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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION SONET

Reference: Operation E14/1727

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY, 7 SEPTEMBER 2015

AT 10.11AM

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

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Commissioner, this is a continuation of the public inquiry into Operation Sonet. As you recall the public inquiry was adjourned on 18 August to enable Mr Jason Kinsella to give evidence and as you recall, and as I stated in my opening Mr Kinsella wasn't available to appear during the first portion of the inquiry. Before I call Mr Kinsella can I deal with some housekeeping matters. Firstly, the Commission's investigators have taken some further statements regarding what might be described as the Cloud People issue in the period of time between the last segment of the public inquiry and today. I tender a bundle containing those statements.

THE COMMISSIONER: That bundle will be Exhibit S7.

#EXHIBIT S7 – BUNDLE OF ADDITIONAL STATEMENTS

MR ROBERTSON: And the same section 112 direction that you made with respect to Exhibit S1 should apply with respect to Exhibit S7.

THE COMMISSIONER: Yes, the information contained in Exhibit S7 that is capable of identifying people such as name, such as addresses, sorry, bank account numbers and any other personal identifying information is suppressed from publication under section 112 of the Act.

THE INFORMATION CONTAINED IN EXHIBIT S7 THAT IS CAPABLE OF IDENTIFYING PEOPLE SUCH AS ADDRESSES, BANK ACCOUNT NUMBERS AND ANY OTHER PERSONAL IDENTIFYING INFORMATION IS SUPPRESSED FROM PUBLICATION UNDER SECTION 112 OF THE ACT.

MR ROBERTSON: May it please the Commission. There's also two new applications for authorisation to appear.

THE COMMISSIONER: Yes, Mr Hanrahan - - -

MR HANRAHAN: Yes, good morning, Commissioner.

THE COMMISSIONER: - - - you appear for Mr Kinsella?

MR HANRAHAN: Yes, I seek leave to appear for Mr Kinsella.

THE COMMISSIONER: Yes, that leave is granted. And Mr Leitner, you're appearing for Mr Cordoba?

MR LEITNER: Yes, that's so, good morning, Commissioner.

THE COMMISSIONER: Good morning.

MR LEITNER: I seek leave.

THE COMMISSIONER: That leave is granted, thank you.

10 MR ROBERTSON: I call Jason Richard Kinsella.

THE COMMISSIONER: Mr Hanrahan, have you explained to Mr Kinsella the effect of a section 38 order?

MR HANRAHAN: Yes, I have - - -

THE COMMISSIONER: He wishes to take advantage?

20 MR HANRAHAN: - - - Commissioner and we'd be seeking, seeking that order, your Honour.

THE COMMISSIONER: Mr Kinsella, could I just make it clear to you that if I make the order under section 38 it protects you from the use of your answers against you in civil or criminal proceedings but it doesn't protect you if it should be found you've given false or misleading evidence to the Commission. If that were the case you would still be liable for prosecution under our Act and the answers could be used against you for that purpose. Do you understand that?

30 MR KINSELLA: Yes.

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

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT

**OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR
THING PRODUCED.**

THE COMMISSIONER: Do you wish to be sworn or affirmed,
Mr Kinsella?

MR KINSELLA: Affirmed.

10 THE COMMISSIONER: Thank you.

THE COMMISSIONER: Yes.

MR ROBERTSON: Can you state your full name please?---Jason Richard Kinsella.

And are you the sole director of Cloud People Pty Limited?---Yes.

10

And can you just explain in brief terms what your company Cloud People does?---So Cloud People is a Cloud service provider so we provide IT infrastructure to businesses so instead of a business having to purchase a server or a physical device to run their business they can go onto our website or portal, log in, change some parameters of what they, what they actually need, put in their credit card details and the service is automatically provisioned for them.

20

And so is it fair to say that as part of that in effect some of the back end services like servers and the like are dealt with by you rather than being onsite at the particular client?---Yes, that's exactly, that's exactly it so we remove the, the need for a business to have physical hardware.

Now did you give a recorded interview with investigators of the Commission in July of this year?---Yes.

Can the witness be shown volume 7 please of Exhibit S1.

30

THE COMMISSIONER: Yes.

MR ROBERTSON: Mr Kinsella, can I ask you to turn to page 89 of the folder with which you have just been provided?---Yeah.

Does that appear to be a copy of a transcript of the interview to which you referred earlier?---Yes.

And you've seen this document before?---I have.

40

And does that fairly set out the words which were said during the course of the interview?---Yes, I believe so, yes.

And with respect of the things that you said were they things that were true and correct to the best of your knowledge and belief?---Yes.

Do you know a Mr Ronald Cordoba?---Yes.

How did you first come to know him?---I was introduced to Mr Cordoba through a customer of mine at the time in December, 2011 and one of my

customers ran a recruitment software business that were using Cloud People as the back end for their recruitment databases. So they on-sold their services to their customers and I was introduced to Mr Cordoba. He was assisting one of my customer's clients to get the server set up.

So is it fair to say from that, that at least your first dealing with Mr Cordoba was he was in effect a client of yours. Is that right?---He wasn't a client of mine. He was a client of - - -

- 10 A client of a client perhaps?---A client of a client. So his business Storm Solutions was providing IT support for my customer's client.

Now, did you know at the time that Mr Cordoba had employment with TAFE?---No.

When did you come to know that?---I believe it was on 29 June. I've got an email where we talked about a, Jukebox opportunity and it was at that time that he told me he was in - - -

- 20 When you say 29 June, you mean 29 June which year?---2012.

And you refer to the Jukebox project, was that a project which was proposed to be rolled out in TAFE?---So it was some software that Cloud People became the distributor for in Australia. It was pretty exciting software. I have been talking to Mr Cordoba about it and at that stage he told me that he was an ICT manager at TAFE.

When you refer to Jukebox, that's not a music software program, for example, is it?---No.

30

And is it in effect a - like a jukebox in the sense that it allows a application to be served up from a external server and in effect be installed and usable on individual computers at a client premises?---Yes, that's correct. In the same way as iTunes or the Google app store. You can download an application from a central location.

Did you ultimately produce a thing called a Proof of Concept for TAFE with respect to Application Jukebox?---Yes.

- 40 Can the witness please be shown volume 3 of Exhibit S1. Mr Kinsella, can I just ask you to turn to page 1 of that folder. The number is in the bottom right-hand corner?---Yeah.

Can you see there a document entitled Application Jukebox Proof of Concept?---Yes.

And is that the Proof of Concept you were referring to before?---Yes.

And is that Proof of Concept in effect a proposal document for TAFE?
---Yes.

And do we take it from that that for producing this Proof of Concept document you weren't entitled to be paid anything from TAFE, rather it was a – in effect a proposal which you hoped would be accepted by TAFE?
---No.

10 So you're agreeing with me?---No. So the proposal was – the Proof of Concept was to implement a, an on-premise solution for TAFE. So previously I had demonstrated the capability to TAFE so the standard way of doing it would be to run it on our own infrastructure. They log in to a portal and they can see it. Mr Cordoba wanted an on-premise installation of this at TAFE so this Proof of Concept outlined the, the scope of the work and along with the emails where I sent him the Proof of Concept I also outlined five days consultancy work to go on-premise and build and configure this software at (not transcribable)

20 Have you provided a copy of that email to the Commission?---Yes.

And so do you say that there was an agreement between you and TAFE that you would be paid some money in order to produce this Proof of Concept document?---Yeah, correct. So on – I'm just going to refer to something else that were also submitted to – as part of the evidence or earlier.

Yeah. Please do that?---And so on the 22 March, 2013, I emailed Mr Cordoba with the proposal and the associated costs - - -

30 So just pausing there, are you referring now to something different to the Proof of Concept document of page 1 of volume 3 or is the same document you're to?---So the document was attached to an email and the email outlined the costs associated with building that Proof of Concept on premise at TAFE.

But that's a different document to the one that I've taken you to at page 1 of volume 3, is that right?---Yes, correct. It's an email.

40 Yeah. Keep going?---Yeah. So on the 22 March, I outlined, 22 March, 2013, I outlined the costs associated with building this Proof of Concept at TAFE. On 20 September, Mr Cordoba followed back up again and copied his desktop engineering team said "We're going to start revisiting this". On 1 October - - -

Before you move on to that?---Yeah.

You made reference to cost and what was the cost that was proposed at that point?---So the cost was five days consultancy capped, so it was capped at five days consultancy and that \$6,000.

And so does it follow from that that as far as preparing the Proof of Concept the agreement was you would be paid \$6,000 I assume plus GST but that was the entirety of your entitlement with respect to the Proof of Concept, is that right?---Yes, correct, yes.

10 You were going onto another document?---Yeah. So the original proposal was that the document you're referring to was emailed to Mr Cordoba on 22 March and wasn't too much happened until 20 September, 2013 and Mr Cordoba emailed his desktop engineering team to say we were going to revisit the Jukebox proposal. On 1 October, 2013 I emailed Mr Cordoba the original proposal and again the costs associated with implementing that proposal. On 2 October, 2013 I drafted a, a new email entitled Pilot Costs to Mr Cordoba which specifically outlined the costs of the, of the Proof of Concept. On 14 October, 2013 I emailed the desktop engineering team with the logins to the free demo which would've been our standard Proof of Concept. On 8 November, 2013 Mr Cordoba emailed and asked me, asked me to send him through the invoice associated with the bill for that Proof of Concept.

20

Which would've been an invoice for \$6,000, is that right?---Correct. And I sent through that invoice on that same day on 8 November, 2013.

Okay. Could I just ask you to provided me with the document you're -- that's currently in your hands?---Yeah, sure.

Just pass it to the court officer. Now the Proof of, I'm sorry, the Application Jukebox Concept didn't ultimately get off the ground with TAFE, is that right?---That's correct.

30

And so no contract was ultimately signed as far as implementing Application Jukebox?---That's correct.

And I think it followed from what you said before that your total entitlement as far as you understood it with respect to the Proof of Concept was \$6,000 plus GST, is that right?---That's correct.

40

Now that wasn't the only amount of money that you ultimately paid in connection with the Proof of Concept, was it?---It was.

Can I ask you to turn to page 36 of volume 3. I'm sorry, page 35 of volume 3. Can you see there an invoice with an invoice number 1-0-5-6?---Yes.

Can I first ask you to explain what are the charges that are described as Cloud server rental to date and additional 12 month term?---Yeah. So Mr Cordoba, let me just get details. Mr Cordoba had a Cloud server with Cloud people through, through TAFE which he was using for development purposes and - - -

Just pausing there, that was a Cloud server for the benefit of TAFE or was it for the benefit of Mr Cordoba?---It was for the benefit of TAFE, it was a server that was previously with Mr Cordoba. It had been in arrears. When I followed up for the arrears Mr Cordoba said that this server was now being used as a development server for, for TAFE.

10 And where on invoice 1056 which is the one at page 35 of volume 3 it refers to an additional 12 month term, is that a 12 month term for the same Cloud server?---Yes, so the, the second line item is the arrears at the time of the invoice. The additional 12 month term is for 12 months' additional rental of that same, of that same server and the first line item is consultancy and design services.

20 Well, what does that mean?---So in February 2013 Mr Cordoba emailed me to say he had an idea for a Moodle implementation. So Moodle is a student learning system and that they would be – he wanted to pay for a trial of this so they wanted to move Moodle into a Cloud um, onto a Cloud server. So they currently run their, their Moodle, their student learning, student – it's a student management and learning system so all of the courses where students would run on this, on this server. In February 20134 he said he wanted to investigate moving that Moodle onto a, into a Cloud service and they would pay for a trial. On 1 May, 2013 he said he needed the Moodle demo up and running as soon as possible and also needed a private Cloud for students to be ready. So on 2 May, 2013 I emailed Mr Cordoba with the costings for the Jukebox, for the Moodle and for the private Cloud. On 6 May Mr Cordoba emailed asking if another Microsoft application, Dynamics CRM could run inside the Jukebox. I did investigations, built a demo and proved that it, it could be run inside the Jukebox. I also on 7 May 30 I emailed Mr Cordoba with some log in details for some demos I had built and set up for him with regard to his earlier requirements for the Moodle and the private Cloud for the students. So that was at the start of, the start of May. 29 May, 2013 I emailed Mr Cordoba with some login details for the teaching Cloud I had started to put together based on his earlier request. 8 June I followed up to see if there had been any progress and that wasn't the first time I think I had followed up. And then on 18 June Mr Cordoba emailed me to say, I think I've got that email, that TAFE were taking their time with all of these projects and to invoice him for the, for the server, an additional 12 months and to add 2,000 for my work to date.

40 Now with respect to that particular \$2,000 was there a contract, purchase order or anything of that sort between TAFE and you?---No.

What's the document you've been reading from?---So I'm just looking at the, I'm just referring to the email where he requests - - -

I'll take you to that email in a moment but - - -?---Yeah.

- - - on the first page of the document you're looking at now, what is that document?---This is just a timeline I've put together from the prospective work associated with the, with the, with the invoice.

Can I just ask you to give that to the court officer so I can have a look at it?
---Yeah.

Associate I should say. Isn't it the case that the \$2,000 you're referring to was an additional amount of money that Mr Cordoba said that you could
10 add simply for your troubles and support, that's what it was for wasn't it?
---It was for the work I had done on the number of proposals he had requested from, from February until June.

But there was no – if I understand that you're saying correctly there was no contract or purchase order of any sort saying that you were entitled to the \$2,000 payment. Is that right?---Yes, that's correct. Yes.

Can I just ask you to go to page 61 of volume 3. Can you see about three-
20 tenths of the way down the page an email from Mr Cordoba to you dated 18 June, 2013?---Yes.

Is that the email you were referring to before - - -?---Yes.

- - - regarding sending the invoice?---Yes.

You can see the second line, can you see a reference there to “add a couple of grand for your troubles and support”?---Yes.

Do you see that there?---Yeah.
30

Now, that couple of grand, that's a reference to the \$2,000 you were referring to earlier on the invoice. Is that right?---Yes, correct, and there's a subsequent email to that - - -

Well, before we get to that?---Yeah.

You don't say do you that you were entitled as a matter of contract to that \$2,000?---No. That's correct.

40 In effect Mr Cordoba was saying well, you provided some support and there's been some trouble and TAFE is taking its time and driving him insane and therefore he in effect wanted you to add a couple of thousand dollars to the bill. Is that right?---Yes.

But that's not \$2,000 that you could have, for example, sued for for breach of contract?---That's correct.

Can I ask you then to turn to page 36 of volume 3?---Yes.

Is that an invoice with an invoice number 1-0-9-7?---Yes.

And is that invoice the invoice for the \$6,000 you referred to earlier?
---That's correct, yeah.

And I think you said that there was some correspondence with TAFE where TAFE agreed to pay that \$6,000. Is that right?---Yes.

10 And is that in one of the two bundles that you gave me earlier?---Yes.

I'll hand you back the bundle which has a document that starts with the words "INV-1097" and I'll just ask you to identify the email or the correspondence you were referring to before. I'll hand you some tabs. I'll just ask you to put a tab next to the particular email you're referring to?---So the email is not actually in that bundle but the email is referenced on 8 November and it was with the original bundle of all of the emails so I can, I can easily access that but just not, not now.

20 So to be clear about it, you say that there was an agreement between you and I take it Mr Cordoba on behalf of TAFE to pay you \$6,000 for the Proof of Concept. Is that what you're saying?---Yes. On 8 November, 2013 Mr Cordoba emailed me and asked me to send me through – to send him through the invoice for that work.

What I'm asking about is before you've prepared the Proof of Concept was there an agreement between you and TAFE where you would be paid \$6,000 to prepare the Proof of Concept?---So the Proof of Concept document there was no, there was no charge associated with producing the Proof of Concept document. The, the charge was associated with a five days consultancy to build and implement what was outlined in that Proof of Concept document.

So let me understand the chronology then. The Proof of Concept document was dated 22 May, 2013. Is that right?---Yes.

And that's the date that's in the bottom right-hand corner on page 1 of volume 3?---Yes.

40 And so do you say that after this proof of concept was – I'll withdraw that. Firstly, you agree that you weren't entitled to any fee for the purposes of producing this document, that is to say the document dated 22 March, 2013?---Yes, correct.

Is that right?---Yes.

But do you then say that there was an agreement where you would be paid an amount of money to in effect prove the concept?---Yes. To build – so

this Proof of Concept document outlined a, an infrastructure that's an infrastructure schematic so the consultancy was to come and build and, you know, be able to demonstrate. So the Proof of Concept is, is, is on paper so what I was paid for to do was actually build and show, show it actually working the TAFE environment.

So when was that agreement reached?---On 8 November – so on 20 September, 2013 - - -

10 So before we get to that - - -?---Yeah.

- - - this consultancy, when was it provided?---It was provided from the, probably from November, around the start of November so it was a period that continued on till September 2014 so that it was 11 months of work associated with building and continuing work on that Proof of Concept. Approximate start was November 2013.

20 So does it follow from that that you sent the invoice before you provided the consultancy services, noting that the invoice was 8 November, 2013?---Yes, correct, yeah.

And so do we take it from that that the consultancy services that you provided hadn't been completed by 18 December, 2013 for example?---Yes, probably, yes.

So it continued into 2014?---It continued up until 8 September, 2014 when - - -

30 So are you referring to 2014 now or 2013?---2014 so that, that engagement to try and get a working model of that proof of concept continued for approximately 10 or 11 months.

And so is that period between about November of 2013 into the latter part of 2014?---That's correct.

40 And you're referring to an agreement to be paid, when do you say that agreement was reached, was it about November of 2013, is that what you said?---On 8 November Mr Cordoba emailed and asking me to send him through the invoice to start that work.

I see. But you were in effect paid in advance for that work, is that right? ---That's correct.

Commissioner, I tender the bundle of documents that Mr Kinsella's been referring to and which start with the document which has the words "INV-1097" on the front.

THE COMMISSIONER: Yes, that bundle will be Exhibit S8.

#EXHIBIT S8 – BUNDLE INV 1097 (8 NOV 2013)

MR ROBERTSON: And to be clear I think you're not saying that there some sort of formal written contract or anything like that with TAFE, rather you proceeded with this consultancy work on Mr Cordoba's request by email, is that right?---Yes.

10

But there was no document specifically signed by someone on behalf of TAFE setting out the terms or anything of that sort, is that right?---No.

There was also a project which did get off the ground wasn't there that's referred to as a hosted private Cloud?---Yes.

20

Is that right? Can you just explain briefly what that is?---So the hosted private cloud was a environment that allowed TAFE students to complete practical modules for a Diploma of IT Networking so the TAFE students required lab environments to configure servers and go through specific exercises associated with their, that diploma course so the hosted private Cloud allowed those students to log in to a TAFE branded portal, enrol in specific modules and complete those modules through a Web browser. It in effect gave them access to server, servers on Cloud People infrastructure.

And so that infrastructure is in effect at your premises rather than, rather than at TAFE, is that right?---It's in a data centre.

30

Can I ask you to turn to page 8 of volume 3 in front of you?---Yes.

Is that a document entitled hosted private Cloud?---Yes.

And is that the proposal for the private Cloud that you've just been talking about?---That's correct.

And was the proposed fee for setting that up at least as a starting point \$140,000?---That's correct.

40

And is that the figure that you'll see on page 18 with the figures on the bottom right-hand corner of that document?---That's correct.

Now this proposal was ultimately approved or agreed within TAFE, is that right?---Yes.

Now before that happened you had agreed with Mr Cordoba that he through his business would provide some of the support services associated with the hosted private Cloud, is that right?---Not before it was agreed, no.

Are you sure about that?---Yes.

Can I ask you to turn to page 71 still in volume 3, can you see there an email chain between you and Mr Cordoba of 14 February, 2014?---Yes.

Now take it February, 2014 was before the hosted private Cloud was rolled out?---Yes.

10 And it was before the proposal had been agreed with?---I had agreement from Mr Cordoba that the, that the project was going ahead. On the, let me just, on 29 January, 2014 I gave a demonstration to Mr Cordoba and two of his staff members of the platform that would run the hosted private Cloud - -
-

So just pausing there?---Yeah.

That's a number of months after this email of February, 2014, correct?---
Now before. Sorry, I said 29 January - - -

20 Of January, I'm sorry?---Yeah, 29 January, 2014, I gave a presentation, an online presentation to Mr Cordoba and two of his staff members which demonstrated the hosted private Cloud and on that same day Mr Cordoba texted me to say that he had gotten approval for that.

Was that before or after you provided the document that we saw at page 8 of this bundle, noting the date on the bottom left-hand corner of page 8, seems to be 31 January, 2014?---So this revision of the document is post that time.

30 So when did you first provide a version of the document that you see at page 8?---31 January.

Well this document - - -?---So the date on it does say - the date on that - - -

- - - this document on page 8 is also 31 January so is this the first version of the document or is it a subsequent version or do you not know?---This is a subsequent version so the original version and the date hasn't been changed on the document but this is not the version of the document that was submitted on 31 January.

40 But is it correct to say that the first version of a detailed written proposal was provided on or about 31 January, 2014?---Yes.

And that was after the demonstration that you referred to before on 29 January, 2014, correct?---Yes.

Now the proposal of 31 January, 2014, is that the first time that the quote of \$140,000 was identified?---So at that stage I don't think the - the support

component hadn't been included in the document at that stage. So the original document had 85,000 plus support to be determined.

So just to be clear about that. You're saying that on 31 January, there was a proposal which was similar to the document that you've seen at page 8 saying that it didn't include support and it was in a sum of about \$85,000, is that right?---Yes, correct.

10 So when do you say it was first arranged that Mr Cordoba through his business would provide support for the private, for the hosted private Cloud?---So on 29 January, 2014, I did the presentation. That was at 2.00pm. At 4.23pm Mr Cordoba emailed saying "That it was exactly what was required and could we talk about costs"?

So just pausing there, you can't say can you that there was an agreement as of 4.23pm between you and TAFE because you hadn't even talked about price yet, correct?---Yes, correct.

20 Yeah. And keep going?---Sorry, I didn't think I said there was an agreement at that stage?

So at 4.23 on 29 January, and what happens then?---Mr Cordoba emailed saying "That it was exactly what was required and could we speak about costs"? And shortly after I replied to his email saying "I would give him a call". I subsequently did speak to him on the phone and gave him the cost of 85,000 plus support to be determined.

30 When you say subsequently does that mean it would likely to have occurred on 29 or perhaps 30 January?---When I spoke to him?

Yes?---No, no. I spoke to him sometime between 4.25pm and 5.45pm. Because at 5.45pm Mr Cordoba texted me to say that "He had approval from the faculty director.

Now at that point had there been any discussion as to, as to support at all and if so who would be providing that support or not?---Yes. So I was providing the support until Ron texted at 5.45pm to say that "His company would be providing support".

40 Have you got the text, that text there?---Yeah. I just have to dig it up. So the text says, this is at 29 January, 5.45pm. "It looks like we have a go ahead. I have the faculty director's support. We need to talk about", "we need to talk business and there is more to it. My company will provide afterhours support and we need to work out dollars above the 85K not affecting your overheads and costs. Explain tomorrow".

Now did you ever have any discussions with Mr Cordoba regarding that support and in particular whether that was something that TAFE had approved or not approved?---Not prior to receiving this text message, no.

What about after sending that text message, receiving that text message?--- Yeah. The following day Mr Cordoba phoned and explained in detail what was, what was, what was happening.

10 When you say the following day you mean 30 January, 2014, is that right?--
-Yes, yes.

And doing the best you can, what was said in that telephone conversation?--
-Mr Cordoba said “That he’d spoken the faculty director, the faculty director was happy to proceed with the project however they wanted his company to do first and second line support. His company would - - -

Just pausing there. Are you quite sure that he specifically said that TAFE wanted him to provide the first and second level support?---Yes.

20 And you were going on to say, I’m sorry?---That his company would also be doing student engagement and interaction. So that they wanted him to do the first and second line support because it was part of that same bundle.

And during, during that conversation was there any discussion as to how that first and second line support would be paid for, as in would you be paying Mr Cordoba or his business separately or would you be paying – in effect paying TAFE or reducing the price to TAFE or how was that proposed to work?---He said, he said I was to invoice for all of it and he would invoice Cloud People for that component, that it was a more
30 straightforward process.

Now, was that a discussion – was that as part of the discussion on 30 January or was that a - - -?---Yeah.

- - - subsequent discussion?---That was part – on 30 January.

And does it follow from what you’ve just said that it was Mr Cordoba’s idea or at least so far as you were concerned it was Mr Cordoba or TAFE’s idea that he provide the support. Is that right?---Yes, correct.
40

It wasn’t something that you came up with or that you proposed?---No.

And was there discussion at that point as to how much would be paid with respect to that support?---I’m not sure if it was discussed then but it was definitely discussed in the next, in the next couple of, couple of days.

And was that by email, telephone, SMS or do you not recall?---Email – I’ve, I’ve – it was phone call. I’ve, I’ve gone back through all, all text messages

and, and emails and, and I don't have a record of that so that was, that was by phone.

And ultimately there was an agreement that Mr Cordoba through his business would be paid some \$55,000 from you. Is that right?---Yes.

10 And do you recall whether that's a figure that, that you quoted or is it a figure that he quoted?---It was a figure that he quoted. In that time between him telling me that his company were going to do first and second line support I had done some estimations as to how much it would potentially cost me to do first and second line support. We were expecting somewhere in the region of 500 students in that period of a year. I estimated it would be potentially two part-time support operatives and 50,000 when he said it sounded around the right ballpark.

20 Okay. I'll just ask you to explain what you mean by first and second line support as opposed to say third line support?---Yeah. So the support is basically split into – there's two, two types of support. There is student lab support and there's platform support. So the student lab support is all support associated with the students actually completing the exercises in their course. So if they've got a problem with the course work that's, that's lab support. So what we're talking about is platform support specifically. An example of first and second line platform support would be if a student wasn't able to log in to the platform, if they had problems accessing the platform, if one of the servers inside the platform that they were using wasn't performing, that would be an example of first and second line support. So fairly basis support. Third line support is, is escalation. So when a, a first and second line support engineer wouldn't have been able to solve a problem with the, with the support and there's actually a true platform issue, that would be escalated to third line support.

30 And who was proposed to provide the third line support?---We were.

By "we" you mean Cloud People?---Correct.

Which means I take it your – some employee or contractor - - -?---Yes.

- - - engaged on your behalf?---Yes.

40 And was there any discussion as to how the first and second line support that Mr Cordoba was going to provide was actually going to happen, that is to say was Mr Cordoba going to do it himself or was he going to do it through subcontracts or - - -?---Mr Cordoba said that through his Storm Solution businesses – business he had four or five guys that did support. That's how I originally encountered Mr Cordoba. So he said his guys were, were doing, were going to be doing that, that support.

Now, you knew at the time that Mr Cordoba was the manager of ICT Services within TAFE weren't you?---Yes.

This arrangement must have smelt to you to be a bit fishy mustn't it in that the IT manager is in effect getting an additional \$55,000 of payment for providing things that he might have been able to provide either internally or through his role as manager of ICT Services?---No, not at all.

10 Why not?---I knew Mr Cordoba as running Storm Solutions and shortly after he told me he was the ICT director at TAFE he said one of the reasons that he'd been promoted to that position was that TAFE knew he was working at Storm Solutions and he had some commercial acumen that many of the, of the TAFE staff didn't have so - - -

Do you recall when approximately that conversation was that you're now referring to?---Not exactly, no.

20 But was it before the private hosted Cloud type discussions which were in about January of 2014?---Yes.

But you must have at least expected mustn't you that the idea of a ICT manager approving a arrangement with you Cloud People and then receiving money back from you Cloud People you must have thought that that was a bit strange mustn't you?---No.

Can you go to page 71 of volume 3. Can you see there an email from you to Mr Cordoba of 14 February, 2014. Page 71, volume 3. The number is in the bottom right-hand corner?---Yes.

30 Can you see that email there from you to Mr Cordoba of 14 February, 2014?---Yes.

And can you see about four-tenths of the way down the page starting with the words "Hi mate"?---Yeah.

Does that appear to be an email from Mr Cordoba to you?---Yes, it is.

40 And can you see in the second paragraph a reference there that says "Please dress it up with complex descriptions"?---Yes.

And you understood that to be a reference to your proposal which was the proposal with respect to the private hosted Cloud. Correct?---Yes.

Now, at least that must have put you on notice mustn't it that something fishy is going on given that Mr Cordoba is asking you to change your document to "dress it up with complex descriptions"?---No, not at all. Actually if you read the very end of the email it says, "Finance has approved it so they need better descriptions on the invoices" and my response to that

email is, “I will work on a draft of the invoice this morning and send it through. The first and third invoice overlap a little bit from the perspective of what has been provided. I will try and work out how best to describe this to clarify for the Finance Department. So it doesn’t – I didn’t, I didn’t see anything with that at the time.

If you look at the final sentence of the email you were just quoting from, can you see the words, “However, I know where you’re coming from”. Do you see that there?--- Yeah.

10

What did you mean by that?---That the descriptions needed to be better for the Finance Department.

I think you were reading from a document earlier with respect to this issue. Is that, is that right, one of your timeline documents?---Yes.

Can I just ask you to give that to the Associate, please. Now, I think you agree with me that ultimately paid Mr Cordova \$55,000. Is that right?
---(No Audible Reply)

20

What did he actually do in exchange for that \$55,000?---He didn’t end up doing anything.

Why was that?---The platform went live on the – in the middle of May.

30

When you say “the platform” you mean the platform for the hosted private Cloud?---Yeah, the hosted private Cloud. As soon as it went live we had a significant number of pretty technical issues with students and students accessing the platform which took approximately two months to, to resolve so during that period the platform – the hosted private Cloud wasn’t in any type of a state that could be – first and second line support could be handed over. There wasn’t actually any first and second line support of the platform at that stage. It probably wasn’t until August/September that even all of the content of the platform was finished and we were starting to get to a stage that it was, it as stable. So directly after – as soon as the platform went live we realised there was problems – there was going to be some problems the way we had, we had built the, built the platform so we started to rebuild all of the platform from, from the perspective of how it was accessed. So by the time that the platform was in any state that first and
40 second line support could have been handed over Mr Cordoba had effectively disappeared from, from TAFE.

When you say he’d disappeared from TAFE he’d been suspended, is that, that what you mean?---I wasn’t sure exactly what, what had happened. I had asked a couple of people. I had asked Pete Lewis and he said he didn’t know what had happened to Ron and I asked George Milanovic and he said he believed he was on some extended leave.

Has Mr Cordoba paid back the \$55,000 you referred to?---No.

And does it follow from that that as far as you're concerned he's in effect in credit with you and you could ask him to do other things?---No.

10 When's the last time you had any discussions with Mr Cordoba regarding any business relationships with him?---So in May of this year Mr Cordoba phoned me to say that he and an a number of his colleagues were setting up a registered training organisation and that they were going to run similar courses to the existing course that, that Cloud People was running for TAFE and that they would want to use the Cloud People platform to run the courses.

And what's happened since then with respect to that if anything?---Nothing, that was only a couple of weeks before I became aware of the investigation.

20 So does it follow from that that you haven't had any further business relationship with Mr Cordoba since about, since at least about August of 2014?---(No Audible Reply)

I withdraw that, I'll put it differently. Other than the engagement you had with him with respect to TAFE and the hosted private Cloud project you've had no other business dealings with Mr Cordoba other than the telephone conversation you referred us to a minute ago?---So in, in September, at the start of September 2014 Mr Cordoba emailed to say he would be, he had a client that was interested in a Cloud server and could I provide him with a, some costings. I did and that the, nothing ever happened from that but from effectively from the start of September 2014 until April, May this year I had no contact with Mr Cordoba.

30 And does it follow from that that Mr Cordoba or his businesses hasn't, haven't done any work for you, that is to say Cloud People since the \$55,000 contract with respect to the hosted private Cloud?---Correct.

Can the witness please be given access to Exhibit S7 which is the exhibit I first tendered this morning.

THE COMMISSIONER: Ah hmm.

40 MR ROBERTSON: One of the copies should have a plastic tab on it. Mr Kinsella, can I just ask you to turn to the page which has a tab on it which is page 67 of Exhibit – sorry, of the statement of Ms Ambrose of 13 August, 2015?---Yeah.

You see there an invoice number 1138?---Yes.

And can you see there a description there to Virtual Cloud Services?---Yes.

Can you just explain what that invoice was for?---Yeah. So on 18 June, on 18 June, 2014 Mr Cordoba emailed saying he urgently needed three Cloud servers. I responded saying fine, started building the servers for him. I also mentioned that the two previous servers he had with TAFE were due for renewal. On the same, 18 June Mr Cordoba emailed saying that that was fine and please send him through invoices for those, for those servers.

And so those are servers that were ultimately provided, is that right?

---Correct, they were provided on that same, on that same day.

10

And did you provide them for in effect the same price that you would provide to any other client or is it for some different price?---No, no, exactly the same price.

And are you again reading from a document you prepared in preparation for giving evidence?---Yes, correct.

20

And can I just ask you to give that to the Associate. Commissioner, I'm going to tender some of the documents that Mr Kinsella's been referring to in his evidence.

THE COMMISSIONER: Yes.

MR ROBERTSON: I first tender a bundle of documents, the first page of which is headed "INV-1056 (18 Jun) 2013".

THE COMMISSIONER: Yes, that'll be Exhibit S9.

30 **#EXHIBIT S9 – BUNDLE INV 1056 (18 JUN 2013)**

MR ROBERTSON: Next I tender a bundle of documents headed with the words "INV-1111, 1112, 1113-hosted private Cloud".

THE COMMISSIONER: Yes, that's Exhibit S10.

40 **#EXHIBIT S10 – BUNDLE INV 1111, 1112, 1113, - HOSTED PRIVATE CLOUD**

MR ROBERTSON: Next I tender a bundle of three pages, the first of which is headed "INV-1138 (5 Cloud servers)".

THE COMMISSIONER: Exhibit S11.

#EXHIBIT S11 – BUNDLE INV 1138 (5 CLOUD SERVERS)

MR ROBERTSON: Mr Kinsella, is that the only set of notes that you prepared for the purposes of giving evidence today or are there other sets? ---I made some notes in regard to the transcript from Mr Cordoba's evidence and - - -

10 Could I just ask you to provide that to the Associate as well. Just pardon me for a moment, Commissioner. Finally I tender the two-page document just provided to me by Mr Kinsella, the first of which is entitled "Page 59/40" and the second of which starts with the words "I will try to work out".

THE COMMISSIONER: Exhibit S12 –

#EXHIBIT S12 – TWO PAGE DOCUMENT - FIRST PAGE 'I WILL TRY TO WORK OUT HOW BES' AND SECOND PAGE 'PAGE 59/4'

20

MR ROBERTSON: Commissioner, in due course I'll ask for a direction that Mr Kinsella provide his mobile phone to the investigators, some of the SMS's that Mr Kinsella's referred to aren't matters that were otherwise known to the investigators - - -

THE COMMISSIONER: Right.

MR ROBERTSON: - - - and it may be that there's other material that's relevant there. Nothing further.

30

THE COMMISSIONER: Yes, thank you. Mr Leitner, do you have any questions of Mr Kinsella or does anyone else have any questions before Mr Leitner?

MR NEWTON: Well, your Honour I have a few questions.

THE COMMISSIONER: You have.

MR NEWTON: Yes.

40

THE COMMISSIONER: Sorry, Mr Leitner, we'll leave it until other people have cross-examined.

MR LEITNER: Yes.

THE COMMISSIONER: Then you're in a position to know what it is that you have to meet, yes.

MR LEITNER: Yes. I'll just confer with my client. A large part of my instructions effectively have already been covered.

THE COMMISSIONER: Right.

MR LEITNER: Just whether or not there's anything arising.

THE COMMISSIONER: All right. All right. Yes, go on.

10 MR NEWTON: Mr Kinsella, my name is Newton and I appear on behalf of the Department of Education. I just want to clarify some matters from your evidence. You were asked questions about the hosted private Cloud service that you provided to the Institute and as I understand your evidence it was proposed that you were to provide third level support and Mr Cordoba was to provide first and second level support in relation to that hosted private Cloud, is that right, is that what the agreement entailed?

20 ---So the agreement was that Cloud People would provide all of the support associated with the hosted private Cloud with the platform. However, the first and second line component of that was to be subcontracted to Storm Solutions.

And from your evidence today in fact Storm Solutions has never provided that first and second level support because there were teething problems from approximately May 2014 until August 2014, is that right?---Yes.

30 From August 2014 though has there been a requirement for first and second level support?---So there was, there's, there's always been a requirement for first and second line support since the platform went in. Generally first and second line support would make up the majority of, of all support calls. However, from the perspective of the, this platform for the first three to four months there was almost no first and second line support calls, most of the calls were actually difficult calls associated with the platform being a very, a very new platform so it wasn't until August/September maybe even later that we had ironed out enough of the issues with the platform that we started to get that they, that the balance of third line support calls decreased and the first and second line calls increased.

40 And when the first and second line support calls increased who's been providing that support?---Both Cloud People and TAFE.

And when you say both Cloud People and TAFE is that, in effect are you saying that the first and second line support that was to be provided by Storm Solutions is now being provided jointly by Cloud People and TAFE, is that right?---So there's, there's, there's a slightly grey line in the, in the support. So previously I mentioned that there's, there's, there's, there's a clear delineation between student lab support, actually supporting the students in their journey through the course and actual platform support so what would generally be a really clear cut if a student says there is a

problem accessing the platform, the platform is not performing as, as it should be, that's a, that's a platform support issue and that's clearly a, a Cloud People support because that's what we've been engaged to, to do. However, the level of IT skills that the students that were taking these courses had were significantly less than what was expected and like a benchmark would be kind of like a, a general office worker would have a, a level of IT skills so this was a diploma of IT networking so the expectation was that these students would have some basic knowledge of logging into a website and what you would expect as a minimum level, that wasn't the case so often what would be seen as a platform support issue was actually an issue with the students so a typical example would be the student would raise a support ticket saying the platform is, is not available. When I would check the platform was actually fine and the issue was that the student hadn't got correct instructions to access the, access the platform so all of those components were handled by, by TAFE correctly as part of a bundle of student issues, not platform issues. So there's a little bit of a grey line from the perspective of who is handling, handling those. The first and second line support tickets that TAFE handled internally were always relating to issues with the students and not with issues relating to the, to the platform and we both had visibility of the flow of those tickets and I would always check those tickets to see if it was actually a true platform issue or if it was a support issue or if it was a student support issue and depending on which it was either Cloud People would do the support or, or TAFE would do support as part of the student – Cloud People were never doing direct student support from the perspective of, of their ability to complete the courses.

So do I take it from that evidence that even had Storm Solution provided second, first and second line support there would've been some requirement for TAFE staff to be providing support to the students?---Yes. So we set up a help desk for a student support help desk inside the platform but that wasn't the only contact point that the students had with, with the course. So there was a number of facilitation sessions and, and one on ones so in those sessions the students would speak to the TAFE facilitators about issues that they had potentially accessing the platform. So the TAFE facilitators had access to potentially solve basic things, if a student had locked their account out by putting the password in incorrectly, so they had the ability to do some platform, well support issues, I guess.

Was that work that you would've expected Storm Solutions to have undertaken but for the fact that they'd gone away - - -?---Yes, correct. Yeah.

So in a sense TAFE staff are now doing some work which you were paid for to provide using Storm Solutions as your contractor?---No, not exactly. So the work that Storm Solutions were engaged to do was, was always done by, by Cloud People. The fact it didn't happen was that wasn't handed over to Storm Solutions so the – all of the platform support was always handled by

Cloud People it just wasn't passed onto, onto Storm Solutions. The TAFE facilitators in their capacity for running the courses were assisting students in student related issues not platform related issues. They never really – they wouldn't have been able to do any first and second line platform type issues and when they realised that the issue was directly related to the platform they would then pass that call onto Cloud People to, to resolve.

No further questions.

10 THE COMMISSIONER: Thank you, Mr Newton.

MR ROBERTSON: Commissioner, before you call - - -

THE COMMISSIONER: Yes.

MR ROBERTSON: - - - on behalf of Mr Cordoba's representative would you mind adjourning briefly? I think in fairness to Mr Cordoba, he should have access to the exhibits that I've just tendered this morning.

20 THE COMMISSIONER: Yes. No, that's - - -

MR ROBERTSON: And so that will allow some time for those to be copied and provided in case there's anything that needs to be put to Mr Kinsella.

THE COMMISSIONER: Well, I'll take an adjournment and I'll say quarter to 12.00 unless Mr Leitner wants to take some more time in relation to that.

30 MR ROBERTSON: May it please the Commission.

THE COMMISSIONER: He can just let me know. Thank you.

SHORT ADJOURNMENT

[11.18am]

40 MR ROBERTSON: Commissioner, during the course of the adjournment one of the emails that Mr Kinsella was referring to we've managed to turn up and with your leave I might just ask a few questions of Mr Kinsella.

THE COMMISSIONER: Yes, certainly.

MR ROBERTSON: Can I show you this document, Mr Kinsella. Does that document appear to be an email between you and Mr Cordoba of 22 March, 2013?---Yes.

And is that the email to which you referred earlier regarding the application Jukebox Proof of Concept?---One of them, yes.

And is that the specific email that refers to the \$6,000 plus GST cost around about halfway down the page?---Yes.

10 And does it follow from that that as far as you're concerned you weren't entitled to any payment with respect to the proposal itself but that you proposed and it was agreed that you would be paid \$6,000 for the Proof of Concept itself. Is that right?---I would be paid to build the Proof of Concept on TAFE hardware on premises, yes.

And so in effect the Proof of Concept is to demonstrate to TAFE that the thing that you want to roll out for everyone is something that can in fact be achieved?---Correct.

And as far as you were concerned you would be paid for that in effect as a consultant at a daily fee?---Exactly.

20 And the proposed daily fee was \$1,500 a day but capped at five days in total. Correct?---And discounted to 1,200 a day bringing it to a total of 6,000.

And one other thing just to confirm. I think you said that Mr Cordoba informed you that he was approved by TAFE to perform work for you through Storm Solutions. Is that right?---When he – after the demonstration on 29 January for the hosted private Cloud, yes, at that stage he told me that the project was going ahead and that TAFE wanted him to do the first and second line support on that.

30 Now, had he not said that to you and had he said in effect that he wasn't authorised to do that work, would have you still subcontracted that work to him and to Storm Solutions?---No.

Nothing further.

THE COMMISSIONER: Yes, thank you. Now Mr Leitner, do you have any questions?

40 MR LEITNER: Yes, Commissioner. Ah, Mr Kinsella, my name is Mr Leitner, I'm appearing on behalf of Mr Cordoba, okay. I'll be asking you a couple of questions, sir.

MR ROBERTSON: I'm sorry, I'm sorry to interrupt, my friend. I should actually tender that document that I just provided to Mr Cordoba.

THE COMMISSIONER: Yes. That will Exhibit S13.

**#EXHIBIT S13 - EMAIL CORRESPONDENCE TITLED PROPOSAL
OUTLINE DATED 22 MARCH 2013**

MR ROBERTSON: And for the abundance of caution with respect to Exhibits S8 through to S12 if the section 112 direction that you made earlier could extend to those documents?

10 THE COMMISSIONER: Yes. The section 112 order that I made with respect to personal identifying information is extended to those exhibits namely Exhibit S9, I think it was, wasn't it, through to 12.

MR ROBERTSON: Yes, 8 through to 12.

THE COMMISSIONER: Sorry, Exhibit S8 through Exhibit S12 thank you. Sorry - - -

20 **THE SECTION 112 ORDER MADE WITH RESPECT TO
PERSONAL IDENTIFYING INFORMATION IS EXTENDED TO
THOSE EXHIBITS NAMELY EXHIBIT S8 THROUGH TO
EXHIBIT S12**

MR ROBERTSON: If it please the Commission.

THE COMMISSIONER: Sorry, Mr Leitner.

30 MR ROBERTSON: I apologise to my friend.

THE COMMISSIONER: Yes, sorry, Mr Leitner.

MR LEITNER: Yes. Now Mr Kinsella, as I indicated I act for Mr Cordoba and I'll be asking you a few questions. Now you've indicated that you've known Mr Cordoba since about 2011, is that correct?---Yes.

40 Okay. And when do you say that you first became aware that Mr Cordoba worked for TAFE?---Would it be possible just to reference those notes from me please, that I - - -

THE COMMISSIONER: Well, your earlier evidence Mr Kinsella was that it was about June, 2012 that you first knew that he was employed by TAFE and that was in relation to the Jukebox email?---Yes.

Is that right?---Yes, correct. That's correct.

MR LEITNER: What I'm going to suggest to you, sir, is that you knew soon, very shortly after meeting Mr Cordoba that he worked for TAFE. Would that be fair?---That's not true, no.

And in what capacity do you say that you first met him, was it only through his company Storm Solutions?---Correct. Through a customer of mine.

I see. Now you approached Mr Cordoba via email on 11 September, 2013, asking him to explore some further business opportunities that you might be
10 explore together, is that correct?---On 11 September, 2013?

Yes?---2014 or 2013?

2013?---I'm just trying to put that into the perspective of – so the only exploration that we talked – so when I found out that Mr Cordoba was working as the – an ICT manager at TAFE he also told me that he was on an ICT steering committee which was formed up by the heads of his counterparts at other TAFE New South Wales organisations. So any exploration around business would've been to put the teaching Cloud at that
20 private Cloud platform into other TAFE's New South Wales.

I'm going to suggest to you that the opportunities that you wished to explore were to roll out systems which suited not only your company but my client's company, Storm Solutions, as well as TAFE?---I don't see how it would have suited Storm Solutions.

See, what I'm suggesting to you is that this was a business relationship that you were going to be working on together?---No, that's not true.

30 In fact you had expressed an intention to roll out your services to other TAFEs in NSW did you not?---Yes, correct.

Okay. And that was on 3 July, 2014?---So it's been my intention to roll it out to TAFEs across New South Wales and, and Australia globally since we started developing the platform and that's still, that's still the intention and that's still the objective that my company is working towards, yes.

And it was through Mr Cordoba that you saw that opportunity to get in and explore that opportunity?---That without Mr Cordoba I wouldn't have
40 realised that it was possible to put that same platform into other TAFE's, if that's, if that's what you were asking - - -

Yes?--- - - - that's not correct.

Now insofar as this payment of \$50,000 this was a personal agreement between yourself and Mr Cordoba wasn't it? This wasn't, this did not have anything to do with provision of services for support was it?---Yes, it was

entirely for first and second line platform support. I've got a signed contract from Mr Cordoba and emails stating that that's exactly what it was for.

That contract was a cosmetic one I'm going to suggest to you, one to give it the appearance of a binding agreement between Cloud People and Storm Solutions?---That's not true.

10 Yeah. Well, because this payment of \$50,000 was a reward or Commission for you being able to explore these opportunities with TAFE New South Wales?---No, that's not true and I provided a text message from Mr Cordoba explaining that this was for the first and second line support and there's actually a number of emails which I've previously submitted which make reference up until March or, or later regarding the setting up of the first and second line support.

Okay. But insofar as the first and second line support is concerned you've given evidence today that my client's done nothing - - -?---Correct.

- - - to advance that?---Correct.

20

Well, if you have this contract between your company and my client's company what steps if any have you undertaken to enforce the provisions of that contract?---So when the platform was being set up I set up a help desk and emailed Mr Cordoba a number of times saying that the populating of that help desk with knowledge based, knowledge based articles was, was progressing well. Then in March we started to build a platform with, with Pete Lewis. The platform as I mentioned had a number of pretty significant issues up until July or August and the handing over of that first and second line of support wouldn't have been, wouldn't have been possible. In June 30 and July I made a number of attempts to try and contact Mr Cordoba to find out exactly what was going on with, with this which were unsuccessful and then I believe in the end of July, early August I contacted both Pete Lewis and George Milanovic to find out where Pete or where Mr Cordoba had actually gone to. Both of them gave differing answers which led me to start to become a little bit suspicious about the whole arrangement. Mr Cordoba then contacted me in early September to say that he was no longer with TAFE. That TAFE had wanted him to do some position he was – wasn't interested in and he had resigned and he was no longer working for TAFE. So between all three of those kind of conflicting answers I very much came 40 to the conclusion that Mr Cordoba didn't have any authorisation to, to do that first and second line support or also that his company wasn't doing student engagement. So at the time we set it up Mr Cordoba told me that his company would also be doing student interaction and engagement with the IT section in addition to the first and second line support and so over a number of months of building that platform I didn't have any visibility of his company doing that other component which I wasn't related to but between all of those circumstances it started to become obvious that that wasn't the case, that he didn't have authorisation.

So there's been – there was communication between yourself and Mr Cordoba since September, 2014 was there not in respect of IT issues generally?---Yes. So there was, there was a couple of times – so from I think May or June, 2014 the only times I actually had contact with Mr Cordoba was in relation to on 18 June he contact me asking for three additional servers for, for TAFE New South Wales and then once or twice between, between August and April, maybe once between August and April he texted me to say that there was a problem at one of the TAFE email servers. It was a time we had a data centre outage. I texted back saying all okay and there was no contact from then which is effectively maybe September until April/May. In April there was a – either a text or an email to say there was a, a problem with the TAFE email server and then in May Mr Cordoba texted me or called, I had a missed call saying he had a – wanted to speak to me about something. We had a number of conversations in May probably up till the start of maybe May and June whereby he explained that he was setting up registered training organisation with a number of his colleagues and wanted to use the platform that we had, we had built, and I was entirely happy for him. If he wanted to use that platform as a, as a paying customer that wasn't, that wasn't a problem for me.

THE COMMISSIONER: Was that May/June this year, 2015?---Yes, correct.

MR LEITNER: And this – was this, just to clarify, a alternative or new arrangement between yourself and Mr Cordoba unrelated to TAFE?---This was – this related to him setting up a registered training organisation and delivering equivalent courses to TAFE.

And you were happy to work with him in relation to that venture?---I was happy to discuss his work on that, yes.

Notwithstanding your concerns about issues of authorisation with respect to his role within TAFE?---This was a completely separate venture that Mr Cordoba was going on. Mr Cordoba to my understanding had not been working for TAFE from September 2014 so him contacting me to say that he was setting up a registered training organisation and wanted to use the services of, of Cloud People was a very straightforward business proposition for me.

You and this, this from a man who according to you was paid a substantive amount of money, the sum of about \$55,000, for work not performed? ---Correct.

You see it's the case that so long as there was a business idea in it for you you were happy to continue working with Mr Cordoba regardless?---No, not, not entirely so the key difference from the perspective of Mr Cordoba

using the services of Cloud people when setting up his new RTO was that his company or his RTO would need to make payments to Cloud People from the perspective of accessing the services.

THE COMMISSIONER: By that I take it that you meant that without some payment then the services wouldn't be provided so you had a, you had a measure of security in terms of whether or not you provided the service because it wasn't something that you were going to do unless you saw the money up front?---Yes, correct. So the conversation would be would I enter
10 into an agreement with Ron where I needed to pay him.

Yes, and that's not something you were going to do?---No.

No.

MR LEITNER: Now just going back to the contact that you had with Mr Cordoba in July 2014 you emailed my client through his Storm Solutions account, not his TAFE email account, is that correct?---I can't say but I have
20 emailed, over the period of the dealings with Mr Cordoba there was no consistency between the dealings with Mr Cordoba, there was no consistency between where the email addresses came from so there was a large percentage of the dealings on TAFE business were on Storm Solution email addresses et cetera so I had two email addresses for Ron when I emailed in the, in the system, I was unaware of, of which address it was going to.

Well, perhaps out of fairness if I can show you this document.

MR ROBERTSON: I don't think I've seen this document, Commissioner.
30

MR LEITNER: Perhaps if I can show it - - -

THE COMMISSIONER: Is that a document that is not presently in evidence, Mr Leitner?

MR LEITNER: Yes, that's so. Perhaps if - - -

THE COMMISSIONER: If you could just show it to Counsel Assisting.

40 MR LEITNER: Yes. Perhaps to speed things up, Commissioner, if I could also provide the second one, this witness has acknowledged those emails but - - -

THE COMMISSIONER: Yes, yeah.

MR LEITNER: - - - out of fairness - - -

MR ROBERTSON: Thank you, Commissioner.

MR LEITNER: Sir, I'll just show you two documents. The first of which, and this is the email that we're talking about on 11 September, 2013, is that what you see before you?---Yeah.

And that is essentially an email from you to my client from your business account, Cloud People to my client through his Storm Solutions business email account?---Yeah.

10 On 11 September, 2013 at 10.14am?---Yes.

Effectively saying, "Hey, Ron, is your Storm Solutions still running? If so maybe we should have a chat about some opportunities."?---Yes.

Yeah. And that's the email that you gave evidence earlier about?---I gave evidence about this email?

Yes. About contacting my client exploring further opportunities?---Yes.
20 Over the period of the number of years I've contacted Mr Cordoba a number of times to, to primarily figure out what was, what was happening with the TAFE support agreement and also I'd previously mentioned that he had told me he was on the ICT Steering Committee and would be able to provide contact information regarding moving the platform to other TAFE's, yes. So I pursued that from the perspective of being able to get some contacts from Mr Cordoba regarding that, yes.

Okay. And the second email again is an email from yourself from your business Cloud People to my client through his Storm Solutions email accounts on 3 July, 2014 at approximately 11.57am and this is where you
30 discuss rolling out or trying to expand opportunities across the entirety of TAFE New South Wales?---Yes.

I seek to tender those documents.

THE COMMISSIONER: Yes, Exhibit S14.

**#EXHIBIT S14 - 2 PAGE DOCUMENT, PAGE ONE TITLED
40 'OPPORTUNITY TO DISCUSS' AND PAGE 2 TITLED STORM SOLUTIONS 11 SEPTEMBER 2013**

MR LEITNER: Yes, nothing further.

THE COMMISSIONER: Thank you. Anything arising?

MR ROBERTSON: Not from my part.

THE COMMISSIONER: No. No more questions for Mr Kinsella I take it. Thank you, Mr Kinsella, you may step down?---Thank you.

THE WITNESS EXCUSED

[12.12pm]

10 MR ROBERTSON: Commissioner, I seek that foreshadow direction with respect to Mr Kinsella's mobile telephone as I've indicated.

THE COMMISSIONER: Yes.

MR ROBERTSON: We didn't have the SMS that was referred to and I don't suggest any wrongful conduct on the part of Mr Kinsella but we seek that direction so that we can create of an image any relevant SMSs?

20 THE COMMISSIONER: Mr Hanrahan, can you, could you please advise Mr Kinsella that the Commission now requires production of his mobile phone. That can be returned to him at a convenient time. Is it the – the phone that he presently has is that one that he's been using for some period of time?

MR HANRAHAN: Yes, ma'am, it's an integral part of his business.

THE COMMISSIONER: I know, mmm.

MR HANRAHAN: Yeah.

30 THE COMMISSIONER: What timeframe can we - - -

MR ROBERTSON: I'd told I think that we'd only need it for half an hour or so it should be (not transcribable)

MR HANRAHAN: Yes, it can certainly be provided.

MR ROBERTSON: - - - during the course of the day.

40 THE COMMISSIONER: All right. If that could, if that could be done we'd appreciate that Mr Hanrahan and we'll return it as soon as we possibly can.

MR HANRAHAN: Sure, thank you.

THE COMMISSIONER: Subject to that, Mr Robertson, I think that Mr, sorry, Mr Kinsella was the last witness but you - - -

MR ROBERTSON: That's so.

THE COMMISSIONER: - - - but do you require Mr Cordoba to return?

MR ROBERTSON: I do, I do very, very briefly and it'll take maybe five minutes or so.

THE COMMISSIONER: All right. Mr Cordoba, could you please come forward and resume a seat in the witness box and given the length of the adjournment I should perhaps reissue the section 38 order to you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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

THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Cordoba?

MR CORDOBA: Affirmed.

THE COMMISSIONER: Yes, can we have him affirmed again, thank you.

THE COMMISSIONER: Yes.

MR ROBERTSON: Mr Cordoba, you were present in the hearing room while Mr Kinsella was giving his evidence, correct?---Correct.

10 And during the course of that evidence you heard him say words to the effect of, that you, you told him that TAFE management wanted you to provide the first and second line support for the private hosted Cloud, correct?---Correct.

And you heard him, you heard him give that evidence, correct?---I heard him.

Now he was telling the truth with respect to that wasn't he?---Not correct.

20 And to the extent that you said on the previous occasion that – I withdraw that. To the extent that you denied on the previous occasion that words to that effect were said that you were lying on the previous occasion weren't you?---On which - - -

I'll start again?---Please.

You've previously given evidence to this public inquiry. Correct? ---Correct.

30 And on the last occasion I asked you the following question, "You said to him didn't you that you were authorised by TAFE to perform work for Cloud People on this project?" And you said, "No, I did not." Do you remember that question - - -?---Correct.

- - - and that answer?---Yeah.

That was false the evidence you gave to the Commission on the last occasion wasn't it?---Not correct.

40 Nothing further, Commissioner.

THE COMMISSIONER: Anyone else have any further questions of Mr Cordoba?

MR NEWTOWN: No, Commissioner.

THE COMMISSIONER: Mr Newton, no. All right.

MR ROBERTSON: Commissioner, that's the evidence.

THE COMMISSIONER: Thank you. Thank you, Mr Cordoba. You can step down.

THE WITNESS EXCUSED

[12.15pm]

THE COMMISSIONER: I just think the only thing that remains is to set the timetable for submissions, Mr Robertson. Is that right?

10

MR ROBERTSON: Yes, that's right. I'd suggest the usual two weeks and two weeks subject to one observation. Mr Newton and his instructors are presently preparing some materials relevant to what might be described as the corruption prevention exercise.

THE COMMISSIONER: Yes.

MR ROBERTSON: He suggested to me that he would like to put on those submissions first because it might be something that I should take into account with respect to my submissions. That strikes me as being a sensible course - - -

20

THE COMMISSIONER: Yes.

MR ROBERTSON: - - - notwithstanding the fact that it's an unusual course. I think Mr Newton has indicated that he can provide that within fairly short order so perhaps if he provides his submissions first I can provide mine within say two weeks and anyone who wishes to reply, including Mr Newton, can do so in a further two weeks.

30

THE COMMISSIONER: Well, on my calculations, Mr Newton, would you be able to provide your submissions on or before the close of business on 21 September?

MR NEWTON: Yes, Commissioner.

THE COMMISSIONER: And then Counsel Assisting, if those submissions can be furnished on or before the close of business on 5 October. Is that - - -

40

MR ROBERTSON: 5 October is a public holiday. I'm happy to do it on the 5th.

THE COMMISSIONER: Oh, sorry, it is too.

MR ROBERTSON: Alternatively, the 6th.

THE COMMISSIONER: We'll say the 6th. Thank you. 6 October and then any other submissions in response should be filed and served by close of

business on 19 October or I'll extend that to 20 October in view of the public holiday.

MR ROBERTSON: As it please the Commission.

THE COMMISSIONER: Does that timetable suit? Yes? No problems.

MR NEWTON: Yes, Commissioner.

10 THE COMMISSIONER: Thank you. Mr Leitner, that's suitable for you?

MR LEITNER: Yes. Thank you.

THE COMMISSIONER: All right. Thank you. I'll adjourn this public inquiry. Thank you to Counsel for your assistance.

**AT 12.18PM THE MATTER WAS ADJOURNED ACCORDINGLY
[12.18PM]**