulars by Mr Elliott (counsel for the defendant) and as an aide to the court. This document stated as follows:

> Count 1
>
> 1. **By a deception**: by making a petty cash claim the defendant was asserting that she had expended $100 for official work related purposes whereas she had in fact expended the money on a gift of car parking to her sister who was not entitled to a work allocated car park.
>
> 2. **Obtained property as a result**: as result of that deception, $100 cash was given to the defendant from petty cash by Nikki Taylor-Feint.
>
> Count 2
>
> 1. **Employed in the public service in a capacity as to require her to furnish statements touching any remuneration payable to be claimed by herself**: Superintendent, petty cash claim form.
>
> 2. **Knowingly makes a statement false in a material particular**: The defendant personally completed the petty cash claim form. The cost code and reason for claim was asserted to be for "PCC" (the Police Commissioners' Conference) when in fact it was a gift of a car

park to the defendant's sister who was not entitled to a work allocated car park.

Count 3

1. **By a deception**: by using the CCC the defendant was asserting that the purchase was an official approved business purchase and not a personal, non-work related purchase.

2. **Obtained a benefit as a result**: the defendant obtained the use of Darwin Council car parking bay for her sister.

Count 4

1. **Employed in the public service in a capacity as to require her to furnish statements touching any remuneration payable to be claimed by herself**: Superintendent, all CCC users required to complete ICMS documentation in respect of each transaction.

2. **Knowingly makes a statement false in a material particular**: the defendant personally completed the ICMS documentation. The statements that "the card holder has incurred all expenses for official purposes claimed on behalf of the NTG while carrying out their designated role", and "Supt vehicle" were false as the car park was in fact purchased for the defendant's sister who was not entitled to a work allocated car park.

Count 5

1. **By a deception**: by using the CCC the defendant was asserting that the purchase was an official approved business purchase and not a personal, non-work related purchase.

2. **Obtained property as a result**: the defendant obtained possession or control of an Aerial brand head cap.

Count 6

1. **Employed in the public service in a capacity as to require her to furnish statements**

touching any remuneration payable to be claimed by herself: Superintendent, all CCC users required to complete ICMS documentation in respect of each transaction.

2. **Knowingly makes a statement false in a material particular**: the defendant personally completed the ICMS documentation. The statements that "the card holder had incurred all expenses for official purposes claimed on behalf of the NTG while carrying out their designated role", and "fuel" and "362311 fuel" were false as the purchase was for a personal cap and not fuel.

4. The prosecution case proceeded before me on 7, 8, 28 & 29 March 2011 & 18 May 2011. The prosecution closed their case in the afternoon of 18 May 2011, and Ms Armitage requested the matter then be adjourned as she was feeling unwell. That request was granted. When the matter resumed on 19 May 2011, Mr Elliott made a no case submission in relation to all of the charges herein. At my request, Mr Elliott had reduced his submission to writing, and he then spoke to that submission. In his submission he made reference to various exhibits by reference to a number only. This is not an accurate description. All exhibits tendered by the prosecution were allocated a number preceded by a "P". The defence tendered an exhibit during the prosecution case also, and this was marked "ExD1".

5. In considering whether there is a case to answer to any of the charges herein I bear in mind (and respectfully follow) what Kitto J said in *Zanetti v Hill (1962) 108 CLR 433 @ 442,* namely:

> The question whether there is a case to answer, arising as it does at the end of the prosecution's evidence in chief, is simply the question of law whether the defendant could lawfully be convicted on the evidence as it stands, - whether, that is to say, there is with respect to every element of the offence some evidence which, if accepted, would either prove the element directly or enable its existence to be inferred. That is a question to be

> carefully distinguished from the question of fact for ultimate decision, namely whether every element of the offence is established to the satisfaction of the tribunal of fact beyond a reasonable doubt.

6. I also have regard to the case of *R v R (1989) 18 NSWLR 74,* where Gleeson CJ cited the following passage from *Attorney-Generals reference (No. 1 of 1983) [1983] 2VR 410* with approval (and it was also followed by the NSWCCA in *R v JMR* in 1991) :

> The question whether the Crown has ultimately excluded every reasonable hypothesis consistent with innocence is a question of fact for the jury and therefore, if the Crown has led evidence upon which the accused could be convicted, a trial judge should not rule that there is no case to answer or direct the jury to acquit simply because he thinks that there could be formulated a reasonable hypothesis consistent with the innocence of the accused which the Crown has failed to exclude.

7. I now turn to the respective submissions of counsel. Mr Elliott's first submission was in relation to charges 2, 4 and 6, and was as follows:

> **In relation to counts 2, 4 and 6**
>
> It is submitted that these 3 counts allege behaviour that constitutes no offence known to the Criminal Code of the Northern Territory.
>
> In each count, the accused is alleged to have:
>
> > "being a person employed in the public service furnished a statement, namely ..... knowing it to be false in a material particular".
>
> Contrary to s 81 of the Criminal Code.
>
> *Sec. 81* of the *Criminal Code* is actually in the following terms:
>
> *Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any remuneration payable or claimed to be payable to himself or to any*

> *other person, or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter that is, to his knowledge, false in any material particular, is guilty of a crime and is liable to imprisonment for 3 years.*

8. When the wording in *section 81* is compared to the way charges 2. 4 and 6 have been laid I agree with Mr Elliott that an obvious problem is apparent. Firstly, the prosecution have at all times made it clear that they do not seek to rely upon the words "or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person", in order to make out the charges herein. Secondly, on the remaining words it is an essential element of a charge under *section 81* that the prosecution prove that any "return or statement" must be "touching any **remuneration** payable or claimed to be payable to himself or to any other person". However, those words (or nothing similar) appear anywhere in charges 2, 4 or 6. Hence, the prosecution have laid these three charges in a form which would not support a finding of guilt under *section 81* in any event.

9. I therefore agree with the submission of Mr Elliott that charges 2, 4 and 6 (as read at the commencement of the hearing) are not known to the law.

10. Ms Armitage made her submissions in reply on 20 May 2011, and handed up written submissions (as requested by me). In those submissions she addressed this point as follows:

> **Information Counts 2, 4 and 6 – no offence known to law**
>
> 1. Information counts 2, 4 and 6 clearly identify the offence which is charged by reference to the relevant section of the Criminal Code and by alleging the following elements, namely:

That Nouvelle Reed was a person employed in the public service,

She furnished a statement, and

Knew it to be false in a material particular.

2. Although each charge did not include the words:

In such capacity as to require him or her to furnish statements touching any remuneration payable to be claimed by herself

This description as to the nature or quality of the person employed was included in the particulars provided to the Defence during the opening address.

3. Section 81 of the Criminal Code included a number of alternatives as to how an offence can be committed. There is a requirement for the prosecution to prove either that the statements touch on remuneration payable or claimed to be payable to herself or to any other person. It is clear from the particulars and opening provided that counts 4 and 6 related to remuneration payable to another person, namely:

(i) In respect of count 4: that the payment was to Darwin City Council, and

(ii) In respect of Count 6: that the payment was to BP Petrol Station, Smith Street, Darwin

4. The prosecution relies on sections 181, 182 and 183 of the Justices Act. Each count on the Information provided a reasonably clear and intelligible statement of the offence. Further clarification of each count was provided by particulars and in the opening address. Counsel for the Defendant did not seek any further particulars or clarification as to any of the offences charged. If there is any identified defect in either the substance or the form of any of the counts this did not result in any prejudice being suffered by the Defendant.

11. Accordingly,it appears that Ms Armitage is accepting that the charges need amendment. I agree with the submission of Ms Armitage that the fact that the current charges are not known to the law would not prevent any amendment (see *section 183 of*

Justices Act). However, in my view, there would be no point in allowing any such amendment (now that the prosecution has closed it's case) if the evidence did not disclose a prima facie case to the charges as now proposed. Accordingly, I will turn to consider that aspect.

12. In his written submissions Mr Elliott stated:

> Putting aside the powers of the Court to order amendment, even if the Prosecution were given leave to amend these charges, it needs to prove the following matters in order to succeed on the counts:
>
> The Accused
>
> is a person employed in the Public Service;
>
> in such a capacity as to
>
> require him or
>
> to enable him to furnish returns or statements
>
> touching any remuneration payable or claimed to be payable to himself or to any other person;
>
> or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person
>
> makes a return or statement touching any such matter that is, to his knowledge, false in any material particular.
>
> Count 2 relates to touching any remuneration payable or claimed payable to himself or to any other person, while counts 4 and 6 do not relate to anything prohibited in the section.
>
> Count 2 relates to the submitting by the Accused of the petty cash reimbursement for the $100 for the car park of Selina Kliendienst. The prosecution has led evidence on elements 1 and 2 of s.81, and element 3 does not apply to this count. In respect to element 4, the particulars as provided by the Prosecution under the heading "Knowingly makes a statement false in a material particular" are as follows:

"The defendant personally completed the petty cash claim form. The cost code and reason for the claim was asserted to be for "PCC" (the Police Commissioner's Conference) when in fact it was a gift of a car park to the defendant's sister who was not entitled to a work allocated car park."

Whether the provision of the car park was a gift to the defendant's sister, and whether the sister was entitled to the car park are irrelevant to this count. However, assuming they were, the question is, even if it was a gift and the sister was not entitled to a car park:

"What evidence is there that the coding of the reimbursement as Police Commissioners conference is false when the uncontested evidence is that Selena Kliendienst was working, inter alia, on the Police conference?"

The highest that the prosecution case can be said to reach is that the entry is incomplete, or ambiguous, or capable of having been described differently, but there is no evidence that it is false.

In relation to counts 4 and 6, the prosecution needs to prove the impugned statements:

"touched any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person."

The statements made after the expenditure has been undertaken, and are for the records of the NT Police. There is no evidence whatsoever that:

the statements are required to be made by law; or

they certify anything for the purpose of any payment of money or delivery of goods to be made to any person".

It is submitted that it is clear that the offence of any payment of money or delivery of goods to be made. In the current case, the payment of money and provision of the service in count 4 and goods in count 6 has already happened, and so the statement is not made for the purpose of any payment of money or delivery of goods.

Furthermore, in relation to count 6, the prosecution case is that the statement made was for the purchase of a cap, and not for fuel as set out in the statement.

There is no evidence that the purchase set out in exhibit 11 was for a cap, save for an admission in the Record of Interview, which will be addressed below. The prosecution case is that on 28 April 2010, the accused stopped at a BP station in Darwin and purchased a cap. It relied on exhibit p.20 and the evidence of O'Brien to show this. In his evidence at p. 174 on 28 March he says the following:

> *If we can look at item number 2 on page 2. Are you able to tell us what sections are automatically populated through the information generated from the actual transaction and which sections need to be inputted by a person acquitting this document? ---The date is automatically populated of the purchase it comes through. BP Darwin City which would be the merchant. The cardholder has to input – after the forward slash what the actual item was. In this case it was inputted by the corporate credit card holder as fuel. The coding sequence. The 16AAC402 is a cost code that's allocated initially to that corporate credit card that's actually allocated to cardholder. It can be changed but it automatically populates to start with when it comes through the system.*

Therefore the prosecution evidence is that the date of the transaction is automatically populated of the purchase." The prosecution case is unequivocally that a cap was purchased on 28 April, and a false statement was submitted in relation to that purchase. The date of the transaction on exhibit 11 is 29 April. Therefore there is no evidence that the statement made in exhibit 11 relates to the purchase relied upon by exhibit 20.

The prosecution case is that on 28 April 2010, the accused stopped at a BP station in Darwin and purchased a cap. It relied on exhibit p.20 and the evidence of O'Brien to show this. In his evidence at p. 174 on 28 March he says the following:

If we can look at item number 2 on page 2. Are you able to tell us what sections are automatically populated through the information generated from the actual transaction and which sections need to be inputted by a person acquitting this document? ---The date is

> automatically populated of the purchase it comes through. BP Darwin City which would be the merchant. The cardholder has to input – after the forward slash what the actual item was. In this case it was inputted by the corporate credit card holder as fuel. The coding sequence. The 16AAC402 is a cost code that's allocated initially to that corporate credit card that's actually allocated to cardholder. It can be changed but it automatically populates to start with when it comes through the system.
>
> Therefore the prosecution evidence is that the date of the transaction is automatically populated of the purchase." The prosecution case is unequivocally that a cap was purchased on 28 April, and a false statement was submitted in relation to that purchase. The date of the transaction on exhibit 11 is 29 April. Therefore there is no evidence that the statement made in exhibit 11 relates to the purchase relied upon by exhibit 20.
>
> The admission in the record of Interview cannot be an admission to that which is the Crown case, i.e. that a cap purchased on 28 April was identified as fuel in exhibit 11.

13. Accordingly, as I understand this submission if the date of 29/04/10 is automatically generated by the computer then it is on it's face a different transaction to the receipt for 28/04/10 that is attached. Therefore, it is submitted that the prosecution have led no evidence to explain the discrepancies in the dates, nor have they led any evidence to show that $16.95 was not in fact paid for fuel on 29/04/10, by payment on the CCC.

14. Whilst this submission at first blush would appear somewhat opportunistic, it cannot, in my view, be dismissed out of hand. The prosecution has led evidence as to the defendant's use of her fuel card to purchase fuel during the dates of 19/02/10 and 22/05/10 (ExP46). However, no printout or evidence has been led as to what amounts were placed onto the defendant's CCC during this same period. It would be a strange coincidence if the defendant bought a cap from BP on 28/04/10 for $16.95 on CCC, and then attended the very next day and purchased fuel for exactly the same amount, and used her CCC instead of a

fuel card. But, as Mr Elliott points out there is no evidence in the prosecution case to exclude it as a reasonable possibility.

15. Ms Armitage in her written submissions made some general observations about the evidence before turning her attention to the specific charges. In relation to charges 2, 4 and 6 her submissions were as follows:

> **Count 2**
>
> 28. The prosecution is required to establish that the Defendant
>
> (1) Was employed in the Public Service
>
> (2) In such a capacity as to require or enable her to furnish returns or statements touching on any remuneration payable or claimed to be payable to herself
>
> (1) Makes a return or statement touching on any such matter
>
> (2) Knowing it to be false in a material particular.
>
> 29. The evidence establishes directly and by reasonable inference each element.
>
> - Elements 1 and 2 are not in dispute and are in any event established by evidence of the Defendant's employment and by, inter alia, Exhibit P 32.

I digress to note that element 2 is in dispute given my observations in relation to "remuneration" which follow later in these reasons. I return to the submissions:

> - Element 3 is established by Exhibit P 9, the admitted facts in Exhibit P 47 and the Defendant's admissions in the record of interview a p 2.
>
> - Element 4 is established by Exhibit 34, the evidence of Ms Kliendienst, Ms Taylor-Faint, Commissioner White and the initial evidence of Ms Ramage, lies in the record of interview, that it was purchased on the Defendant's personal credit card whilst she was on

leave, and that it was not within her delegated authority as limited by departmental guidelines.

I do not understand how the prosecution allege that it "was not within her delegated authority", other than to allege that it was not a proper "work-related" expense. The defendant had authority to spend petty cash up to $100. The car park was for this amount. On the prosecution evidence the car park was used by SK during the time that she worked in the NAB Building (at least in part) on the PCC. Accordingly, on it's face ExP9 arguably is not "false", but the defendant's explanation in her EROI does not raise any of these issues and therefore does not appear to assist her.

Count 4

32. The prosecution is required to establish that the Defendant

(1) Was employed in the Public Service

(2) In such a capacity as to require or enable her to furnish returns or statements touching on any remuneration payable or claimed to be payable to another

(3) Makes a return or statement touching on any such matter

(4) Knowing it to be false in a material particular.

33. The evidence established directly and by reasonable inference each element.

- Elements 1 and 2 are not in dispute

As will appear later in these reasons, element 2 is in dispute given the use of the word "remuneration".

- Elements 3 and 4 are established by the evidence set out in paragraph 29.

I am unable to accept this submission. Paragraph 29 deals with ExP9 and the evidence relating thereto. These all refer to alleged offending behaviour approximately one year before the alleged offending behaviour herein. Paragraph 29 does not relate to charge 4 at all. I assume that this must be a typographical error.

Count 6

36. The prosecution is required to establish that the Defendant

(1) Was employed in the Public Service

(2) In such a capacity as to require or enable her to furnish returns or statements touching on any remuneration payable or claimed to be payable to another

(3) Makes a return or statement touching on any such matter

(4) Knowing it to be false in a material particular.

37. The evidence establishes directly and by reasonable inference each element.

- Elements 1 and 2 are not in dispute

As noted, the issue of "remuneration" is in dispute.

- Elements 3 and 4 are established by the evidence set out in paragraph 33.

The reference to paragraph 33 appears to be an error.

16. In the course of Ms Armitage speaking to her written submissions I pointed out that neither counsel had addressed me on the meaning of "remuneration" as it appeared in *section 81* (as this was directly relevant to charges 2, 4 and 6). Ms Armitage asked me to stand the matter down for her to consider this aspect, which I did. Upon resumption Ms Armitage referred to a dictionary definition, and then made some general submissions, and Mr Elliott made some general submissions in reply. Neither counsel took me to any decided cases. I drew counsels' attention to a number of cases in the Work Health jurisdiction, but neither counsel requested additional time to consider the issue further, or to make any further submissions.

17. I find that *section 81* is directly (and only) concerned with false statements:

> *touching any **remuneration** payable or claimed to be payable to himself or to any other person, or touching any other matter required by law to be certified for the purpose of any payment of money or delivery of goods to be made to any person.*

18. As noted earlier, the prosecution were not relying upon the second limb of the section, and accordingly the issue of whether the statements alleged to be false were "*touching any **remuneration**"* is a crucial element of the charge. In my view, by using the word "remuneration" the legislature has intended to limit the ambit of *section 81.* If the legislature had intended to catch all claims for money then the word "remuneration" would not have been used. The section would cover situations (for example) where a person put in false time sheets to claim "remuneration" that they were not entitled to. It would also cover a situation where a person was complicit in a false time sheet claiming "remuneration" that another person was not entitled to.

19. I have had cause to consider the meaning of "remuneration" in a number of cases under the *Work Health Act,* and *the Workers Rehabilitation and Compensation Act*. I summarised the cases in my decision of *Wakeling v Qantas Airways Ltd [2008] NTMC 075* at paragraphs 76-80 as follows:

> 76. It is settled law in the Northern Territory that a worker may receive non-cash benefits from his or her employer, the value of which ought to be included in the calculation of the worker's "remuneration" under section 49 of the Act (*Murwangi Community Aboriginal Corporation v Carroll (2002) 12 NTLR 121; Hastings Deering (Australia) Ltd v Smith [2004] NTCA 13*). The first issue herein is whether the concessional travel that the worker accessed (and others accessed through him) was part of his remuneration for the purposes of his NWE. If it is part of his remuneration then the next question is what is the value (in dollar terms) that should be added to his NWE.

77. The Act is not a general compensation scheme. It does not seek to compensate persons for any injury sustained out of or in the course of their employment. Section 53 (set out above) makes it clear that it is only where an injury results in or materially contributes to a worker's death, impairment or incapacity that there is payable such compensation as is prescribed in the Act.

78. On the pleadings (set out in full above) it is admitted that the worker suffered his first injury on 20 April 2002, and his second injury on 1 October 2006. It is further admitted (paragraph 8) on the pleadings that the employer assessed the worker's NWE as at the date of the second injury (namely 1 October 2006) as $927.35.

79. *In Fox v Palumpa Station Pty Ltd [1999] NTMC* I had cause to consider the meaning of "remuneration". At paragraphs 68 to 76 I noted:
"68. Remuneration is defined in the Concise Oxford Dictionary of Current English (eighth edition) to mean:
"1. reward; pay for services rendered. 2. serve as or provide recompense for (toil etc) or to (a person)."

69. In *Chalmers v. the Commonwealth of Australia (1946)73CLR 19 @ 37* Williams J confirmed that:
"**The ordinary meaning of remuneration is pay for services rendered**."

70. The English Court of Appeal considered the meaning of remuneration in the context of their worker's compensation legislation in the case of *Dothie and others v. Robert Macandrew & Co (1908)1 KB 803*. The definition there under consideration was "workman does not include any person employed otherwise than by way of manual labour whose remuneration exceeds 250l. a year." At page 806 Cozens-Hardy MR said:
"His pay was 216l. a year in cash.....he lived on board his ship. He got his food on board there, whether he was actually at sea or not; and it is not disputed, and it could not be disputed, on behalf of the respondent's that, in considering whether he is a "workman", you must have regard to the fact that his remuneration was nor merely 216l. in cash, but also board and lodging on board ship."
And at page 808:
"The true test is not, therefore, what Captain Dothie actually saved by his allowance, but what was the actual value to the workman of the reasonable board which was provided for him by the shipowners."
In the same case Fletcher Moulton LJ said at page 809:
"Now let us suppose that the workman is within the Act

and claims compensation. He is in receipt of certain monetary payments, but he is also in receipt of his food. Now it is incontestable that you must reckon the value of the food as part of the remuneration he gets. It is remuneration in the sense that it is something which he receives for his labour; it is remuneration in the sense that it is something the expense of which has to be borne by his master in order to procure that labour. But of course we cannot give compensation in food; we must turn it into money."

And Buckley LJ added at page 810:

"Here the workman was the master of a ship, and the remuneration payable in kind was his board on board the vessel. What we have to ascertain, I think, is the value of the board as in fact supplied to him, being, as it appears it was, reasonable according to the nature of his employment. The next question is how are we to ascertain that value, because the value to one person and the value to another person is often a different thing. I think that the value that we ought to arrive at is the value to the workman reasonably ascertained. It is not necessarily the cost to the employer, it is the value to the workman."

The Court of Appeal again considered the matter in *Skailes v. Blue Anchor Line, Limited (1911) 1 KB 360*. At pages 363-4 the Master of the Rolls Cozens-Hardy said:

"Now "remuneration" is not the same thing as salary or cash payment by the employer. The word "remuneration" is only found in s.13 of the Act and in Sched. I., par.2(a), and this latter paragraph satisfies me that remuneration involves precisely the same considerations as earnings. I do not think it is open to this court, after our decision in *Dothie v. Robert Macandrew & Co* to take any other view. We there held that the value of board and lodging must be brought into account in considering whether the remuneration of a deceased man exceeded 250l, and that the mere cash salary was not to be solely regarded."

In the same case Lord Justice Fletcher Moulton said at page 367:

"This "remuneration" is the remuneration under the contract, and therefore is not identical with the "earnings" or "average weekly earnings" of Sched. I., Pars. 1 and 2."

He went on to add at page 369:

"If in addition to wages there is remuneration in kind, such as gratuitous board and lodging, it must take a fair estimate of the annual value of such remuneration to the workman. And even where part of the remuneration is in the form of gratuities so customary and so capable of being estimated as to justify their inclusion in "earnings"

(as in the case of waiter's tips), I think it probable that they also must be taken into consideration in deciding whether the contract of service comes within the exception."
The majority of the Court of Appeal in that case held that "earnings" was synonymous with "remuneration". Fletcher Moulton LJ was in dissent on this point.

71. The Full Court of the Supreme Court of Victoria also had cause to consider the word "remuneration" in *Connally v. The Victorian Railways Commissioners (1957) VR 466*.In a joint judgment by Herring CJ and Gavan Duffy J their honours said at page 467:
"The question we have to answer appears to us therefore to depend on the meaning to be given to the word "remuneration" in the definition of "worker" in s.3(1). Does it mean the sum the worker actually receives from his employer under their contract, or that sum less sums which because of the contract between employer and workman are to be deducted in calculating the worker's remuneration, or does it mean the sum by which the worker is richer after deducting from what he receives from his employer what he has had to expend, or has lost, in performing his obligations under the contract, or if it has none of these meanings what other meaning has it?
For ourselves, apart from authority, we would see no reason for giving to the word "remuneration" other than what we take to be its ordinary meaning "pay for services rendered or work done".
Their Honours concluded at page 472:
"We may conclude by saying that in our opinion "remuneration" in s.3 is not to be construed by considering the meaning to be given "average weekly earnings", "earnings", or any other word or phrase. It should be given its natural meaning unless there is reason to do otherwise. In our judgment that natural meaning is the full sum for which the worker is engaged to do the work in question and does not mean the sum found by balancing his gains and losses or by deducting from the moneys received by him for his services the expenses he had to incur for the purpose of putting himself in a condition to earn his remuneration."
Following upon this decision Sholl J considered the matter in *Dawson v. Bankers and Traders Insurance Co Ltd (1957) VR 491*. At page 497 he held:
"Board and lodging are properly included in remuneration, - at any rate where they are not provided solely for the benefit of the employer*, Dothie v. Robert Macandrew and Co*, supra; *Skailes v. Blue Anchor Line*

Ltd, supra. And they are to be included, not at a figure representing the actual saving to the employee which they represent, but at their value to him, *Dothie's case*. In calculating that value, the test is not necessarily the cost to the employer."
In the end result Sholl J in that case calculated the worker's remuneration by adding up his cash salary, plus the value of his board and lodging, plus the value of the transport provided by the employer.

72. In the case of *Rofin Australia Pty Ltd v. Newton (1997) 78 IR 78* the Australian Industrial Relations Commission considered the meaning of remuneration. In a joint decision the Commission (comprising Williams SDP, Acton DP, Eames C) said at page 81:
"The term now used is "remuneration", a term which denotes a broader concept than salary or wages. "Remuneration", in our view, is properly defined as the reward payable by an employer to an employee for the work done by that employee in the course of his or her employment with that employer. It is a term that is confined neither to cash payments nor, necessarily, to payments actually made to the employee. It would include non-pecuniary benefits and payments made on behalf of and at the direction of the employee to another person out of monies otherwise due to that employee as salary and wages."

73. Hence, in the case of *Bell v. McArthur River Mining Pty Ltd (1998) 81 IR 436* the Commission accepted (at page 449) "that the provision of board and meals while on site at McArthur River Mining may be a component in the assessed rate of remuneration applicable to Mr Bell."

74. I also note the following passage in the work by Hill and Bingeman: "Principles of Worker's Compensation" at page 122:
"In all cases the calculation of average weekly earnings is concerned not only with money wages but also with what the worker receives in kind from the employer (*Simmonds v Stourbridge Glazed Brick & Co (1910) 2 KB 269; Great Northern Railway Co v Dawson (1905) 1 KB 331*). In the Australian countryside, rural workers are commonly provided with housing, meat, wood, milk etc, as part of their remuneration."

75. From my limited researches I have not been able to locate any authority which goes against, or seriously doubts, any of these authorities. Mr Bryant did not take

> me to any authorities to support his contention that remuneration was limited to wages paid only.
>
> 76. I therefore find that for the purposes of the definition of "normal weekly earnings" in assessing what the worker's gross weekly remuneration was that he earned the Court is not limited to the actual wages received but may look at all the benefits of the employment. The onus would be upon the worker to establish that any particular benefit was in fact part of his remuneration, and then to introduce sufficient evidence to enable the Court to quantify it."
>
> 80. I do not understand that the Supreme Court is in disagreement with anything in those paragraphs.

20. Whilst these decisions are all in the worker's compensation field I consider that they still provide some assistance herein. The general effect of the aforementioned decisions is that for something to be "remuneration" there needs to be some connection between it and a person's services or toil provided. In my view, "remuneration" does not include a work expense to which a person might be entitled to a re-imbursement, if they happen to have paid for it out of their own pocket. Further, in my view, if a person claimed a re-imbursement (or filled in paperwork to attempt to justify a payment out) that was false (either for something that did not in fact take place, or for a different amount, or for something that was not properly work related) that would not change the nature of the payment. It would not become "remuneration" by this fact alone.

21. If a plumber goes to and from work each day in his own transport but then uses a work vehicle (full of what he needs to do his work) whilst at work, then the use of that vehicle is not a part of his remuneration. The same would be true if the employer allowed the worker to take the work vehicle home so that the worker could travel directly to and from work sites. It would only be if the worker were able to use the vehicle for private purposes outside of work hours, and not associated with

the performance of work on any given day, that it would then potentially come under remuneration (for the private use component). Likewise, if a pen (or item of stationery) were provided to a worker as a necessary tool of work then it would not be a part of the worker's remuneration (even if the pen was used on occasions for personal reasons, such as writing out a private cheque).

22. In relation to charge 2, the prosecution sought to amend the charge to add the words "in such a capacity as to require her to furnish statements touching any remuneration payable to be claimed by herself" after the words "public service", and then after "statement" to add "touching any such matter".

23. The prosecution case was that at all material times the defendant was a Superintendent working with the Strategic Planning Command (hereinafter referred to as "SPC"), which was based in the NAB Building in Darwin city. Selina Kliendienst (hereinafter referred to as "SK"), was at all material times an Administrative Officer working with Police, primarily with the Drug And Alcohol Unit. Sometime in February 2009 SK was directed to work with the SPC (for a period whilst a Ms Taylor-Feint was on leave) at the NAB Building. There was no free parking in the immediate area.

24. At the relevant time the defendant was working on the upcoming Police Commissioner's Conference (hereinafter referred as the "PCC"), and it was a part of SK's duties to assist with that.

25. The allegation is that the defendant purchased a car park for SK on her own private credit card from the Darwin City Council (hereinafter referred to as the "DCC"), and she later sought a petty cash re-imbursement for that, by falsely asserting that it was a car park for the PCC. However, importantly in my view, it appears to be no part of the prosecution case that this particular

car park was (or could have been) any part of the defendant's remuneration.

26. On the prosecution evidence it is clearly asserted that the defendant was entitled (as part of her rank of Superintendent) to a police paid for motor vehicle and a police paid for car park. It is further asserted from ExP28 that some time prior to 27 January 2009 (and therefore before any of the alleged offending herein) the defendant had been allocated car park 120 in the NAB Building. And there is no evidence to suggest that this changed at any relevant time. Accordingly, it would appear to be the prosecution case that at all material times the defendant had car park 120 allocated to her for her use. Accordingly, on the prosecution case, this car park may therefore have formed part of her remuneration.

27. It was no part of the evidence that the defendant's remuneration entitled her to more than one police paid for car park at any time. Nor was it suggested that it was any part of the defendant's remuneration that she was entitled to any additional police paid for car park for family, friends or any other person or persons.

28. Further, the prosecution case was that SK (as an AO3 or 4) was never entitled to a police paid for car park for any reason. The evidence went on to suggest that there were some exceptions where an Administrative Officer had been given a police paid for car park, but these circumstances were rare (and importantly, the evidence did not go on to suggest that this then became a part of that person's remuneration). In XXN, Mr Elliott had a number of the witnesses confirm that there was in fact nothing (in writing) that prevented the defendant from giving a police paid for car park to SK or anyone. But on none of the evidence was it suggested that SK was or might ever be entitled to a

police paid for car park as any part of her remuneration, or the defendant's remuneration.

29. On the contrary, the prosecution case is predicated upon it not being legitimate and hence why it is said it was falsely described as being for the PCC. Hence, in my view, when charge 2 is analysed it is not properly a charge under *section 81.* In reality, the statement complained of was not "touching any remuneration payable or claimed to be payable to herself or to any other person". It was a claim for re-imbursement for an expense which the prosecution allege was not proper. Whether this allegation is correct or not, or whether some other offence may have been committed, is irrelevant. In my view the wrong charge has been laid. I find that on the prosecution case a prima facie case in relation to charge 2 has not been made out. I find no case to answer on charge 2, and that charge is dismissed.

30. In relation to charge 4, the prosecution sought to amend the charge to add "in such a capacity as to require her to furnish statements touching any remuneration payable or claimed to be payable to any other person" after the words "public service" and then after "statement" to add "touching any such matter". Ms Armitage went on to submit that the "any other person" in this charge was the DCC, as it was to them that the money was paid.

31. The allegation (as particularised) is that the claim (on ExP10) for a car park for "SUPT VEVICLE" was false, in that it was in fact "purchased for the defendant's sister SK, who was not entitled to a work allocated car park". Again, on the prosecution case it is asserted that the defendant still had car park 120 as her work paid for and allocated car park. Accordingly, car park 120 may have been part of the defendant's remuneration.

32. It appears from the evidence that the Drug and Alcohol Unit was moved into the NAB Building in September or October 2009 (T122) and SK moved with them. On 20 October 2009 the defendant purchased car park #197 (through until 31 December 2009) on her own credit card (ExP35) and gave this to SK as a gift (T123). This payment does not form any part of the charges before the court.

33. The prosecution case is that Superintendent Jones commenced working with SPC sometime in or about December 2009 (T84). On the evidence it seems that as a Superintendent she should also have been entitled to a police paid for car park as part of her remuneration. However, on the evidence of Jones she was on a return to work program (involving a few hours a day) and she didn't want to push the issue (T86). So she would pay for her own parking on occasions. However, the defendant was on leave for an extended period from 14 December 2009 until about 15 January 2010 inclusive (ExP24). Jones said in her evidence (T85) that the defendant provided her with her car park (presumably #120, but this wasn't clarified in evidence) while the defendant was on leave. Thereafter Jones stopped using the defendant's car park (T85).

34. The alleged offending payment was made on 27 January 2010 (ExP10), and the alleged offending "transaction summary form" (ExP10) was completed on 8 February 2010. On 8 March 2010 an extra access card was paid for (ExP37) and from maybe early March Jones was allocated car park #197, which she used (T86). After Jones left and Acting Commander Murphy commenced with the SPC, he then continued using #197 (T91).

35. Accordingly, on the prosecution case for about 4 months of the time bay #197 was being used (during the relevant period) it was being used by a person of the rank of Superintendent or higher. Both Jones and Murphy presumably should have been

entitled to a police paid for car park as part of their remuneration.

36. Charge 4 (as sought to be amended) seeks to make it clear that the transaction was alleged to relate to the remuneration of another, and not the defendant. The particulars then refer only to the "defendant's sister", and accordingly It appeared that she may have been the "another" relied upon. But in speaking to her submissions, Ms Armitage suggested that the "another" was the DCC, as they were the ones who were paid for the car park.

37. In my view, to characterise any payment to the DCC as a claim for "remuneration" on behalf of the DCC is misguided. What in effect the prosecution appears to be alleging is that the defendant is obtaining the benefit of a car park (for herself or SK) by falsely pretending that it was for a Superintendent's vehicle. But this is not what the defendant has been charged with.

38. For the same reasons enunciated in relation to charge 2, charge 4 cannot, in my view, be made out. It is no part of the prosecution case or evidence that SK ever had or could have had any entitlement to a police paid for car park as part of her remuneration. If the prosecution are correct, and the defendant got a car park for SK and then falsely tried to pretend it was for a Superintendent, then some other offence may have been committed, but a charge under *section 81* cannot be made out, and hasn't been. I find that there is no case to answer to charge 4, and charge 4 is dismissed.

39. In relation to charge 6, the prosecution again sought to amend the charge to add "in such a capacity as to require her to furnish statements touching any remuneration payable or claimed to be payable to any other person" after the words "public service" and then after "statement" to add "touching any such matter".

40. The particulars identify that the allegation is that statements "the cardholder has incurred all expenses for official purposes" and "fuel" are both false as the defendant in fact purchased a "personal cap". If the cap is said to have been for the defendant to use, I do not understand why the prosecution would be seeking to amend charge 6 to refer to remuneration "to any other person", rather than "to herself". But Ms Armitage submitted that the money was paid to BP, and therefore that was to whom the remuneration was paid.

41. The evidence suggested that Police were entitled to be supplied uniform items from stores as necessary. The evidence also disclosed that Police stores had a legionnaire's style cap that was available. The evidence (and submissions) did not address whether any such clothing items were part of the defendant's remuneration. Whether they were or might have been is one thing, but it seems clear that the prosecution case is that a "personal cap", and in particular the Aerial cap that she purchased wasn't part of her remuneration.

42. It was no part of ExP11 that she was claiming a "cap" as any part of her remuneration. She purported to claim "fuel", and the evidence suggested that this was a part of her entitlement (but should have been paid for on the fuel card provided with her motor vehicle). Whether all "fuel" was a part of her remuneration requires some closer analysis. The evidence was that as a Superintendent she was entitled to be provided with a work paid for car, and car park and fuel, and she was able to home garage the car. What the situation was when she was on leave was not adequately covered in evidence. In my view, whilst the defendant was using her car directly for a work purpose, then any fuel that she used would be purely work-related and not part of her remuneration. It would, in my view, only be fuel that she used during personal use of her vehicle that could be an added

benefit to her in return for her work or toil. And this fuel might then form part of her remuneration.

43. The prosecution case was that on 28 April 2010 the defendant was required to attend at the Mickett Creek shooting range at 0900 to undergo firearms training as part of her work. The defendant had arranged through stores to acquire the necessary accoutrement belt, holster, magazine pouch and keepers (ExP29) in order to undergo the training. On her way to the training the defendant stopped at BP in Darwin city and purchased an "Aerial" brand cap, which the defendant said in her EROI, she needed as she had no cap for the training. Garland in his evidence said that a cap should be worn for OH&S reasons. He also confirmed that the Police "Akubra" style hat was not appropriate as the ear protection could not be worn.

44. The transaction docket from BP (part of ExP11) is somewhat ambiguous as it contains two entries that may refer to the time of the transaction, as follows:

28 APR 2010 09:12

APPROVED 0008

Operator: CM

542543 28/4/10 08:42:07

45. The difference between the two entries (assuming that they both refer to time) is exactly 30 minutes. Perhaps the approval is done from a central computer that works on Eastern Standard Time, but this is speculation. If the transaction was at 0842, then she would have been potentially running late. If the transaction took place at 0912, then she was running very late.

46. On the prosecution case therefore it would appear that the fuel used in travelling to Mickett Creek for firearms training was purely work related and accordingly would not be part of her

remuneration. Therefore even if she had actually bought fuel then this would not have amounted to a claim for remuneration.

47. Further, it appears to be the prosecution case that no matter what the defendant's remuneration was, it never extended to a cap of this type. Accordingly, in my view, however the prosecution case is looked at (and even if the amendment were allowed) there is no evidence that would support a finding that the "fuel" as perhaps wrongly identified (although Mr Elliott submits this possibility has not been excluded) or the "cap" as actually purchased (on 28 April 2010) was any part of any remuneration payable to the defendant (or to BP).

48. For these reasons I find that charges 2, 4 and 6 have not been made out such as to establish a prima facie case. I will now turn to consider the remaining charges.

49. *Section 227* of the *Criminal Code* is in the following terms:

> (1) Any person who by any deception:
>
> (a) obtains the property of another; or
>
> (b) obtains a benefit (whether for himself or herself or for another),
>
> is guilty of a crime and is liable to the same punishment as if he or she had stolen the property or property of equivalent value to the benefit fraudulently obtained (as the case may be).
>
> (1A) In subsection (1), ***benefit*** includes any advantage, right or entitlement.
>
> (2) For the purposes of subsection (1), a person ***obtains property*** if he obtains ownership, possession or control of it and ***obtains*** includes obtaining for another and enabling another to obtain or retain.
>
> (3) Any person who by any deception obtains credit or further credit for himself or another, whether for the performance of an obligation that is legally enforceable or for one that is not, is guilty of a crime and is liable to imprisonment for 7 years.

> (4) Any person who, for the purposes of gain for himself or another, by any deception induces a person to engage in any conduct is guilty of a crime and is liable to imprisonment for 7 years.

"Deception" is defined in *section 1* of the Criminal Code as follows:

> deception:
>
> (a) means intentional deception by word or conduct as to fact or law and includes a deception as to the present intention of the person using the deception or another person; and
>
> (b) includes an act or thing done or omitted to be done with the intention of causing:
>
> (i) a computer system; or
>
> (ii) a machine that is designed to operate by means of payment or identification,
>
> to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

50. I note that omissions are specifically referred to in part (b) of the definition only, which relates to machines or computers. As ExP9 (for example) was a petty cash re-imbursement that (on the evidence before me) was considered by and actioned by persons (and not a machine or computer) then part (b) would appear to have no application herein. Accordingly, the prosecution would need to be relying upon part (a) of the definition, which does not refer to omissions, but it does refer to "conduct", which may (or may not) include omissions. I have reached no concluded view in that regard. The definition of "conduct" in *section 1* of the *Criminal Code* does not appear to apply to offences against *section 227.*

51. In relation to these charges Mr Elliott submitted that:

> **In relation to counts 1, 3 and 5**

These are all counts of obtaining either property or a benefit by a deception. In all counts the deception is particularised as “asserting” certain matters.

Count 1

The Prosecution alleges the accused asserted “that she had expended $100 for official work related purposes whereas she had in fact expended the money on a gift of car parking to her sister who was not entitled to a work allocated car park”.

The key exhibit is exhibit 5, and evidence of an authority in the accused to expend police monies for police related purposes. What is not in dispute is:

- The police are able to purchase designated car parks for employees.
- Some employees have an entitlement to a designated car park.
- Some employees who have no entitlement at all to a car park are given a police paid for car park.

The prosecution case seems to be predicated on the fact that the car park is a designated car park, and that Selina Kliendienst was not entitled to a dedicated car park. It is submitted that analysis misses the point. Ms. Kliendienst was an employee of the NT Police. She was working in a building adjacent to where the car park was provided. No witness was able to identify what it was that withdrew the authorisation that the accused had to spend monies for police related purposes.

I digress to note that unlike charge 1 (where SK was working with the SPC at the relevant time, which was where the defendant also worked), at the time relevant to charge 3 SK had (on the evidence thus far) no working role with the SPC or with the defendant (apart from being sisters and both working generally in the Police force). Accordingly, on the prosecution evidence there was no evidence to suggest any proper “police related purpose” if the car park was purchased for SK to use. I return to the submissions:

Several witnesses were asked to specify what it was that prohibited the accused from purchasing the car park for Selina Kliendienst, none could.

Hallett p.226, 29 March

Dowd p.17, 7 March

White p.23, 8 March

Michael Murphy p.35, 8 March

Anne Marie Murphy p.47 and 50, 8 March

Stavidis p.58, 8 March

O'Brien p.192, 29 March

Hofer

Kerr

Exhibit P22 and in particular paragraphs 33 to 45 "Conflicts of Interest" do not remove the authorisation of the Accused. At their highest, they give guidance to members of the Police Force as to how to make decisions.

Some said it was against policy, but no policy existed in the years 2007-10 (Hallett p.217, 29 March). Some said that Selina Kliendienst was not entitled to a car park, but as discussed above, that is not to the point. The highest the prosecution case can be put is that the purchase was unusual, undesirable, unwise, or a decision that any particular witness would not have made.

Counts 3 and 5

In terms of authorisation vested in the accused to purchase the car park in count 3, the same submissions are made as were made for count 1.

In relation to the purchase of the cap, the evidence is that the cap was purchased on the way to the shooting range, and that headwear is required at the shooting range. There is no evidence whatsoever that the cap was purchased for a private purpose, or for any purpose other than to be worn that day at the shooting range.

Furthermore, in relation to these counts, the prosecution has not particularised who was deceived. There is no causal connection between the deception alleged, and the property or benefit received.

By using a CCC at DCC or BP the accused is not asserting to either of those entities that the use of the card is authorised. Indeed, the DCC specifically said it has no interest in that matter 243-44, and there is no evidence that BP was in any way interested in the question.

52. In reply, Ms Armitage made submissions that commenced with a general submission about the evidence, as follows:

Evidence and law relevant to each count

5. *Section 11* of the *Procurement Act* provides:

(1) The Minister may, from time to time, issue directions with respect to the principles, practices and procedures to be observed in the procurement of supplies by and on behalf of the Territory or its agencies.

(2) Subject to this Act, all Accountable Officers and employees shall comply with the procurement directions.

6. *Section 16* of the *Financial Management Act* provides:

The Accountable Officer of an Agency must issue and maintain an accounting and property manual for use by employees of the Agency.

7. *Section 38* of the *Financial Management Act* provides:

(1) The Treasurer may, from time to time, issue directions to Accountable Officers concerning the principals, practices and procedures to be observed in the administration of the financial affairs of the Territory and Agencies.

(2) The Accountable officer of an Agency…and each employee of an Agency must comply with the Treasurers Direction.

8. *Section 3* of the *Financial Management Act* relevantly defines, inter alia, Accountable Officer, Agency and Employee.

9. *Section 14A* of the *Police Administration Act* provides:

(1) The Commissioner may, from time to time, in writing, issue such general orders and instructions as are necessary –

(a) to secure the good government and efficient working of the Police Force;

(b) ...

(2) Without limiting subsection (1), general orders may include a code of conduct to be observed by police.

10. In accordance with the legislative requirements the Accountable Officer for the Northern Territory Police, Fire and Emergency Services has issued and maintained (as amended from time to time) an Accounting and Property Manual (Exhibit P 32). The Manual sets out the forms, practices and procedures to be followed by employees in the financial administration of the Agency. Definitions are contained in Section 1.7 and include, inter alia, Corporate Credit Card, Employee, Petty Cash, Procurement and Records.

11. As an employee of the Agency, the defendant was required to comply with the policy and procedures set out in the Accounting and Property Manual. In particular, she was required to comply with Section 6 – Procurement (which remained in force throughout the period covered by the counts) and Section 16 – Corporate Credit Cards (which was replaced by Section 24 – Corporate Credit Cards in on 10 July 2009, see Exhibit P 8).

I digress to note that the submission in relation to section 6 is contentious. ExP32 was a copy of what purported to be the "Accounting and Property Manual" with an instrument of authorisation dated 2 March 2006 (purportedly under the hand of Paul White as "accountable officer, NT Police, Fire and Emergency Services"). Clearly section 6 headed "procurement" formed part of that document. However on 10 July 2009 (therefore prior to charges 3 to 6 arising) there was an updated "Accounting and Property Manual" (ExD1) which had re-numbered sections and the section headed "Procurement" did not make it's way into this document at all, but appeared in the index as "(under construction)". Whilst Ms Hallett expressed the view in her evidence that this meant the previous part of the Manual therefore continued, I found her opinion not to be compelling on the evidence thus far. I return to the submissions:

12. Further as an employee of the Agency the defendant was required to comply with the Treasurer's Direction on Corporate Credit Cards, Exhibit P2.

13. Further the Defendant was required to comply with the Northern Territory Police Orders on Code of Conduct and Ethics (Exhibit P 22), Responsibilities (Exhibit P 23) and Fraud and Dishonesty Control (Exhibit P1).

I digress to note that ExP22 was purportedly promulgated on 14 June 2007 purportedly in accordance with the provisions of *section 14A* of the *Police Administration Act.* But there is nothing else on the face of the document as tendered to indicate that it is in fact a valid General Order issued by the Commissioner of Police. In relation to ExP23 this also was promulgated on 14 June 2007 purportedly in accordance with the provisions of *section 14A* of the *Police Administration Act.* But there is nothing else on the face of the document as tendered to indicate that it is in fact a valid General Order issued by the Commissioner of Police. In addition, in paragraph 4 of that document is stated "This General Order is implemented by Gazette Notice and replaces General Order R2 Responsibilities", but no gazettal made it's way into evidence. Likewise, ExP1 was purportedly promulgated on 11 December 2008 purportedly in accordance with the provisions of *section 14A* of the *Police Administration Act.* But there is nothing else on the face of the document as tendered to indicate that it is in fact a valid General Order issued by the Commissioner of Police. Paul White was called to give evidence in the prosecution case. He said that he was the Police Commissioner from 17 December 2001 until 16 October 2009. Accordingly, he was the Police Commissioner at the relevant times that each of these General Orders were allegedly made. He was not shown or asked about any of these three exhibits, when he clearly could have been. Accordingly, in my view, the validity of any of these documents is questionable. I return to the written submission:

14. The Defendant was well aware of the policies, guidelines and procedures which governed and directed her actions as an employee and manager in the Police Force. The Defendant's knowledge is the only available reasonable inference that can be drawn from the following evidence:

(i) The Defendant's application for Superintendent (note for example p 2 Prescribed Responsibilities, p 12 Industry Knowledge, p 1 her length of service, breadth of experience and training) and subsequent promotion to that position – Exhibit P 44.

(ii) The evidence of Commander Jeanette Kerr as to the content and successful completion by the Defendant of the Prerequisite Knowledge Test, the Management Development program, and the Leadership Development Program (Syllabus tendered as Exhibit P 48).

(iii) The Defendant's attestation as to her awareness of her responsibilities and duties as an NTG Corporate Credit Card Holder pursuant to: s16 of the Accounting and Property Manual, The NT Procurement Act, the NT Procurement Regulations – Exhibit P 13 and P 14.

(iv) The Defendant's participation in an Executive Leadership Meeting in which Corporate Credit Card Procedures were discussed – Exhibits P15, 16 and 33.

(v) The Defendant's issuing of instructions concerning Procurement of Items for Strategic Planning Command – Exhibit P 18.

15. The Defendant has delegations to expend monies in accordance with departmental guidelines only – Exhibit P 5. Her authorisation to expend Police Service monies did not extend beyond this and was limited by the departmental guidelines.

I digress to note that ExP5 was a document that purported to be "updated July 2010". Accordingly, it post dates all of the alleged offending herein. If a similar document was in existence at the time of the alleged offending, it was not put into evidence. Accordingly, ExP5 may have no evidentiary weight. I return to the submissions:

16. Departmental guidelines include:

(i) The Instructions and Procedures on Fraud and Dishonest Control (Exhibit P 1) which defines Fraud for the purposes of the Agency (at 4.), outlines the Responsibilities of Managers (at 13.) and provides directions on policy guidance (at 20.)

But I digress to note as I did earlier that the evidence to support ExP1 as a valid and effective document is lacking. I return to the submissions:

(ii) The Code of Conduct (Exhibit P 22) and in particular paragraphs 13, 33-36, and 58-59.

But I digress to note as I did earlier that the evidence to support ExP22 as a valid and effective document is lacking. I return to the submissions:

> (iii) Responsibilities (Exhibit P 23) in particular 27.2 and 27.7

But I digress to note as I did earlier that the evidence to support ExP23 as a valid and effective document is lacking. I return to the submissions:

> (iv) The Accounting and Property Manual – Exhibit P 32.

But what parts remained in force for the period relating to charges 3 to 6, as opposed to perhaps being replaced by ExD1was not adequately covered in the evidence. I return to the submissions:

> (v) The Treasurer's Directions – Exhibit P 2

17. The Defendant specifically acknowledged (Exhibit P 13 and P 14):

That I <u>may not use</u> my NTG Corporate Credit Card for:

- Personal, non-work related purchases;
- Purchase of fuels and oils other than exceptional circumstances;
- Gaining personal benefits.

19. The Defendant specifically acknowledged (Exhibit P 12):

That the Card will only be used by me for business purposes, and not for private or personal purposes under any circumstances.

General Evidence as to Car Parks

19. The evidence establishes that Commissioned officers and Executive officers and above are entitled to work allocated vehicles and a designated, allocated, work paid for car park for a car park for their allocated vehicle.

> 20. Employees below these ranks are generally not entitled to a dedicated, work paid for car park. Two exceptions have been identified, namely, Commissioner approved car parks for the Commissioner's Executive / Personal Assistant who is a level 5 and for Glenda Ramage when she was employed as the Co-ordinator for the Police Commissioner's Conference in 2009. No other exceptions have been identified in evidence.

I digress to note that although no other existing exceptions were established, neither were any expressly excluded. Whilst the evidence established that none of the senior police witnesses called would have purchased a car park for an AO3 or AO4, none were able to identify anything in writing that expressly said it could not be done. But it would be virtually impossible (and probably pointless) to try to spell out everything that could not be done.

> 21. Employees of any rank are permitted to park in Police Service provided car parks on a first come – first served basis, including at the Mitchell Centre where a swipe card is used to access the area of general parking. These are not car parks provided for dedicated individual use but shared and may or may not be available at any given time depending on the level of usage.
>
> 22. The evidence establishes that Administrative Officers at levels 1-4 are not entitled to dedicated work paid for car parks as park of their employment.
>
> 23. The only reasonable inference established by the evidence is that the Defendant knew that her expenditure delegations did not extend to spending Police Service money on car parks. Furthermore, her expenditure delegation did not permit her to expend government monies on non-work related expenses.

I digress to note that this submission may, in my view, go too far. The prosecution appears to be taking some of the wording relating to CCC, and then transposing this over to the general delegations. Assuming that ExP5 was in force on the dates of the alleged offending (and this is not clear) then all it says is that a Superintendent of police has a "limit of $15,000 in any one instance" and has a petty cash "limit of $100 in any one instance". On the face of the document it is not related to CCC purchases. Accordingly, there is no reason to import any CCC obligations or restrictions into ExP5 (except where the CCC was actually used).

In relation to CCC the acknowledgement that is signed is that the card holder "may not use my NTG CCC for personal, non-work related purchases". Therefore in my view, the words "personal, non-work related" need to be read together. There is not the word "or" between them. However, the prosecution in this submission has taken the words "non-work related" and separated them from "personal" and sought to change "purchases" to "expenses". This may, in my view, change the intent and meaning of the matter.

In relation to charge 1, the prosecution case was that the defendant purchased a car park for a police employee who was transferred to work in the NAB building, against her wishes; and who was working with the SPC; and that working on the PCC was part of her work. There was no evidence to suggest that SK ever used the car park outside of her normal working hours, or on days when she was not at work. Yet the prosecution still allege that the car park was "non-work related". I do not understand this submission. It may not have been an appropriate purchase, but on it's face it was "work-related".

The other problem, in my view, with what the prosecution are attempting to do in relation to charge 1 is using the CCC wording for a petty cash re-imbursement. There is no basis that has been laid in the evidence before me for this to occur. The $100 relating to charge 1 was not paid for on CCC. Accordingly, the CCC requirements and obligations are irrelevant when considering that charge. I return to the submissions:

> Employees who were not entitled to work paid for dedicated car parks were required necessarily, to arrange their own parking and bare any expense (if any) associated with that parking. Their day to day travel and parking arrangements were not work related but a personal for those employees. That inference as to her knowledge is established by the following evidence:
>
> - When the Defendant starting working at Strategic Command Services in the NAB Building her allocated parking space was in the Mitchell Centre. She did not purchase a more convenient car park for herself on police monies.
>
> - The Defendant knew her own NAB car park was only allocated after approval at an ELG – Exhibit P 17.

- Although the Defendant discussed parking difficulties with the then Superintendent Bert Hofer, who was entitled to a car park, she did not purchase him a car park in the China Town complex. Superintendent Hofer's car park was approved "up the line".

- The Defendant did not approve Glenda Ramage's car park but was present during discussions when it was approved by Commissioner.

- The first car park purchased by the Defendant for her sister was on her personal credit card, and purchased whilst she was on leave.

But I digress to note that it was the evidence of Ramage that despite being on leave the defendant was coming in "effectively every day". I return to the submissions:

- The Defendant admitted in her record of interview (Exhibit P 42) that she purchased the first car park for her sister *out of goodwill* (at p 3.6).

- The second car park purchased by the Defendant for her sister was on her personal credit card and provided to her sister at home in a gift bag (T 123.4).

- The Defendant's sister's circumstances did not change between the second purchase in October 2009 and the renewal of that purchase in January 2010.

24. The Prosecution relies on lies in the Defendant's record of interview (Exhibit P 42) as evidence of her consciousness of guilt. Put directly, the Defendant knew she did not have authority to expend monies outside her delegated authority as circumscribed by departmental guidelines, she knew she did not have authority to expend monies on car parks in the way she did and so she lied about what she had done.

26. The following lies as to how and why car parks were purchased, who they were for, and who authorised the purchase are identified:

- At p 3.2 – *It was for myself and my sister*

  At p. 8.6 – *That was for me and my sister*

  At p 3.10 – *I was using it as well for PCC*

Contrary to the evidence of Ms Kliendienst that she was the only person using the car park (T 121.4) and the evidence of Commander Kerr and Exhibits P 17 and P 28.

- At p. 3.4 – *Because I didn't have a car park at the time*

  At p 4.3 – *No I didn't have a car park in the basement*

  At p 8.7 – *I didn't have a car park*

  Contrary to the evidence of Commander Kerr and Exhibits P 17 and P 28

- At p 4.5 – the defendant falsely asserted that the car park was used by a range of people – *Glenda Ramage, myself, Delcene Jones, Alex Knowler*

  Contrary to the evidence of Ms Glenda Ramage that she had her own allocated car park approved by the Commissioner.

- At p 4.7 – the Defendant falsely asserted that the car park paid for by her personal credit card was for *Glenda and myself for the PCC and we've actually spoken to the Commissioner and asked for approval.*

  Contrary to the Former Commissioner White's evidence that he only approved one car park for Ms Glenda Ramage (T 79.10).

- At p 5.7 – *We've had approval from the Commissioner*

  Contrary to the evidence of the former Commissioner who said he never approved a car park for Ms Selina Kliendienst or any general car park for the PCC (T 77.8, 79.9). He only approved a car park for Ms Glenda Ramage.

- At p 6.3 – the Defendant lied when she said that she didn't register a private vehicle to the car park

  Contrary to the evidence in Exhibit P 34.

- At p 6.6 – the Defendant lied when she said that she hadn't paid for a car park on her Corporate Credit Card on 27 January 2010.

Contrary to the evidence and inferences available from the evidence in Exhibits P 36, P37, P10 and the evidence of Superintendent Delcene Jones (T 86.4)

- At p 8.5 – the Defendant lied when she asserted *I didn't realise I had purchased it on my own credit card*

  Which is contrary to the evidence and inferences available from the evidence of Ms Kliendienst as to the gift bag at home; Exhibit P 35; and the Defendant's asserted recollection of conversation with Ms Helen Whittington at p 9.1 of the record of interview.

- At p 9.1 – the Defendant lied when she asserted the car park was for *my sister's car and my car.*

  Contrary to Ms Kliendienst's evidence it was a gift to her and to Exhibits P 17 and P 28.

- At p 9.6 – *Because Glenda Ramage moved into it*

  Contrary to the evidence of Ms Glenda Ramage who said she never moved from the car park allocated to her by the Commissioner.

- At p 9.7 and p 10.3 – the Defendant lied when she denied renewing the car park

  Contrary to the evidence and inferences available on the evidence of Exhibits P 36, P 37, P 10 and Superintendent Delcene Jones (T 86.4).

- At p 11 – the Defendant lied when she said the car park was for Superintendent Jones.

  Contrary to the evidence of Ms Kliendienst (T 128.6), Superintendent Jones and Exhibits P 25 and P 27.

- At p 12.5 – the Defendant lied when she asserted that Commander Kerr had endorsed the use of transactions on a credit card that the card holder knew nothing about.

  Contrary to the evidence of Commander Kerr.

Count 1

26. The Prosecution is required to establish that the Defendant

(3) By a deception,

(4) Obtained property of the Northern Territory of Australia.

27. The evidence establishes directly and by reasonable inference both elements.

- In January 2009 Ms Nikki Taylor-Faint was employed as the Executive Support Officer in Strategic Planning Command. She was not entitled to a dedicated work paid for car park. Ms Selina Kliendienst filled in for Ms Taylor-Faint whilst Ms Taylor-Faint was on leave between 10 – 27 February 2009. Ms Selina Kliendienst was not entitled to a dedicated work paid for car park.

- Ms Kliendienst was not part of the Police Commissioner's Conference Committee, she was filling in for Ms Taylor-Faint's whilst Ms Taylor Faint' was on leave (Taylor-Faint, Kliendienst, White, initial evidence of Ramage)

- The car park was purchased for Ms Kliendienst and not for the Police Commissioners Conference – Exhibit P 34

- It was paid for on the Defendant's private credit card and not her Corporate Credit Card

- It was paid for whilst the Defendant was on leave

- The Defendant lied about the circumstances surrounding the purchase of this car park in her record of interview because she knew she was not authorised to expend police monies on her sister who was not entitled to a car park as part of her employment.

- Commander Dowd did not and would not have approved a car park for Ms Kliendienst (T 70.5)

- The then Police Commissioner did not approve a car park for Ms Kliendienst (T 79.10)

- By stating on a petty cash form that the car park was for the Police Commissioner Conference the Defendant deliberately deceived employees of the Police Service as to the true nature of the expenditure and as a result of that deception obtained $100 from Ms Taylor-Faint.

On it's face, Mr Elliott submits that ExP9 is not "false". It may not tell the full story. It may be the case that if the defendant had sought approval for the car park it would not have been granted, but that is a different story. The prosecution allege that the deception was because it was in fact "personal" and not "work-related". In my view, the main aspect that might render it personal was the relationship between the defendant and SK. If in ExP9 the defendant had said "PCC: car parking *for my sister* in Chinatown" then it may be the case that the petty cash re-imbursement would not have been approved. But does the absence of further information make it "by a deception"? In ExP9 the defendant doesn't specify who the car park was for, or whether it was for one person or a number of persons.

Could the words that appear on ExP9 be an "intentional deception by word"? If SK had no involvement with the SPC or the PCC then clearly (as the car park was used by SK) the words would then be clearly false and intentionally so. But that is not the prosecution case. However, whilst it does not appear to be the prosecution case, the defendant's responses in her EROI, do not appear to assist her. The defendant in her EROI makes no reference to SK having any involvement with the PCC at the relevant time, and conceded that she provided the car park to SK "basically out of good will" (stating that SK probably used it for 80% of the time).

Accordingly, I find that there is a prima facie case in relation to charge 1.

Count 3

30. The Prosecution is required to establish that the Defendant

(1) By a deception,

(2) Obtained a benefit for another.

I digress to note that charge 3 identifies the "benefit" as "the use of a DCC car-parking bay", and it is in the particulars

handed up at the start of the case that the “use” of the bay was alleged to be “for her sister”.

> 31. The evidence establishes directly and reasonable inference each element.
>
> - The car park was originally purchased on the Defendant’s personal credit as a gift for her sister who was not entitled to a dedicated work paid for car park – Exhibit P 35, P 19, evidence of Ms Kliendienst (T 123.4).
>
> - The renewal was sent to the Defendant – Exhibit P 36
>
> - The renewal was paid for on the Defendant’s Corporate Credit Card and returns or statements as to that expenditure were submitted by the Defendant – Exhibits P 10 and P 47.
>
> - The renewal was paid for when the car park was still being used by the Defendant’s sister and the Defendant told her sister that she could continue to use the car park. Ms Kleindienst continued to use the car park until she stopped working in the NAB Building – Ms Kliendienst (T 127.2, 128.6-.10).

In my view, the evidence of SK is not quite as clear cut as the prosecution assert. Between T126 and 132 SK said the following:

> SK started paying for her own parking “and then I went back to parking where I was before”
>
> “I thought it was okay to go back to that car park in a conversation that I had, I was speaking to my sister and I thought it was okay to go back there and park…….I can’t remember the precise words, but I thought she said that it was okay to go back and park there.
>
> Q---And when you had that conversation, I think you told us that you’ve acted on it and you did move back to that park?---That’s correct.”
>
> SK did not receive another sticker for her windscreen.
>
> Q---That sticker expired on 31 December 2009?---That’s correct.
>
> Q---Is it a public car park?---Half and half.

Q---When you parked in there after the ticket had expired, you were saying you were there for some months and never got a ticket?---That's correct.

Q---Even though you had an expired permit?---Yeah, yes.

Q---Now, can I suggest to you that in fact your sister was parking in that car park during that period?---I don't know.

Q---Some of the time anyway?---Well, one – one assumes so, I don't know, I don't know.

Q---I mean the car park 197?---She may have been.

Q---You can't – is it fair to say, you gained the impression somehow or other from your sister that you could use that car park some times?---Yeah, that's correct, yes.

Q---You don't know what she said that gave you that impression?---No, I mean with me, like I said, I could have misheard for all I know. But yeah, I – I thought that. She knew that I was unhappy there and that I was leaving. And we were having a fight. I mean, I – I just – I truly can't remember what was said. And yeah, I could have taken it the wrong way and parked there, I don't – I don't know."

Accordingly, the evidence may not support the submission that "the Defendant told her sister that she could continue to use the car park". At best this is only a possibility. I return to the submissions:

- Ms Kliendienst retained the expired permit and no new permit was issued.

- The renewal was paid for when Superintendent Jones was on leave (Exhibits P 10, P 26).

- An access card was not purchased for Ms Jones until 8 March 2010. It was purchased on the Defendant's Corporate Credit Card – Exhibit P 37. The access card was then provided to Superintendent Jones (T 86.5).

- When Exhibit P 10 was completed, the Defendant falsely asserted:

- that the $550 expense was incurred for an official purpose when in fact it was the extension of a gift car park to her sister who was not entitled to a work paid for allocated car park

- falsely asserted that the parking was for a Superintendent's vehicle when it was if fact being used by her sisters private vehicle.

- The Defendant lied about the circumstances of this purchase in her record of interview.

- The false assertions in Exhibit P 10 deceived the employees of the Police Service and resulted in the Defendant obtaining a benefit for another at the expense of the Northern Territory Government.

- The Northern Territory Government acceded to the payment to another because of the deception.

In relation to this charge the "deception" is said to be by using the words "supt vehicle", when in fact it was for SK's private vehicle.

On the prosecution case, Superintendent Jones commenced work with the SPC on 8.12.09 (T84) after a period of sick leave (she was on sick leave from 14.7.09 until 7.12.09 according to ExP26). As a Superintendent, Jones was entitled to a work paid for designated car park. The defendant went on leave from 14.12.09 until 15.1.10 (ExP24). Whilst the defendant was on leave Jones used the defendant's car park (T85).

Jones had further sick leave between 31.12.09 and 17.1.10 (ExP26) and commenced parking around the streets (T86) as she had no car park despite her clear entitlement to one. On 25.1.10 Jones went on sick leave again until 1.2.10 (ExP26). On 27.1.10 $550 was paid to DCC on defendant's CCC for a car park until 30.6.10.

5.3.10 was SK's last day of working at NAB Building before going on "stress" leave. Presumably this is why charge 3 only relates to conduct between 27.1.10 and 5.3.10.

At T86 Jones suggested that it was about 19 March 2010 (but it could have been earlier in March) that she was allocated parking bay #197, and given a plastic card with the parking bay number on it.

On 23.4.10 Murphy commenced working as an Acting Commander in the SPC (T91). He also would have been entitled to a work paid for allocated car park. He said (T91) that he came into work one day and found a card from DCC for bay #197 on his desk. He said he was told that it had been left for him by Jones who had now left the SPC.

Accordingly, on the prosecution evidence parking bay #197 was used by Jones and/or Murphy (who were both clearly entitled to a work paid for allocated car park) from sometime in March 2010 through until the end of June 2010. Who was using it before then and how did this come about? On this the prosecution evidence is very non-specific, as clearly SK was not an impressive witness.

Further, whilst the $550 for bay #197 was clearly paid for on the defendant's CCC on 27.1.10, it is also the case that this was done over the phone. Accordingly, whether it was done by the defendant herself or someone else within the SPC is a live issue.

If there was no Superintendent working at the SPC around the time the car park was purchased (27.1.10), or due to start shortly, who did not have an allocated car park, then the prosecution would be on very solid ground that no such car park could have been purchased for a Superintendent's vehicle. But that is not the prosecution case. Jones was a Superintendent and was working with the SPC (when she was not off on sick leave) from 8.12.09 (T84) until well after this offence is said to have been committed. It is also clear from the prosecution case that Jones did not have an allocated car park at all times (despite being entitled to one).

One problem with this analysis is that it is not an explanation provided by the defendant herself in her EROI. I consider that there is some evidence that if accepted, may go to each element of this charge.

I would find a case to answer in relation to charge 3.

Count 5

34. The Prosecution is required to establish that the Defendant

(1) By a deception,

(2) Obtained a benefit for herself.

35. The evidence established directly and by reasonable inference each element.

- The charge is laid as between 28 April and 6 May. Nothing turns on the automatically generated dated on 29/4/10 in page 2 of Exhibit P 11. In her record of interview the Defendant admits paying for the cap on her Corporate Credit Card and by Exhibit P 47 admits furnishing the returns.

- The Defendant has delegations to expend monies ***in accordance with departmental guidelines*** only – Exhibit P 5. Her authorisation to expend Police Service monies did not extend beyond this and was limited by those guidelines.

- The Sections 6.2 and 6.3 of Procurement Guidelines (Exhibit P 32) limit the circumstances in which a Corporate Credit Card can be used. They card is not to be used for items that are available from Stock Stores except in cases of urgency.

- Hats are not essential to undertake training – Sgt Craig Garland, Commander Colleen Gwynne.

But Garland in his evidence said that hats were an OH&S issue. He also said that the police issue "Akubra" style hat was inappropriate as the ear protection could not be worn.

- There was no requirement that the Defendant arrive precisely at 9 am, she was not going to qualify in any event – Sgt Craig Garland.

But the evidence did not establish that the defendant would, or ought to, have known this.

- Other items necessary for the Defendant's training were collected from Stores. Caps were available at Stores. Stores was en route to the shooting range. – Exhibits s P 29, P 30 and Superintendent Jamie O'Brien (42 available).

- In completing P 11 the Defendant falsely asserted that:

  - the expense was incurred for an official purpose whereas in fact it was for an item of personal clothing.

This appears to be the most important aspect of the prosecution allegation. Clearly the cap purchased was not police issue. No evidence was led as to what the actual uniform requirements for the defendant were. There was evidence that the rank of Superintendent was a "uniformed" position. Whilst I would be surprised if the defendant were able to wear any sort of cap at work, there was no direct evidence of this. It is not a matter that Judicial notice could be taken of, in my view.

But the biggest difficulty for the prosecution is that on the evidence the cap **was** purchased for a work-related purpose, namely to provide some protection while she undertook firearm's training as part of her work. She did not buy it to go fishing. Yes, it was a cap that she might be able to wear also to go fishing (but it was not an attractive cap), but this could also be said about the caps apparently available from stores. There was no evidence to suggest that if she had obtained a cap from stores that there was anything to prevent her from wearing it other than as part of a full uniform, and whilst performing work. I return to the submissions:

- That the item purchased was fuel when in fact it was a cap

And it is this, in my view, that has led to the charge. The prosecution are asserting in effect that the defendant knew she shouldn't have bought the hat so she has tried to conceal it as "fuel". In this regard, the highest the prosecution case goes, in my view, is to raise a suspicion that this was the case.

- At the time of the purchase, the Defendant was issued with a work allocated car and fuel card for BP Petrol stations. The Defendant's Fuel Card records (Exhibit P 46) establish that the Defendant's allocated vehicle was regularly filled at BO service stations using the Fuel Card. For the period 12 January – 2 June 2010 all fuel purchases on the fuel card were in excess of $70.

- The appropriate documentation in support of the expenditure was not attached to Exhibit P 11. No tax invoice or receipt was attached so the true nature of the expenditure was not disclosed as required by departmental guidelines – Exhibit P 8 at 25.45.4(b)

- From previous returns it is evident that the Defendant was aware of the requirement to attach receipts which

would disclose the nature of the expenditure – see for example Exhibit P 10.

- The Defendant has signed acknowledgements that the Corporate Credit Cards may not be used for the purchase of fuels other than in exceptional circumstances – Exhibit P 13 and P 14.

- When asked about the purchase in her Record of Interview the Defendant admitted the true nature of the purchase

- The only reasonable inference to be drawn from the established circumstances is that the deception to represent the purchase as fuel and not a cap was deliberate.

- The false assertions in Exhibit P 11 deceived the employees of the Police Service and resulted in the Defendant obtaining a benefit for herself at the expense of the Northern Territory Government.

- The Northern Territory Government acceded to the payment to another because of the deception.

The defendant was supposedly running late for firearm training. Whilst it appears Garland would not have been too troubled by this, there is no evidence to suggest that the defendant would have been aware of this. Clearly, some form of head protection was a very good idea. If she went to stores to get a cap she may have been even later than she was.

In reality, it is not the purchasing of the cap that is in issue, or the wearing of it at firearm's training. It is the fact that she paid for it on her CCC and then later purportedly described it as "fuel" on the subsequent documentation.

There is the added difficulty for the prosecution (as pointed out by Mr Elliott) that the claim relates to a different date to the receipt that was attached to it, albeit for the identical amount.

But I consider, despite these problems, that there is a prima facie case in relation to this charge.

53. As noted previously herein I find no case to answer on charges 2, 4 and 6. Accordingly, charges 2, 4 and 6 are dismissed and the defendant is discharged.

54. I will hear counsel as to a convenient date to resume the hearing on the remaining charges 1, 3 and 5, and any consequential orders.

Dated this 22nd day of June 2011.

DAYNOR TRIGG SM