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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION MISTO

Reference: Operation E13/2009

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 18 FEBRUARY 2015

AT 2.17PM

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

THE COMMISSIONER: Yes, Mr McGrath.

<BRETT ANDREW ROBERTS, on former affirmation [2.17pm]

MR McGRATH: I just want you to turn your mind back to the fraudulent agreement that was created and signed by you and also Mr Killalea?---Yes.

10 When do you say that that agreement was actually signed?---Um, I don't know the exact date that it was signed.

It was sometime after the email of Katie Whiting of 17 May, 2013 though, wasn't it?---Um, yeah, I think it was.

Yes. And sometime before the creation of the concocted emails, as I've termed them, on 28 June, 2013?---I think they were all done at about the same time.

20 I see. So the agreement and the emails were done around the same time. Is that right?---I think so, yeah.

And doing the best you can, do you know who wrote the words, "Zainal Gunawan," on that agreement?---No, I don't.

And I just want to take you to a number of the emails. The first is at page 310, and you'll see at the top of that page there's an email from you to Marc Bailey. Who is Marc Bailey?---Marc Bailey was my manager at ah, Macquarie University.

30 And it's dated 28 June, 2013?---Yeah.

And it's on that date that you forwarded to him the email stream that appears below on that page, and you'll see there there's an email of 28 June from Management and Professional Services account to your account? ---Yep.

That email was sent to you on that date, wasn't it?---That email there?

40 Yes, the 28 June email?---No.

Well, the email that you sent to Mr Bailey is dated 28 June, it says, at 5.56? ---Yep.

And if you go down to the email, just that header, the first header - - -? ---Okay, yes, yes.

Yes. That was sent on 28 June - - -?---Yes.

- - - at 1.54, wasn't it?---Yes.

But what it attached or what it had as its body was in fact an email purporting to be on Friday, 8 March. Do you see that?---Yes.

And if you go, we then go over the page to 311, there's an email of 7 March from yourself to the Management and Professional Services email account? ---Yes.

10

And that itself has below it an email from a Mr Tran at EMC. Do you see that?---Yes.

Now, it's the case isn't it that the email of 7 March, 2013 from Mr Tran and your copy to it, that is an authentic email that was sent on that date, isn't it? ---It is.

It is?---Yeah.

20

The email directly above that though which is dated 7 March, 2013 from yourself to the Management and Professional Services email account, that is not an authentic email is it?---No.

And the one that's on the page before that at 310 dated Friday, 8 March from Management and Professional Services to you, that's not authentic either is it?---No.

And those are two of the concocted emails that I've termed them - - -? ---Yes.

30

- - - that were created by yourself and Mr Killalea on about 28 June, 2013? ---Yes.

That's correct. Now if we could turn over to 344, you'll see at 344 again there's an email from you of 28 June to Marc Bailey and that's an authentic email sent on that date isn't it?---Yes.

40

And if we go down you'll then see an email header of 28 June from Management and Professional Services to you, the header of the email of 28 June there, that is authentic isn't it, it was sent on that day?---Yes, yes.

Then the email directly below that, the body of that email is from Management and Professional Services to you of 28 February, that is not an authentic email is it?---No.

That was concocted by you and Mr Killalea on about 28 June, 2013?---Yes.

And if we then turn over the page to 345 there's an email dated 26 October, 2012 from Management and Professional Services to you, that is not an authentic email is it?---No.

It was concocted by you and Mr Killalea wasn't it?---Yes.

And then if we turn over the page to page 346 there's an email from yourself to Management and Professional Services of 23 October and that's not an authentic email is it?---Um, I'm not sure about that one.

10

You think that this might in fact be a real email created - - -?---Yeah, yeah, I think it might be.

- - - on the day it bears?---Yeah.

But the one above it is in fact concocted?---That's right.

And we go further down the page and there's an email from someone at Macquarie called Harrild and you're copied to that?---Yeah.

20

That's is an authentic email?---Yeah, it is.

Next if we go to page 319, if we go to the email that's at the bottom of the page, it's dated 10 July, 2013, it's from Management and Professional Services to you, is that an email that was drafted by Mr Killalea on or about 10 July, 2013?---I think so.

30

Did you ask him to insert the paragraph which commences "An anticipated I have basically carried the cost to date for the initial work effort on the original invoice which I did fractionally overrun due to delays and subsequent toing and froing between you and EMC." Did you ask him to insert that paragraph?---I'm not certain, probably.

And that was part of the other – that was another part of the effort by yourself and Mr Killalea to give the impression of earlier activity occurring on a project by Management and Professional Services wasn't it?---Yes.

Do you still maintain your evidence that Mr Killalea created the emails and some of the structure and then you filled in the rest - - -?---Yep.

40

- - - for each of the concocted emails?---Yep.

Now, when did you last see Mr Killalea?---Um - - -

Apart, apart from in the circumstances of this, of this hearing?---Yeah, I know what you mean. Um, probably about the time that um, I mentioned to him that I was um, under investigation by the university.

I see. Now, we know from the documents that you came under investigation of the university in the early part of July, 2013?---Ah hmm.

So would that be - - -?---Around then.

Accord with your memory?---Yeah.

When was the last time you had a communication with Mr Killalea?
---About then.

10

From your perspective why had – why have your communications with him ceased?---Um, I would say probably to do with the stuff at Macquarie University.

Well, I'm asking it from your perspective?---Yeah.

Why have you no longer remained in contact with Mr Killalea since about the time that you became under investigation from Macquarie University?
---Um, no particular reason to be honest with you.

20

Are you embarrassed - - -?---Yeah.

- - - about the circumstances - - -?---Absolutely.

- - - in which that happened?---Absolutely.

So it was false to say at your compulsory examination that the reason why you have ceased communications with him is that you were just simply at keeping in touch with people. Is that right?---No, no, that's, that's part of it as well.

30

You know exactly why all contact between yourself and Mr Killalea has ceased don't you?---No.

He ceased all contact with you on 18 July, 2013 didn't he?---No. That's about the time that we were talking about the investigation.

Well, you've heard what he says?---Yeah.

40

He says that he told you that he no longer wished to continue your friendship, that the trust that he had in you had evaporated and that he wanted you out of his life and never to cross his path again. Do you recall him saying words to that effect to you?---No.

And you heard his evidence that you said to him that he didn't have to act like that?---Yeah, I heard him say that.

Sorry?---I heard him say that in here.

Yes. What do you say that - - -?---That didn't happen. I don't - - -

That didn't happen?---No.

And at the time that you had a conversation with him, this is according to Mr Killalea, it was at his home and that was the last time you stayed at his home?---Um, yeah. I don't think I even stayed that evening. But there was a conversation but it didn't go that way.

10

Well, you tell the Commission the conversation which occurred which has caused you to no longer be staying at Mr Killalea's home from around July, 2013 onwards?---When I explained the context of the investigation that the ah, university was carrying out and that part of it related to MAPS um, Chris and I discussed the fact that um, we shouldn't um, be around each other and that um, we thought it would be best if we just went our separate ways, you know, for the time being. There was nothing about anything else. Um, he was um, upset I think about the fact that it was under investigation um, but the context of the conversation wasn't – pardon me – the way it was reiterated.

20

So to your mind there hasn't actually been a falling out between friends as such in that relationship?---No. That's what I said to you, yeah.

But in fact it was a conscious decision that you say taken by both of you that you shouldn't be seen together?---Yep.

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

30 Because if you were seen together it might cause issues in the investigation that was occurring at Macquarie University. Is that the case?---Yes.

And has it remained the case that the reason why you haven't been in contact with him for that period is that you didn't want to raise suspicions? ---Oh, no.

After you were sacked - - -?---Yeah.

40 - - - by Macquarie University the issue about suspicions was no longer relevant. That's right, isn't it?---That's right.

Why did you not attempt to make contact with Mr Killalea after that point to say to him, doesn't matter anymore, mate, I've been sacked, we can, we can resume our friendship?---Ah, 'cause I never really did that with anybody, I was – at that time I was looking for work and it was, I wasn't in the Sydney area.

You weren't in the Sydney area?---No.

I see. And it's only in the Sydney area, when you're in the Sydney area that you maintain contact with Mr Killalea. Is that the case?---Generally.

I see. Now, I can take you to the documents but I think you're familiar with them?---Ah hmm.

They are searches of Telstra records that have been done - - -?---Yes.

10 - - - in relation to particular telephone numbers?---Yeah.

Now, you would agree wouldn't you that you have seen those telephone records - - -?---Yeah.

- - - on a previous occasion?---Yes.

And you identified those telephone numbers as being a landline at your home - - -?---Yeah.

20 - - - your mobile - - -?---Yeah.

- - - your wife's mobile - - -?---Yeah.

[REDACTED]

And the Broadband account. You know don't you from those records, and it's the case that on 28 October of 2013 - - -?---Ah hmm.

30 - - - you arranged for each of those telephone numbers to be placed into the name of Management and Professional Services Pty Limited?---That's right.

And you know, well, you knew at the time you did that that you had absolutely no authority whatsoever from Management and Professional Services Pty Limited to make them the accountholder for each of those service numbers?---That's right.

40 And you knew that the effect of you putting all of those numbers in the name of Management and Professional Services Pty Limited is that from the point of view of Telstra it regarded Management and Professional Services Pty Limited as its customer on each of those telephone numbers. You know that, don't you?---I know that now, yes.

And you would understand wouldn't you that by doing that, Management and Professional Services Pty Limited appeared to become liable for all of the account charges made for each of those telephone numbers, don't you? ---Yes, the Commissioner explained that to me.

Now, are you able to explain to the Commission why it is that you arranged for the whole of your family's phone numbers and Broadband to be transferred into the name of Management and Professional Services Pty Limited on 28 October, 2013?---Because I had an Internet connection at my home that was provided by Macquarie University and ah, my mobile phone, pardon me, was um, also ah, covered by the University. When I was suspended um, the, Marc Bailey um, got the network, pardon me, got the network people to um, set about the transfer process of putting those services back into my name. Ah, they filled out ah, the wrong paperwork and Telstra didn't process the forms and so at one point before the 28th for a few weeks I had no phone services, they were actually disconnected, and I had to go backwards and forwards to Telstra to have them reconnected. When I got to the stage of reconnection ah, they couldn't put the Broadband onto my old Telstra account because it was on an older system, it could only go on a business account, and the young girl in the store said um, did I have a business and I said, at that stage I said no, I didn't. She said, "Do you know anybody with a business?" And we went through a couple of people that I knew and they didn't have ABN numbers and she was basically looking up on the system an ABN number, she said, "I can move the services to this, to an account," created for me with that name, and she said, "And then I'll get, that'll get the services back on quicker." And that's why it was done.

Of all the entities that you could possibly think of when you're in the Telstra store - - -?---Yeah.

- - - to have your telephone numbers transferred into - - -?---Yeah.

- - - could you please explain to the Commission how it is that you settled upon Management and Professional Services Pty Limited to be it?---It was literally the first one to come up with and that she could pull up in that screen that worked.

And you knew didn't you at the point in time in which you were doing this that you were under investigation from Macquarie University - - -?---Yes.

- - - for a serious investigation of allegations against you?---Yes.

And you say that one of the reasons why you had gone your separate ways with Mr Killalea was because you didn't want to be seen with him and have suspicions raised?---Yeah.

That's the case?---Yeah.

Wouldn't you imagine that suspicions would be raised by you having all of your family's telephone and broadband account numbers shifted into the name of that company?---Yes.

And you're just saying that that was just a very foolish thing to do are you?
---Yes, I am.

And you knew you had no further connection at all with Mr Killalea and yet you still went ahead and did that?---That's right.

10 Since the date you had them all shifted into the name of Management and Professional Services Pty Limited what have you done to have them all transferred out of that company's name?---Well, since the Commissioner pointed out the, the issue to me I've contacted Telstra and they're in the process of moving them to a, a, I think it's a user account, a residential account.

And did that just take a phone call to Telstra to arrange?---No, no, there's a heap of paperwork that had to be filled out.

I see. Now I just want to go through a sequence of things relating to your recruitment to each of the Universities?---Yeah.

20 You agreed with me earlier that the position that you took at Macquarie, at the University of Newcastle was one which had been, you had been placed through Hudson Global?---That's right.

You remember that?---Yeah.

The position at the University of Sydney?---Yeah.

Did you also go through a recruitment agency to obtain that position?---Yes.

30 Which recruitment agency was that?---Um, I can't remember to be honest with you. It was -- they found me and they were somebody that was associated with the University already.

I see. The position at Macquarie University, is that one that you obtained through placement from a agency?---Um, I don't remember to be honest with you. Yeah, I think there was a um, it was another, it was somebody that the University had engaged. It was a small one-man operation I think.

40 What are the things that have attracted you to positions that have become available at three of the major universities in New South Wales?---I don't understand the question.

Well, why have you taken positions at universities over the last 10 years - - - ?---Yeah.

What is it about universities that you have been attracted by to take positions there?---Um, the University of Newcastle was close to my home ah, and the work was interesting and I, it was large-scale work. Um, the

University of Sydney I was um, not headhunted by the um, agency selected me because I'd worked at another university and Macquarie University um, the agency called me there again but I think that was um, I think somebody had referred me to him.

I see. You would recognise, wouldn't you, that at each of Newcastle, Sydney and Macquarie Universities you have been able to perpetrate frauds on them in a very similar manner haven't you?---Yes.

10 And it's involved you getting, except in the case of iPath, getting Management and Professional Services Pty Limited as an accredited supplier to the institution?---Yeah.

It's involved you creating or being involved in the creation of fictitious invoices to each of those institutions?---Yes.

And then having them pay?---Yes.

20 Did you recognise when you first took the job and had worked at University of Newcastle for some time that universities had some defect in their systems which would enable you to perpetuate the sort of fraud that you have done on each of those institutions?---No.

It wasn't one of the things that attracted you to taking a job at the University of Sydney that you thought you could get away with something similar to what you had done to the University of Newcastle - - -?---No.

- - - by way of fraud?---No.

30 It didn't attract you to the job at the Macquarie University that one of the things that you might be able to do is to get away with a similar fraud that you had gotten away at both the University of Newcastle and Sydney University?---No.

But you recognised, seemingly quite quickly in each of these roles, that they were susceptible to the method of fraud that you ultimately perpetuated on each of them weren't they?---I, I hadn't planned anything like that at - it, it wasn't the way you were saying.

40 Well, let's be clear. You did plan each of these frauds didn't you?---No, I didn't plan them, no.

Well, it's not like the occasion where you might be wandering along in the university offices and you see an open drawer and sitting there is \$43,000? ---Yeah, no.

It's not like that?---No. No, it's not.

What it involves is a systematic series of steps that you take that ultimately ends up in an invoice being paid by the university. So when you start each of those steps you had in place a plan that would see through to fruition the payment of an invoice to your benefit. That's right isn't it?---That's right.

So you did plan each of these frauds didn't you?---Put that way, yes.

Well, not put that way. You planned them didn't you?---I had no plan before I went to any of those universities to do that.

10

No. I'm asking you whether you had in place a plan immediately prior to you starting to take the steps on each of the frauds?---No.

No plan at all?---Absolutely no.

On the day in which you arranged for Management and Professional Services Pty Limited to be an accredited supplier to the universities - - -? ---Yeah.

20

- - - did you have a plan in place that would involve fictitious invoices being paid to your benefit by the universities?---At Sydney.

Only at Sydney?---Yeah.

But you didn't have that plan in place at University of Newcastle?---No.

Or Macquarie University. Is that what you're saying?---Yeah.

30

I just want to clarify one thing that arose from your evidence earlier. Is there anything that you ever said to Mr Killalea during the latter part of 2012 through until around May, 2013 which would have given rise to an expectation on his part that he would in fact be doing work for Macquarie University?---Um, probably.

So you were saying things to him during the course of that period - - -? ---Yeah.

- - - that would lead him to believe that there might in fact be work - - -? ---Yeah.

40

- - - that he would legitimately be doing for Macquarie University?---Yeah, I can't um, place the timing but I would have, I would have said something along those lines, yeah.

Yes. And what was the nature of the work that you were saying to him he might be doing at some point in the future?---Project management work, project governance work.

Did it have anything to do with the process improvement report that was to be written after you had collated data for him on it?---No.

Nothing at all. So that's, you say that was a, there was not an expectation
- - -?---I don't know what - - -

- - - that he could have, he could have held from having spoken to you?
---I don't know what that is.

10 I see.

Commissioner, I need to just have a moment. I need to just speak to my
instructing.

Nothing further, Commissioner.

THE COMMISSIONER: Thank you. Mr Alexis, do you have any
questions?

20 MR ALEXIS: Thank you, Commissioner. Mr Roberts, Alexis is my name.
As you've probably heard, I appear for Macquarie University?
---Yes.

When you were appointed to the position of Director Experience
Informatics at Macquarie University, a financial delegation was bestowed
upon you in that position, wasn't it?---Yes.

30 And that financial delegation involved, as you understood it, the University
reposing trust in your ability to exercise that delegation honestly and for
purposes related to the University only. Is that so?---Yes.

And would you agree with this suggestion, that in undertaking the creation
of the fraudulent invoices which as we've heard one of which came to be
paid in December 2012, you were singularly abusing the trust and
confidence that the University had reposed in you as one of its employees?
---Yeah, and I'm ashamed of it.

40 Now, just in that regard, should the Commission understand that at the
relevant time, and by that I mean of course when the false invoice and
invoices were created, your financial delegation had a ceiling of \$30,000?
---I don't recall.

Well, if you look at Exhibit M1 - - -?---Yeah.

- - - and we'll have it turned to page 188 and 189 and wait for it to come up
on the screen?---Yep.

Do you see the document headed "Financial Delegation Authority?"---Yes.

And you'll see your details and you'll see the date and signature at the bottom of the page. Do you see that?---Yes.

And if you go to the next page – and I'll come back to that one – page 189, this is the earlier form of delegation, you'll see the document variously dated 27 and 29 August, 2012. Do you see that?---Yes.

And the Commissioner should understand that this is the authority under which you had a financial delegation of \$30,000. Do you see that?---Yes.

10

Now you understood that the policy that travelled with financial delegations meant that the amount of expenditure you were authorised to approve was up to \$30,000 exclusive of GST?---Um, probably, yes.

And that explains doesn't it when we go to the invoice that you've accepted today was created fraudulently why the amount referred to in the invoice is just under \$30,000, \$29,500, that it was just below your financial delegation?---I don't think that much thought went into it.

20

Well, you would hardly have created an invoice for expenditure that you yourself were unable to approve would you?---Potentially. I actually thought my delegation was 50,000 there um, the full cost of the phone bill was the only exception because it was a, sort of a static account arrangement.

Well, if you go back to page 188 - - -?---Yeah.

- - - you see that at a later point in time, namely October 2012, the financial delegation appears to have been increased from \$30,000 to \$50,000?

30

---Yeah, right.

In any event the proposition I'm putting to you is this, that when you were creating the fraudulent invoice in December and were involved in the fraudulent invoices that were created in the 2013 year you were very keen to ensure that the amount claimed in each invoice was within your financial delegation because you knew that you were able to then approve it, correct? ---No.

40

Do you seriously suggest to the Commission, Mr Roberts, that the level of your financial delegation had no role to play in the determination of the amount of the invoices that were fraudulently created?---Absolutely.

You knew didn't you that the means by which you could facilitate payment was the fact, the very plain fact may I suggest to you, that you knew you had a financial delegation to approve that invoice?---No.

You knew didn't you that if you had approved the invoice and you were taken earlier to the purchase order at page 250 that it would then be

processed for payment by Ms Whiting, you knew that didn't you?---Katie's team or Katie and her team processed all the documents. They looked after - anything that I could sign came to my desk, anything that Marc had to sign went to his desk, there was - it's not the conspiracy that you're sort of suggesting, it was - - -

THE COMMISSIONER: Mr Roberts, I think you're missing the point somewhat?---Yeah.

10 You see, provided the amount of the invoice was below your financial delegation limit - - -?---Yeah.

- - - the invoice was always going to come back to you for approval wasn't it?---Not necessarily.

Where else would it go?---Ah, it could go to other people in the ah, group, we all, each of the directors had delegations.

20 But insofar as you might submit an invoice, for example had Mr Killalea decided that the invoice was going to be 60,000 instead of 32,000 - - -? ---Yeah.

- - - that would have immediately caused problems wouldn't it from the point of view of exceeding your financial delegation, it would have had to have gone somewhere else, it would have by necessity have gone somewhere else for approval wouldn't it?---It would have gone somewhere else, yes.

30 And that would have attracted somebody's attention to the invoice?---I didn't put that much thought into it.

Seriously you didn't put that much thought into it?---No.

So this whole scheme could have unravelled quite dramatically and suddenly if the invoice had gone to someone else and they'd picked up the problem that no work had been done?---Absolutely.

40 MR ALEXIS: Mr Roberts, you were taken earlier by learned Counsel Assisting to the document at page 250, perhaps we ought to go back to that, it'll come up on your screen momentarily. This is the approval document to which reference was made before lunch?---Yeah.

And what I want to suggest to you is that you well understood when the fraudulent invoice was created that it would come to you for approval being an amount of expenditure that fell within your financial delegation, the evidence of which we see by the signature on the document at page 250, correct?---I signed that, yes.

And you signed that knowing that the invoice that had been fraudulently created would come to you for approval because it fell within your financial delegation. Correct?---No.

Now, you were asked some questions about the emails that were created to give the false impression of work being done under the contract between the University and Management and Professional Services. Do you recall those questions?---Yes.

10 Now, by about June of 2013 you'd become the subject of an internal investigation by your direct report, Mr Bailey, hadn't you?---Yes.

And we should understand that Mr Bailey then occupied the position of Chief Information Officer - - -?---That's right.

- - - to whom you reported?---Yes.

20 And he was trying to get to the bottom of whether or not the contract that was said to exist between the University and Management and Professional Services was a genuine commercial contract or not, amongst other issues, wasn't he?---Yes.

And it was in relation to that internal investigation that the emails to which reference has been made that were cobbled together with Mr Killalea were prepared and forwarded to Mr Bailey to give him the impression that these were genuine emails representing genuine work product with respect to that contract. Correct?---Yes.

30 Now, you accept I think that insofar as you forwarded those emails to Mr Bailey you were seeking to deceive him into believing that there was a genuine contract in existence when you know or knew at the time that there was no such contract in place?---Yes.

And in addition to forwarding him those emails you also sent to him a number of emails containing explanations that he had been seeking from you?---Probably, yes.

40 Well, would you agree with this proposition, that in conducting the internal investigation Mr Bailey was unrelenting in terms of trying to obtain a clear and transparent response to the questions that he was asking you about this? --- (No Audible Reply)

Do you agree with that or not?---Um, Mr Bailey was unrelenting, full stop. I saw no difference in the correspondence from him at that time to any other time.

Mmm. All right. Well, I gather then that you agree that in pursuing this particular matter, whether it was his general form, he was unrelenting in

trying to obtain from you a clear and coherent and transparent response to his questions?---Yes.

And insofar as he sent you email after email after email, which are all reproduced in this material, you responded to his emails with complete deception. Is that so?---With those emails, yes.

10 And you were trying to achieve a position whereby he would become satisfied and not recommend that you become the subject of disciplinary action. Correct?---Yes.

And you told Mr Killalea that there was an internal investigation being conducted at the time?---Yes.

Which explains of course why the emails were created?---Yeah.

Is that so?---Yes.

20 And he well understood I gather from what you said to him that there would be likely a misconduct investigation and a disciplinary action taken against you unless the position could be properly and satisfactorily covered up to Mr Bailey's satisfaction?---Um, I'm not sure.

Well, can I put this to you?---Yes.

30 It was crystal clear to you and to Mr Killalea as far as you understood his knowledge of the situation, that the wheels were about to fall off this fraudulent scheme unless Mr Bailey could be satisfied that everything was above board?---Yes.

And you and he discussed, didn't you, the way in which you could set about the task of trying to make sure that the wheels didn't fall off didn't you? ---Yes. Yes.

And that's what led to the false emails?---Yes.

That's what led to the creation of the backdated service contract?---Yes.

40 And that's what led to you emailing Mr Bailey and providing him with explanations which we know were ultimately regarded as unsatisfactory. Correct?---Yes.

Now, I gather in June of 2013 you well understood that if there was a disciplinary action you would likely lose your job?---Ah, yes.

And I gather you also understood that in June, 2013 if that happened there would be a question as to a liability to repay the university funds that it had paid for no good reason?---I wasn't aware.

Well, it's pretty obvious isn't it, if it was found that you had engaged in misconduct -- -?---Yeah.

-- - a consequence of that would be that you would have to repay money as a result of that misconduct. Correct?---Look, I would look to do that anyway.

10 Well, what I want to get to is this, have you and Mr Killalea discussed the likely consequence of a disciplinary action against you?---No.

Now, can I come to this matter. We know that you were suspended without pay in early September, 2013 pending the disciplinary investigation?---Yes.

We know that by early October your suspension became a suspension without pay?---That's right.

20 And then the misconduct investigation committee was convened and undertook a hearing on 25 November, 2013. I don't need to be precise about the date but that's the general order of things?---Yeah.

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

-- - how you recall it?---Yep.

30 Now, in relation to each of those particular steps, can you tell us what you communicated about that to Mr Killalea in terms of how the investigation was going?---No. He didn't get blow-by-blow updates. The only conversation we had was that um, I was being investigated and that um, there were several areas that I was being investigated about and one of them related to MAPS.

And did you not tell him what the result of that investigation was?---I'm not sure I understand what you mean.

Did you not tell Mr Killalea what the outcome of the investigation that you've told him about in June of 2013 was?---I, I don't recall.

40 Could you have done so?---Yeah, I could have.

Based on what you told us earlier this afternoon, the reason for either a lack of communication or a limited amount of communication was a joint decision that you ought to stay low with one another and not potentially be seen together?---Yep.

Do you remember giving that evidence?---Yes.

Can you try and recall to mind whether you had any form of communication with Mr Killalea after the events of June, July, 2013 during which you explained to him what the consequence of the disciplinary action was?---No.

Now, there was also reference to you performing the role of trustee of his private superannuation fund?---Yes.

You accept that you were appointed a trustee of his superannuation fund?
---At one stage, yes.

10

Do you recall being appointed as the sole trustee?---No, I don't.

What's your recollection as to what happened in terms of bringing that role to an end, has it been brought to an end?---Oh, I don't – I assume so.

20

Well, why would you assume that?---Well, there were, there was forms that came from either his accountant or a solicitor or somebody each year which was like a statement that you had to sign and I only did that once. His brother was doing it and then um, his brother took a job where he couldn't do it and he asked me to do it, I asked him what it was about and he said if anything happens to me you've just, I've got to, got to appoint somebody, if anything happens to me it just goes with the Will, whatever his Will was or his estate was so - - -

Yeah. But by reason of all that you understood that you had a formal role to play with respect to self-managed superannuation fund?---Yeah, didn't like - - -

30

Well, has that role come to an end?---I believe so.

When did it come to an end?---I don't know.

How did it come to an end?---I don't know.

Well, there's a suggestion made that in about December 2013 you either resigned or were removed as the trustee of the super fund. What can you tell us about that?---Well, I didn't resign so I must have been removed.

40

Right. Did you receive any papers with respect to that removal?---No.

Nothing at all?---No.

Did you have any communication with Mr Killalea or anyone on his behalf in December 2013 about your removal as a trustee of the superannuation fund?---No, otherwise I would have known it had happened.

Right. Do you remember participating in the misconduct investigation committee hearing?---Yes.

And we'll have brought up on the screen for you the report, I just want to take you to some parts of it, Exhibit M1 at page 196 and following. You represented yourself during the hearing before the committee is that so?
---I wasn't allowed to take anybody.

In any event you made submissions before the committee as to your defence to the allegations and your position?---I answered their questions.

10 And did you read this report after it was prepared by the committee?---Um, yeah, I did, it came much later.

I'm sorry?---It came much later.

Now if you just have a look at page 204 you'll see that one of the allegations which is described in the report as allegation number 4, related to the entering into of the contract between Macquarie University and Management and Professional Services, do you see that?---Yes.

20 And the issue raised by that allegation was whether or not your entry into that contract on behalf of the University was consistent with University policy, you understood that was the allegation?---Yes, yes.

Now if you turn over to page 205 you see further towards the bottom of that page there's a paragraph that starts with the words "Mr Roberts claims" and then there's a colon and then there's some material in quotation marks, do you see that?---Yeah.

30 And that accurate captures doesn't it the submission or the argument that you put to the committee on this occasion about how it came to be that this agreement was entered into?---Yes.

And in making that claim or putting that submission to the committee you knew didn't you that the contract to which you were there referring didn't exist at the time the services apparently were rendered by Management and Professional Services?---Sorry, can you just say the question again?

Well, at the time you made this submission to the committee - - -?---Yes.

40 - - - you knew that the agreement didn't exist at the time the services were alleged to have been rendered?---Yes.

And you knew that your submission to the committee was founded on a contract that you knew didn't exist?---Yes.

And you knew that the work being referred to in that contract had never been done?---Yes.

And you never disclosed to the committee, did you, in the course of this hearing that the agreement had been created after the event to cover a fraud, did you?---No.

And to that extent I gather you would accept from me that you singularly deceived the committee at this disciplinary hearing in relation to the true facts of this matter?---Yes.

Yes, thank you, Mr Roberts.

10

THE COMMISSIONER: Yes, yes, Mr Cheshire.

MR CHESHIRE: Thank you, Commissioner.

Mr Roberts, Cheshire is my name. I represent the University of Sydney. I'm right I think that in relation to the three University of Newcastle invoices you accept that it was your scheme to obtain money by raising false invoices. Correct?---Yes.

20

And you involved Mr Killalea and MAPS in order to be able to carry out that scheme. Correct?---Yes.

And indeed you discussed at the outset with Mr Killalea what the intent of the scheme was. Correct?---Yes.

So therefore from your point of view from the outset Mr Killalea was aware that the University of Newcastle invoices, that it was intended to get money by way of a fraudulent scheme. Correct?---Yes.

30

In relation to the University of, to Macquarie University, again that was your scheme in order to submit false invoices. Correct?---Yes.

And you engaged or got Mr Killalea and MAPS involved in order to carry out that scheme. Correct?---Yes.

And you told Mr Killalea at the outset of your intention to carry out a fraudulent scheme in relation to Macquarie University. Correct?---Yes.

40

In relation to the University of Sydney, again you got Mr Killalea involved, Mr Killalea and MAPS involved in order to be able to carry out a fraudulent scheme. Correct?---Yes.

Did you tell Mr Killalea at the outset that you intended to obtain work by – obtain money by a fraudulent scheme?---No.

At any time with Mr Killalea did you discuss with him in relation to the University of Sydney what you intended to do, namely carrying out a fraudulent scheme?---No.

At any time did you tell Mr Killalea in relation to the University of Sydney that you had in fact carried through on your fraudulent scheme?---No.

And did you at any stage tell Mr Killalea that you had in fact obtained money from the University of Sydney to which you had not been entitled? ---No.

10 You say that you involved Mr Killalea in order to be able to carry out your fraudulent scheme in relation to the University of Sydney. Correct?---Yes.

And that involvement was Mr Killalea filling in an accreditation form for the University of Sydney on behalf of MAPS. Correct?---That's right.

And do you say that you told Mr Killalea that you wanted him – did you give – sorry, I withdraw that. Did you tell Mr Killalea why you wanted him to fill in that form?---No.

20 So did you simply say to him one day could you please fill in an accreditation form for the University of Sydney?---Yes.

Did you give him reason to believe that there might be work that would flow to MAPS if he filled in the accreditation scheme?---Yes.

And therefore after he had filled in the form did you at any stage discuss with him after that date where things were up to with MAPS getting work from the University of Sydney?---No.

30 Did Mr Killalea ever come back to you and say anything to the effect of well, I filled in that form, are we going to get any work?---No.

So you say that the events occurred in, in this order, that you said to Mr Killalea in effect can you fill in an accreditation form for, for the University of Sydney for MAPS?---Yeah.

I'll see if I can get you some work - - -?---Yeah.

40 - - - for MAPS, he says, okay, he fills in the form, the form is submitted, you know that he's been approved and you say that there is no further discussion between you and Mr Killalea about the prospect of carrying out any work that the University of Sydney, is that your evidence?---There, there may have been conversation but I don't recall it. Not in any detail or specifics.

But you still maintain that in those conversations you never said to Mr Killalea anything to the effect of, well, I've done to the University of Sydney had I did to the University of Newcastle?---No.

Are you aware that either Mr Killalea or MAPS have repaid the sum of \$32,450 to Macquarie University?---Yes.

When did you become aware of that?---Ah, Monday.

Of this week?---Yeah.

And that was during the course of this hearing. Is that right?---Yes.

10 You heard Mr Killalea give that evidence?---Yes.

And you're aware that Mr Killalea repaid that money because – sorry, his evidence was that he repaid the money because the work hadn't been done and therefore the money had been obtained fraudulently?---Yes.

The position in relation to the University of Sydney is the same isn't it? ---Yes.

20 And indeed the – what was perpetrated on the University of Sydney was a fraud that was caused by you. Correct?---Yes.

And indeed you personally benefited from it did you not?---Yes.

Has it occurred to you to offer to repay the money that you obtained from the University of Sydney?---Yes.

And what steps have you taken in that regard?---None yet but I would like to. I'm ashamed of what I've done.

30 And so it is your intention, is it, to repay the sums of money that were obtained fraudulent from the University of Sydney?---Yes.

Have you ever discussed with Mr Killalea the prospect of repaying any of these moneys that were fraudulently obtained from any of the three universities?---No.

Thank you very much. Thank you, Commissioner.

40 THE COMMISSIONER: Thank you, Mr Cheshire. Mr Gleeson, do you have any questions?

MR GLEESON: No, Commissioner. Thank you.

THE COMMISSIONER: Anything arising, Mr McGrath?

MR McGRATH: No, nothing arising.

THE COMMISSIONER: All right. All right, Mr Roberts, you can step down. You're excused for the moment. I can't anticipate at this stage whether or not you'll be required to come back but you may step down and leave the proceedings for now?---Commissioner, can I just say something before - - -

10 Yes?---I want to take the opportunity to apologise to each of the universities. You know, what I've done is – I'm ashamed of, it was wrong, and um, I know it probably doesn't mean much coming from me here, but I want to do what I can to fix this up. Thank you.

THE COMMISSIONER: All right. Thank you, Mr Roberts.

THE WITNESS WITHDREW [3.17pm]

THE COMMISSIONER: Mr McGrath, yes.

20 MR McGRATH: Commissioner, I would ask for the hearing to be adjourned for about 10 to 15 minutes so that an opportunity can be had to have a discussion with Mr Killalea about one matter.

THE COMMISSIONER: Yes.

MR McGRATH: And then we could resume at which point I'll be able to indicate something further about the further progress of the hearing.

30 THE COMMISSIONER: All right. All right. Well, we'll take an adjournment and when you're ready to resume just let me know. Thank you.

SHORT ADJOURNMENT [3.18pm]

THE COMMISSIONER: Are we right? We're right.

40 Yes, Mr McGrath.

MR McGRATH: Commissioner, the issue has arisen as to the – what is to be done in relation to and opportunity for Mr Killalea to address the matters which arose from the evidence from Mr Roberts - - -

THE COMMISSIONER: Roberts, yes.

MR McGRATH: - - - during the box today. I am keen for Mr Killalea, particularly in light of the fact that he hasn't been represented during the

course of the hearing, that he has an opportunity to address those matters and the issue is about what time is taken to enable him to seek any such advice as he might wish and then to be questioned on those matters under oath in the box again.

THE COMMISSIONER: Yes. Is he in the room or is he outside? No, he's outside. It might – could Mr Killalea be brought in? I think I might need to find out what he wishes to do.

10 Mr Killalea, would you mind coming forward. Mr Killalea, could you just take a seat in the witness box only so that your voice can be recorded during this exchange.

MR KILLALEA: Yes, Commissioner.

20 THE COMMISSIONER: Can I just make it clear to you that for reasons of procedural fairness the Commission is in a position where it has to put certain matters to you that have been raised in the course of the evidence of Mr Roberts. I'm not being critical of Mr Gleeson because I know he only came into it today, but matters that have been put by Mr Roberts in his evidence were not put to you by Mr Roberts' representative when you were cross-examined. In those circumstances it's important that you be given an opportunity to respond to those matter.

MR KILLALEA: I understand, Commissioner.

30 THE COMMISSIONER: I appreciate that you haven't had any legal representative with you in the course of the public inquiry, but you do have access to legal advice as I understand it?

MR KILLALEA: I understand, Commissioner, but I prefer to resolve this forthwith. I prefer to make my comments in response to the questions.

THE COMMISSIONER: Well, you appreciate do you that if we go ahead it will be Mr McGrath who will be in the position of having to put certain matters to you and you're content for that to occur in the absence of any separate legal representation?

40 MR KILLALEA: Correct, Commissioner.

THE COMMISSIONER: Before we pursue that course, Mr Killalea, I want to make it absolutely clear so that you're not under any misapprehension whatsoever, that some of what Mr Roberts has said contradicts your evidence in quite substantial and serious respects.

MR KILLALEA: Yes.

THE COMMISSIONER: The evidence puts us in the position of essentially when the time comes having to make findings and in effect choose between two conflicting accounts. Do you understand that?

MR KILLALEA: I, I understand entirely.

10 THE COMMISSIONER: So you are in some jeopardy and I don't want you to go ahead with this evidence unless you are properly protected and you feel that you're in a position to answer those questions to the best of your ability. Do you understand that?

MR KILLALEA: I, I do, Commissioner.

THE COMMISSIONER: Do you nonetheless want to proceed?

MR KILLALEA: Please.

20 THE COMMISSIONER: Well, Mr McGrath I think the only thing to do is to put the questions to Mr Killalea and see what his response is in the circumstances and then those matters will have to be conveyed to Mr Cavanagh so that submissions can be put on Mr Killalea's behalf at the appropriate time.

MR McGRATH: Yes, Commissioner.

Mr Killalea - - -

30 THE COMMISSIONER: Just before we go any further could I just confirm, Mr Killalea, that the evidence that you're now giving, you're now being asked to give is under the protection of the section 38 order you were previously given and you're under your former oath and you're obliged to tell the truth in relation to the evidence that you now give.

MR KILLALEA: Yes, Commissioner.

<CHRISTOPHER MYLES KILLALEA, on former oath [3.58pm]

THE COMMISSIONER: Perhaps if we just put Mr Killalea's name back on the record, thank you. Your full name, Mr Killalea?---Christopher Myles Killalea.

Thank you. Yes, Mr McGrath.

10 MR McGRATH: Mr Killalea, you have been following all of the evidence that's been given - - -?---Yes.

- - - by Mr Roberts during the course of yesterday and today haven't you?
---Correct.

You have been outside this hearing room but you have been able to both hear and see him give evidence during the course of both yesterday and today?---Yes, sir.

20 That's correct, isn't it? And you haven't been absent for any parts of the evidence that he has given?---No, sir.

Now you heard Mr Roberts say that you and he arrived at a scheme pursuant to which fraudulent invoices would be submitted to the University of Newcastle in the course of September and October 2006, you heard him say that didn't you?---Yes, sir.

30 Is it the case that you and he agreed on a fraudulent scheme pursuant to which three invoices were rendered to the University of Newcastle?---No, sir.

Is it the case that you and he agreed on a scheme pursuant to which invoices that were submitted to the University of Newcastle were paid by the University of Newcastle?---No, sir.

Is it the case that during the course of around September and October of 2006 that you weren't doing very much work?---The dates again please, sir?

40 In around September and October of 2006 you weren't doing very much work?---2006, sir, I was very seriously engaged with a project in Melbourne from January through to late October. Perhaps my sign off was in fact November. I was extremely busy.

Who were you working for on that project?---I was a consultant – I was actually a contractor ah, program manager contractor working for Computer Associates on a major domestic bank project in Melbourne.

And what was the name of that bank?---The ANZ Bank.

And were you being paid a regular salary by Computer Associates during the course of 2006?---In the sense, sir, that it was a daily contract rate, I was paid basically throughout that entire time which was as I say January through to late October which is when I believe my engagement closed but the farewell function was November. My day rate was in the vicinity of 1,000 to \$1,200 a day.

10 And where were the funds for that day rate being deposited?---Into my company account, Management, Christopher Killalea trading as Management and Professional Services.

Into the cash management account held by that company. Is that correct?
---Yes, if that's the account, sir.

20 And what do you say about Mr Roberts' evidence that you and he agreed to share 50/50 on the proceeds of the three invoices that were paid by the University of Newcastle into the cash management account of Management and Professional Services Pty Limited?---False.

What do you say, having heard the evidence of Mr Roberts, became of those proceeds?---Those proceeds, sir, were not paid to Mr Roberts. They in fact were deposited into my bank account as stated and I had no ah, prior knowledge of those funds arriving and to my detriment I did not even notice those funds being deposited.

30 You adhere to your former evidence that \$7,000 of the amount that came from the University of New South Wales was paid in cash to Mr Roberts for work that he had done on a Unisys project?---At the time of the deposit, sir, I had \$160,000 in that bank account and for want of actions that will be established no doubt, the following day I have been – I was – the following day I withdrew \$7,000 from my bank account to pay Mr Roberts at his bequest the \$7,000 that I have stated that I owed him for work performed sometime earlier but not yet paid for, for a project that he operate under the banner of my company as a service – as a ah, service architect document expert on behalf of my company, sir, Management and Professional Services at Unisys Corporation. Those \$7,000 – the \$7,000 was payment of his work performed.

40 Did you also hear the evidence of Mr RH that was given during the course of yesterday?---Yes, I did, sir.

And you heard him say that he has never received a total of \$12,000 in cash from you, you heard him say that didn't you?---I did, sir.

Do you adhere to your former evidence that you paid him \$12,000 in cash?
---Yes, sir, in or around November. Ah, may I be so bold as to correct your comment when questioning Mr RH You asked him if I'd paid him

\$2,000 around that date of ah, mid, early-mid that is, no, those \$2,000 was part of the \$10,000 that I had withdrawn in cash later in the year, October. I paid him the \$12,000 in cash at one occasion.

And so you contest the evidence of Mr RH that he says that he has never received any cash amounts from you or your company. Is that the position that you contest his evidence to that effect?---Unfortunately, sir, I do.

10 And you've heard Mr Roberts give evidence of the events that surround the creation of the invoice of 7 December, 2012 that was issued to Macquarie University?---Yes, sir.

You have maintained, haven't you, that at the time that that invoice was raised, Mr Roberts had said to you words to the effect that he had done work on the collation of data for Macquarie University and that he anticipated that you would be performing work following the completion of his work on the creation of a process improvement report?---Correct, sir.

20 That's the effect of what you said?---Yes, sir.

And you've heard his evidence today which is to the effect that you and he agreed on a fraudulent scheme pursuant to which that invoice was submitted to Macquarie University. You heard him say that, didn't you?---Correct, sir.

30 And at the time the invoice was created you and he had agreed that you would split the proceeds of that false invoice 50/50. You've heard that, haven't you?---Correct, sir. The proceeds were to be split 50/50 on the invoice as raised for the work performed, not on a false invoice, sir, but on
- - -

Well, his - you understand his allegation to be - - -?---I do, sir.

- - - that you and he both had the same intention, which was to submit to Macquarie University a fraudulent invoice and you both knew it to be fraudulent and dishonest at the time it was created. That's correct?
---Yes, sir, both knew it was fraudulent and it would be dishonest, at this point in time the work was ah, as explained by my statement and my previous comment it was explained to me by Mr Roberts that the major portion of his component had already been performed. This is why he was
40 raising the invoice or, correction, sir, this is why - - -

But do you agree - - -?--- - - - he was justifying the invoice being raised.

Do you agree with Mr Roberts' assertion that you and he agreed on a scheme to issue a fraudulent invoice to Macquarie University?---I agree on the point, sir, that we raised the invoice. I do not agree that it was a fraudulent scheme. As stated I firmly believed that it was work that had been partly carried out, certainly not complete and definitely not from my

perspective criminal, definitely not fraudulent. As I stated, very uncomfortable with raising it and previously stated I have made a mistake in putting my faith, professionalism at risk by believing Mr Roberts had performed that component without cross-referencing perhaps as stated by parties. But, sir, at the time I agreed with your comment, it was incorrect but it wasn't my purpose for a fraudulent email to be raised.

10 Now, you heard Mr Roberts, do you adhere to your evidence that you continued to believe up until July of 2013 that you might be doing work on a project for Macquarie University?---Yes, sir, as stated by Mr Roberts himself he had discussed with me the opportunity in late 2012 when this, prior to this invoice being raised and thereafter that there was opportunity at Macquarie University for my services. He also stated, sir, in his comments that he had promised or had arranged for a piece of work documentation to be supplied to me. That was the documentation, sir, of which I referred in my comment.

20 And you've heard Mr Roberts say that you created each of the three invoices dated in January 2013, February 2013 and March 2013, that you created each of those documents, you heard him say that didn't you?
---Correct, sir.

Do you agree that you created those documents?---I dispute that comment, sir. I absolutely disagree.

You've also heard him say that you were the person who submitted each of those invoices to Macquarie University for payment, you heard him say that didn't you?---Correct, sir.

30 What is your response to that?---I dispute it. May I make a comment, sir?

You can make a comment in response to questions I ask of you?---Correct, okay.

You also heard him give evidence concerning the creation of the set of what has been termed the concocted emails?---Yes, sir.

Which occurred on about 28 June, 2013?---Correct.

40 He says that you created the emails in the sense of the header and that you created a skeleton of their content and he simply filled in the detail. What do you say in response to that evidence?---Incorrect, sir, in its entirety.

And what do you say in relation to his assertion that it was you who created these documents on a memory stick and gave them to him?---Incorrect, sir. Had that been the case, sir, I would not have been recorded as having emailed them to him.

And to take Mr Roberts' evidence in a summary fashion in relation to Macquarie University Mr Roberts is in effect, has in effect said that all of the events involving Macquarie University in which you were involved were events which took place as part of a scheme that the two of you arrived at together and determined to pursue?---Incorrect, sir.

10 Is there anything else concerning the evidence of Mr Roberts that you heard today that you wish to dispute that hasn't been covered in relation to the questions I've asked you?---Yes, sir. His closing comments about advising me of a disciplinary action at the Macquarie University being underway. As you may have already observed, Mr Roberts can have a memory lapse in reality. That conversation did not occur and my departure of our friendship with Mr Roberts, sir, was based solely on my realisation that his presentation to me at the beginning of the engagement with Macquarie University for which he'd requested I raise that invoice in advance of the work being performed. Whilst I waited patiently for that work to arrive and my bequest (as said) for that material stories continued, I obtained from those emails that were in that fraudulent communication a communication, 20 email, from a gentleman at NEC that was able to confer, correction, that informed me that the material that I was waiting for in effect was material that was not as I had expected, had been believed to be waiting for, that is the material in relation to services, systems documentation, manuals, procedures, for me to carry out my analysis and documentation on my report was not at all, that material from what I understand because I couldn't access it was nothing more than data logs from some sort of network configuration, nothing to do with what I was engaged by Mr Roberts to perform. It's at that time, sir, that I realised that I was being conned, let alone the University and parted our relationship on 18 July and, may I add, 30 in the words that I had stated previously at this hearing and not at all happy about the relationship at all.

Is there anything further that you wish to say?---That's adequate, sir.

Thank you.

THE COMMISSIONER: Right. Thank you, Mr - - -

MR ALEXIS: Commissioner, before Mr Killalea is excused may I have leave to - - - 40

THE COMMISSIONER: Yes. You wish to put a further question. Yes.

MR ALEXIS: A couple of questions.

THE COMMISSIONER: Yes.

MR ALEXIS: Very short, Commissioner.

THE COMMISSIONER: Yes.

MR ALEXIS: Mr Killalea, you referred in your answer a moment ago to not having any knowledge about the disciplinary or the misconduct hearing that Mr Roberts in due course was subjected to. Did I hear that correctly?
---Correct, sir.

Thank you. You did however know that he, Mr Roberts was subjected to an internal investigation being conducted by his direct report at the university in June of 2013 didn't you?---No, sir. May I comment also, sir, that I was also unaware of his disciplinary action at Newcastle University. Mr Roberts did not convey the truth to me during this business relationship.

Well, I want to suggest to you that what Mr Roberts said during his evidence this morning at transcript 288 and 289, that's a reference for the Commissioner, about telling you that he was undergoing an internal investigation was one that happened in the context of the emails being fabricated?---I'll comment, sir, that Mr Roberts conveyed to me that he was under serious questioning by his manager in relation to why this report had not been forthcoming.

So you describe the words that he used as serious questioning by his manager. Is that what you understood?---He often spoke to me, sir, about serious questioning from his manager.

Well, did you understand that to be a form of investigation or - - -?---No, sir. I – Mr Roberts can be quite sarcastic at times and he had absolutely a loathing regard of his manager.

Well, be that as it may, you well understood, didn't you, that the essential purpose of the emails being created to, as we discussed yesterday, try and cover up what had occurred were so that those fake emails could be deployed in answer to the serious questioning that was emanating from his direct report at the university?---Sir, I have never tried to hide the fact that, in fact it was in my original submission, that those emails were fraudulent and have been – I have been a party to those invoices being raised.

THE COMMISSIONER: Slightly different emphasis, Mr Killalea. What Mr Alexis is putting to you is that it seems from what you've said thus far that the fraudulent emails were constructed as a response to this serious questioning by Mr Roberts' manager, in other words, they were designed to answer the manager's questions about where this report was and what was going on and that was something that you knew at the time that the emails were done?---Okay. Thank you, Commissioner.

Is that right?---Thank you for clarifying that. At the time Mr Roberts conveyed to me that he needed ah, to ah, what would be an appropriate

phrase, justify the delay in the report being produced. That was actually the instigation of our conversation.

10 About, about the emails?---Just, yes, the emails were to justify the delay in the publication of those reports, and I think I may have made comment to that if not in my statement, in my previous comments, categorically those emails from my perspective were a explanation that Mr Roberts had requested me assisting him to produce to account for the delay in the report relating to the piece of work supposedly (as said) commenced and completed prior to that MQ0011.

MR ALEXIS: Mr Killalea, perhaps we can just try and get to the nub of this. You well understood in June of 2013 that the direct report of Mr Roberts was asking very serious questions about his conduct that you had become involved in. Correct?---No, sir, not at all. I knew that he was being questioned, as I said, by his manager in relation to where this report was.

20 What, did you think these very serious questions had nothing to do with you?---Oh yes, absolutely they involved me, sir, because I was the one that was writing the report.

And indeed writing or involved in the creation of fake emails to explain yourself?---For the delay in the report, yes, sir, I, I, I agree I was privy to that information that I knew that they were false emails- - -

So is your evidence - - -?--- - - - to explain the delay in the report.

30 I see. Well, you keep saying that, so should we understand that your evidence to the Commission is that you thought the serious questions that were being asked by Mr Roberts' direct report related only to a subject of delay?---That's what was conveyed to me, sir. In fact he conveyed that to me on 28 June.

Mmm. And so when we read the emails and the content of them we should understand that your involvement in their false preparation was directed to explain some question of delay. Is that right?---As requested, yes, sir, and as explained clearly.

40 Yes, thank you, Commissioner.

THE COMMISSIONER: Does anyone have any other questions of Mr Killalea before we allow him to leave? No. All right. Mr Killalea, yes, you are excused, you may step down. And I think I'll just have some formal arrangements to make with Counsel if you wouldn't mind leaving the box.

THE WITNESS: Thank you, Commissioner.

THE COMMISSIONER: Just in terms of submissions, Mr McGrath.

MR McGRATH: Before we get to that I need to tender what haven't been tendered previously.

THE COMMISSIONER: Ah, yes.

10

MR McGRATH: The last three volumes, the page numbers are 463 to 706, that's in volume 3, volume 4 comprises 707 to 901 and volume 5 comprises pages 902 through to 1106.

THE COMMISSIONER: Do you want those volumes marked separately, Mr McGrath, or - - -

MR McGRATH: I'm content if they all go as part of - - -

20 THE COMMISSIONER: One exhibit?

MR McGRATH: One, M1.

THE COMMISSIONER: That, well, those – oh, you want them joined with M1?

MR McGRATH: They could all be joined with M1.

30 THE COMMISSIONER: All right. Well then I'll join volumes 3, 4 and 5 with M1.

#EXHIBIT M1 - VOL 3, 4 AND 5 OF BRETT ROBERTS BRIEF

THE COMMISSIONER: Anything else?

MR McGRATH: Commissioner, there was a document marked MFI 1 which- - -

40

THE COMMISSIONER: Ah, yes, that was Mr Alexis's document?

MR McGRATH: That's correct. There are some pages that need to be amended – sorry, there are some references that need to be amended in the last mentioned item in MFI 1.

THE COMMISSIONER: Yes.

MR McGRATH: The last mentioned itemed, the page numbers to be added to there are page 196 and 213, that's where the identity of the Misconduct Investigation Committee members is also made, and I would ask - - -

THE COMMISSIONER: So page, so add to 214, 196 and?

MR McGRATH: 213.

THE COMMISSIONER: 213, yes.

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MR McGRATH: I'm content for a suppression order to be made in respect of the identities on those pages.

THE COMMISSIONER: Yes, I'll add pages 196 and 213 to the previous suppression order made in relation to that category of MFI 1.

THE IDENTITIES ON PAGES 196 AND 213 ARE SUPPRESSED

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MR McGRATH: And then it's the case that the second last item there, which is referred to as being accounts payable procedures - - -

THE COMMISSIONER: Yes.

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MR McGRATH: - - - that is actually comprised of two documents, the accounts payable procedures document runs from 824 through to 889. Then there is a document known as a vendor creation procedure and that runs across pages 891 through to 901 and it's my understanding that Mr Alexis wishes to make an application in relation to the suppression of those two documents on which I do not have any submissions to make.

THE COMMISSIONER: All right. Yes, Mr Alexis.

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MR ALEXIS: Commissioner, the three documents to which my learned friend has referred are not in the public domain and we have a concern because of their commercial in confidence nature that they might unwittingly become available through the public tender of these documents to potential contractors to the University and its perhaps one of the very problems that the Commission is concerned about on matters of corruption prevention and that's why we respectfully made the application that those three documents should be the subject of an order.

THE COMMISSIONER: And that's the procurement handbook - - -

MR ALEXIS: Yes.

THE COMMISSIONER: - - - the accounts payable procedures and the vendor creation procedures?

MR ALEXIS: Yes, yes, Commissioner.

THE COMMISSIONER: Yes. Well, I think that that's probably a reasonable and appropriate request. The entirety of those three documents which cover the pages in the brief between, in relevant order, pages 471 and page 707, does that cover the whole of the document, Mr Alexis or is - - -

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MR ALEXIS: It does.

THE COMMISSIONER: Right.

MR ALEXIS: That's the first document.

THE COMMISSIONER: Right.

MR ALEXIS: The - - -

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THE COMMISSIONER: And the second document being pages 824 to 889 inclusive and the third document being pages 891 to 901 inclusive, all of those documents are suppressed from publication under section 112 of the Act.

THE PROCUREMENT HANDBOOK, ACCOUNTS PAYABLE PROCEDURES AND THE VENDOR CREATION PROCEDURES APPEARING AT PAGES 471 TO 582, 707 TO 818, 824 TO 889 AND 891 TO 901 INCLUSIVE ARE SUPPRESSED FROM PUBLICATION

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MR ALEXIS: Yes, thank you, Commissioner. Just for clarity, just to correct myself, the procurement handbook - - -

THE COMMISSIONER: Handbook.

MR ALEXIS: - - - starts at 471 and finishes at 582, it's then reproduced again at 707 and runs through to 818. So it's pages 471 to 582 inclusive and pages 707 to 818 inclusive.

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THE COMMISSIONER: Yes. Well, again, I think the order should cover all of those pages inclusive.

MR ALEXIS: Thank you.

THE COMMISSIONER: At both parts of the brief where the document appears.

MR ALEXIS: May it please the Commission.

THE COMMISSIONER: Thank you. Yes, Mr McGrath.

MR McGRATH: The only thing further, Commissioner, is to set a timetable with respect to written submissions. I would respectfully ask the Commission that the, that my, Counsel Assisting's submissions should be with the Commission and the other parties by 4.00pm on 4 March, that's
10 14 days from today and that any other party wishing to make any submissions in response could then have until 4.00pm on 18 March, a further 14 days.

THE COMMISSIONER: Well, just because we're in the middle of the week I think I'll be inclined to order that the submissions of Counsel Assisting should be filed and served on each party on or before 4.00pm on 6 March so we'll take it to Friday of this week, and the submissions in reply ought to be filed and served on each party by 20 March.

20 MR McGRATH: If it please the Commission.

THE COMMISSIONER: If there's any need to respond to those submissions in reply, Counsel Assisting has until 4.00pm on 27 March to do so.

MR McGRATH: Thank you, Commissioner.

THE COMMISSIONER: Given the relatively confined and brief nature of the inquiry, there's no need to set any page limits but just could I remind all
30 parties that, that they provide the submissions as much as possible in A4 font with some spacing that allows people with my fading eyesight to read them. Other than that, I don't think there is anything else that we need to do at this stage, Mr McGrath.

MR McGRATH: Thank you, Commissioner.

MR CHESHIRE: Commissioner, I apologise.

THE COMMISSIONER: Yes, Mr Cheshire.

40 MR CHESHIRE: One matter which is in fact a non-matter. In the light of Mr Alexis's comments, I've sought instructions in relation to the University of Sydney's similar manuals.

THE COMMISSIONER: Oh.

MR CHESHIRE: Our understanding is, or we may be mistaken, but is that they are probably public documents so at this stage I don't seek to make an application but if I do, Commissioner, if we can write to the, to the - - -

THE COMMISSIONER: Certainly. If you wish to make such an application, Mr Cheshire, you can write to the solicitor for the Commission and it'll be received in the normal course of events and responded to promptly.

10 MR CHESHIRE: Thank you, Commissioner.

MR McGRATH: Just so that there is no doubt about this, those documents will be published tonight so if any application has to be made to prevent their publication it would have to be made before then.

THE COMMISSIONER: That doesn't leave much time for Mr Cheshire to take instructions.

MR McGRATH: No.

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THE COMMISSIONER: Is there any possibility that at least that part of the brief could be withheld from publication until 4.00pm tomorrow?

MR McGRATH: Yes. Yes, that can be done. If we can get an identification of the page numbers to be absolutely sure as to the documents that are being spoken about.

THE COMMISSIONER: All right. Could you do that, Mr Cheshire. Could you - - -

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MR CHESHIRE: Yes, I can, Commissioner.

THE COMMISSIONER: - - - liaise with Counsel Assisting and could you please tell us if you wish to make an application before 4.00pm tomorrow afternoon.

MR CHESHIRE: Yes, Commissioner. Thank you.

40 THE COMMISSIONER: Right. Any other last minute concerns? No. All right. Thank you. I'll adjourn the inquiry.

**AT 4.32PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.32PM]**