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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 6 AUGUST, 2012

AT 10.16AM

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

THE COMMISSIONER: There's just one matter of housekeeping that I need to deal with before we commence. When this public inquiry commenced I announced that one of the purposes for which the inquiry is being conducted was to investigate certain allegations concerning Geoffrey Powell, consultant to New South Wales Businesslink Pty Limited relating to alleged corrupt benefits from officers at Kings Security Group Pty Limited.
10 This public inquiry will no longer pursue that investigation. That's not to say that the investigation will not be pursued at a later stage. Mr Strickland.

MR STRICKLAND: I just had a couple more questions for Mr Paul, Mr Commissioner.

Mr Paul, in your evidence on 1 August, last Wednesday, I asked you some questions about telephone contact you had with Mr Diekman in February, 2001, that's between the opening of the tender and the close of the tender and you said that you did have that frequent phone contact but you also said
20 that you had lots of other dealings with Mr Diekman at the time. To refresh your memory I'll just remind you of the question and answer. It's at 1104, line 40. Question, "And what project, what other projects would you have discussed apart from the Art Gallery on that day?" and we were talking about the day of 27 February, the day of the interview and you said, "Well, whatever other projects he was working on and I just mentioned that to you, it could have been GPT, it could have been Westfield, it could have been Defence, it could have been a range of different other projects." What, what was the project you were working on with Kings involving GPT, that's
30 General Property Trust, is that right?---General Property Trust, yes.

What, what were you working on with Kings in February 2009 concerning General Property Trust?---Oh, it would have been a shopping centre, I don't recall which one. I know that there was a Lend Lease shopping centre, I might have had the two confused but Macarthur Square stage 3 was on at the time.

And what was your role in that project?---I was a consultant.

And what was Kings' role?---The contractor, having won that at tender in
40 stage 3 over other, other tenderers.

And what about, what about Westfield? What, what involvement - - -?
---They had a national tender going at the moment, at that time for remediation works across 40 different shopping centres so that was out at the same time.

And you were the security consultant for Westfield?---Correct.

And was Kings, was Kings the integrator for Westfield?---No, they were a integrator for Westfield but Westfield, we spread the work around a fair bit there so they might have picked up one or two jobs but not, not the predominant bulk of them.

Okay. What about Defence, what, what work were doing at Defence - - -?
---There was a, there was a project inner west.

10 Hold on I've just got to finish. As at February 2009 what, what work were you doing with Defence?---I had, had various different projects on but this particular one that I was referring to in that question was on in the inner west.

Okay. And, and - - -?---That was a CCTV project.

Were you security consultant for that?---Correct.

20 And what was Kings roll in that?---They were appointed under a builder and they were the systems integrator under that builder.

Okay. Now you've given evidence about a gambling relationship you had with Mr Diekman over some years. Was there any other person involved in the security industry that you had a long standing gambling relationship with?---I wouldn't call it a long standing gambling relationship but, yeah.

Well you - - -?---Other people that I bet with, yeah.

30 But, but in the amounts that you did with Mr Diekman?---Not tens of thousands, no. 1000 here or 2000 there, yeah.

So Mr Diekman was the principal person you had a - Mr Diekman was the principal person you had major debt - major gambling bets with, is that right?---He's a mate that I gambled with, yeah.

That's not my question. He was the principal person you had major gambling bets with. Is that right?---As opposed to who else?

40 Well you've just said other people you had bets with but not to the same amount but to the amount of one or \$2000?---I have with family members and stuff. I've had \$10,000 bets with family members.

Leaving aside family members was he the, was he the main person you had gambling debts with Mr Diekman?---Oh, he was one of them.

Was there anyone else you gambled tens of thousands of dollars with?---Um - - -

THE COMMISSIONER: In the security industry.

MR STRICKLAND: In the security industry?---Yeah, I, I've had a couple of bets of Morris Ciot.

Right. And to that, to that amount?---Once a \$17,000 with him.

All right.

10 THE COMMISSIONER: A few minutes ago or two minutes ago you said only at - and you were asked the same question your reply was 1000 I think or 2000?---Yeah, predominately they were small bets, yeah.

So why didn't you mention the 17,000 bet then?---Well I just did now.

Yes, I know. But it seems like an after thought because when you were asked this question first you've just said 1000 to 2000. I'm just interested in what made you remember the 17,000 all of a sudden?---It wasn't all of a sudden it was over a period of a couple of minutes while I'm thinking about who else, who else have I bet with.

20

MR STRICKLAND: See with Mr Diekman the bets over a period of time on your evidence amounted to some tens of thousands of dollars. Was there any other person in the security industry you bet tens of thousands of dollars with?---On a regular basis, no.

Okay. Yes, thank you, Commissioner.

30 THE COMMISSIONER: Other than Mr Lloyd is there anyone who wishes to ask Mr Paul any questions? Mr Lloyd.

MR LLOYD: Thank you, Commissioner.

Mr Paul, I'm going to in my re-examination of you work backwards, that is I'll ask you questions about your latest evidence and then work through to the evidence you first gave. I asked you to do a little bit of homework and I had a quick chat with you during breaks, one of them being to ask you to remember what projects you were on with Kings or Charlie Diekman in February/March '09 and I think you prepared for me a spreadsheet which I'd like to show you?---Thank you.

40

You've just covered I think some of this evidence now. Just one correction you asked me to make looking at that chart, the right-hand column is contractors, the last one SHFA appears to the same as the client for that? ---Yeah. It should, should read AIC.

So bottom right-hand corner we change SHFA to AIC do we?---Correct, yeah.

And just tell us how you came about to make this chart? What information you looked at?---I went back through my invoicing records and my project records on, on file and basically came up with the, with the list of those projects that were on at the time that were involving various different contractors that had gone to tender.

10 So looking at those I don't remember off the questions Counsel Assisting just asked you, but did you cover all these jobs in that evidence a few minutes ago?---No, I didn't. No, they didn't ask, well UWS was a project on at the time, the Inner West Defence one, Macarthur Square with Lend Lease.

THE COMMISSIONER: They speak, the document speaks for itself Mr Lloyd.

MR LLOYD: Thank you. I tender that.

20 THE COMMISSIONER: Yes. The list of projects in which Mr Paul was involved with Kings in the period January to June, 2009 is Exhibit 107.

#EXHIBIT 107 - LIST OF PROJECTS IN WHICH MR PAUL WAS INVOLVED FROM JANUARY 2009-MARCH 2009

30 MR LLOYD: You were shown Exhibit 90 which I should take you to. It was an Amex, Amex bill for, I think it was \$1,750, from memory, which was we heard evidence a payment for a gala awards dinner held on 11 July, 2007 and I want to show you an invoice you've given to me dated 26 July, '07 where you invoiced Austar Security for the sum of \$2,200 inclusive of GST for what is described as the ASIAL dinner security function?---Yes.

Is the function described on your tax invoice the same as that – the subject of Exhibit 90?---Yes, it is. Yes, it is.

40 So what does this invoice represent?---So we actually took a couple of tables and we went halves and, and on this particular one I had some of his guests and he had some of my guests, we basically just shared the, shared the costs, if you like. And then we went out afterwards with some clients and stuff drinking, so there was, that's why it doesn't, it doesn't match up with the exact cost of \$1,750.

I tender that.

THE COMMISSIONER: SCI invoice of 26 July, 2007 is Exhibit 108.

#EXHIBIT 108 - TAX INVOICE NUMBER 260707 IN THE AMOUNT OF \$2,000.00 FOR ASIAL DINNER – SECURITY FUNCTION DATED 26 JULY 2007

MR LLOYD: Moving to the Art Gallery project and the Endura 2 product, it was suggested to you that orders for that product could only be accepted after 1 April of 2009. Going back to that period of time were you aware of that fact or not?---No.

10

You were shown a document numbered R28, which I must confess I don't know what Exhibit it's from.

THE COMMISSIONER: Exhibit 2.

MR LLOYD: And you were questioned extensively about the content of this document?---Yes.

Have you got it in front of you?---Yes, I do.

20

Could I take you to the middle page of the series, that is page 216 and at the top of 216 do you see the bottom email on, sorry, I'll take you to the bottom email first on 216, that's the first in the chain. It appears as though the housings that are needed on the Art Gallery equipment had gone over the agreed supply price and it would appear from the very top of 216 that the exceedance is in the sum of \$20,000. To your understanding of the tender that was awarded to Kings, who was to bear the cost of any exceedance of an agreed sum?---Not the client. It would have, that was a discussion between Q Video and the contractor Kings and between them they were debating who should bear the cost of that, of those, of those housings so it wasn't, it certainly never got transferred, never was a variation or anything like that for, for me or my client.

30

And then you send at the top of 215, that is the first page in that series, the email to Charlies and others saying, "Looks to me like the 20K problem could be increased to 50K spread around and the problem would vanish," and you said to the Commissioner that was a joke?---Yes.

Could you explain the joke or what you meant by that email?---Yeah, basically I'm saying to the, to the contractors and, and suppliers that it's not my problem, that you can put it up as high as you like, spread it out amongst yourselves, wear the cost however you want to distribute it but not our problem.

40

THE COMMISSIONER: Well, what's the point of increasing the cost? ---Oh, just I'm having a jab at them, I'm telling them it could be, here I'm saying it's \$50,000 and, and verbally I'm saying to them, you know, put it up to a million dollars, it doesn't matter, we're not paying anything and, and

they've, they've copied me on that for whatever reason, it was actually their own internal email.

But why say to spread around and the problem would vanish in an instant?
---Because I'm, I'm saying to them they can all wear a bit of the cost, not my problem.

Well, I obviously haven't got a sense of humour. I just don't see anything funny about it?---Fair enough.

10

MR LLOYD: You were questioned about ACG putting in a bid for the Art Gallery job of \$1.92 million and you said that that was in the final submission and there were notes to that effect, you said check Anne Tregeagle's notes. I'd like to show you her notes. They are marked F13 of Exhibit 17?---Thank you.

THE COMMISSIONER: I think they're just marked 13, they marked be F?
---Tab F13.

20 Anyway they're Exhibit - - -

MR LLOYD: (not transcribable)

THE COMMISSIONER: Sorry, number - - -

MR LLOYD: I'm sorry, Commissioner.

THE COMMISSIONER: Number, number 13 of Exhibit 2, Exhibit 5 I beg your pardon.

30

MR LLOYD: Thank you.

THE COMMISSIONER: No, I'm sorry, it's Exhibit 17.

MR LLOYD: It's Exhibit 17. Document 13 in Exhibit 17?

MR STRICKLAND: Yes.

THE COMMISSIONER: Yes, I think that's right.

40

MR STRICKLAND: That's right.

THE WITNESS: Yeah, item number 3 on that second page.

MR LLOYD: So it's a page which has - - -

THE COMMISSIONER: Sorry, item what, I beg your pardon?---Item 3.

Will cover cost of grounds?---No, no, of the second page, it says, proposed Andover interface. This is the ACG page and at the bottom of that point, it's 1.9 to 2 million any mix of products. And it's reiterating what, what I heard as well.

I haven't got the item. What item is it?

MR STRICKLAND: Page 146.

10 MR LLOYD: 146.

THE COMMISSIONER: Yes.

MR LLOYD: You can see the top right hand corner of that page. I hope your copy - - -

THE COMMISSIONER: It's 146.

MR STRICKLAND: Yes.

20

MR LLOYD: 146.

THE COMMISSIONER: And item 3?

MR LLOYD: Item 3 on page 146.

THE COMMISSIONER: It refers, prefers Pelco.

MR STRICKLAND: There's two item 3's, Mr Commissioner.

30

MR LLOYD: Yes, there are two item 3's.

THE COMMISSIONER: Proposed and that word underneath is?---
Andover.

What's that mean?---That's a different product set again. That was the one that Mr Grubisic put forward to the final - - -

40 THE COMMISSIONER: Right. So what is the point being made with - - -

MR LLOYD: The point being made is that the notes show the offer by Kings - - -?---No, by ACG.

Sorry, by ACG of 1.9 to 2 million. That's the very, just before - - -

THE COMMISSIONER: The N.

MR LLOYD: N.

THE COMMISSIONER: Yes.

MR LLOYD: Whilst I'm there, these are the only notes that we've been shown of the meeting?---Yes.

And we know these are notes of the second round interviews on 5 March. And there are two item 3s on this page 146?---Yes.

10 THE COMMISSIONER: So Mr Paul, what is your evidence about the reason given by Kings for the reduction in the tender price?---Excuse me?

What is your evidence about the reason given by Kings for reducing their bid?---They've done, as I said in previous evidence, they've come in with some deal that they'd done with the manufacturer or the wholesaler or whatever to reduce their costs.

Does that mean Pelco?---Well on that particular bid yes, they were proposing Pelco.

20

So they've, you're saying now and I'm not saying that you haven't said it before, but I'm stressing now because that's your latest evidence after consulting with Mr Lloyd, you are saying that the reason, just correct me if I'm wrong, you're saying that the reason given by Kings at this meeting for the reduction in their purchase price from approximately \$2.7 million to \$2 million was that they had done a deal with Pelco whereby they were getting then products for a, for in effect \$700,000 less. Is that your evidence?---No. No. There were, they're my words not their words. I don't know that we even pursued the line how can you drop from that price to that price.

30

I'm asking you, sorry, you see this is, if you wouldn't mind answering the question, please?---Sure.

What is your evidence today about the reason given by Kings at the meeting for the reduction in their bid from about \$2.7 million to \$2 million or 1.9 to \$2 million?

MR LLOYD: Commissioner, before my client answers, in fairness to him this sheet concerns ACG not Kings.

40

THE COMMISSIONER: Well I'm asking, I understand that.

MR LLOYD: My client's evidence has been consistent of the drop by Kings - - -

THE COMMISSIONER: Well can I ask him Mr Lloyd?

MR LLOYD: Sorry, Commissioner?

THE COMMISSIONER: Is that unfair question?

MR LLOYD: No, but there is some confusion it would appear in your mind because he's - - -

THE COMMISSIONER: I, I agree. This is – you are quite right.

MR LLOYD: And you want to clarify it.

10

THE COMMISSIONER: I would like to clarify it.

MR LLOYD: I won't stop you, Commissioner. You have to make the findings.

THE COMMISSIONER: I am so relieved. Thank you. Now do you mind answering the question?---Sure. I don't know that they gave a reason at that point.

20

No, no, please tell me?---I'm telling you.

No, no, look, are you now saying they didn't give a reason?---We weren't able to ask.

“We weren't able to ask”?---That's correct. We - they - - -

All right. I understand that. So you're saying - - -?---On, on the 27 you're saying?

30

I'm saying at the meeting - - -?---On the 27.

- - - when you first learned according to your evidence that Kings were reducing their tender bid from 2.7 to \$2 million you weren't able to ask Kings what the reason was for that reduction?---No, 'cause - - -

Have I got your evidence correct now?---Yes, because Anne Tregeagle pulled up the meeting - - -

40

All right. That's all I wanted to know, that's all - - -?---We weren't allowed to ask.

No. No. You weren't able to ask. Now my next question is why weren't you able to ask?---Because Anne Tregeagle pulled the meeting up, we weren't allowed to accept a second bid of pricing at that point.

So nobody asked why Kings were able to reduce their bid by about \$700,000 because Anne Tregeagle put a stop to the meeting at that point? ---Yes.

That's your evidence?---That's my evidence.

Thank you.

MR LLOYD: Let's (not transcribable) no doubt about it take us back to your memory of that meeting on 27 February, not reconstruction after the event and tell us what you remember what was said in relation to the price?
---Charlie came with the, with the envelope, package whatever it was that he had was talking about a reduction of price from, from his original bid of 2.7 to the 2 million and Anne Tregagle essentially stopped the meeting at that point and said we can't accept a bid right now because we're not in a position to do that, you can't present a new price, you can't present a new, a new presentation at this point, so she stopped that and we went on to discuss other things but, but we didn't discuss the price or how they got to it or what the content of the new offer was.

Okay. Taking you back to this exhibit, well 13 of Exhibit 17?---Yes.

20 These are the handwritten notes of Ms Tregagle of the second round interviews on 5 March, taking you back to the questioning of ACG at page 146? We've got two number 3s, the first says prefers Pelco, not clear of mega pixel cameras will work fully (not transcribable) but Pelco is the best company. (3) propose Andover with some notations beside that and then 1.9 to 2 mil?---Yes.

And was that 1.9 a lower bid than had previously been made by ACG?---Yes, it was.

30 And was any explanation sought or given for that lower figure?---We discussed the, the number between 1.9 and 2 million and Tony at that time said he didn't want to - Tony Grubisic didn't want to put forward the, the Pelco product he was putting forward an Andover product subject to what the mix of materials, what the mix of products is, which is essentially what Anne's written here. 1.9 to 2 million any mix of products.

Okay. And what was your understanding of what was discussed with Tony Grubisic about what he was proposing, what product?---He, he didn't want to propose the Pelco at that point so that's the reason we didn't write it up.

40 Okay. And for the record if you could be shown exhibit R8 the tender evaluation report which is part of Exhibit 2?---Thank you.

THE COMMISSIONER: Eight of Exhibit 2.

MR LLOYD: I just want to take you through to page 155 of this exhibit?
---Yes.

And we see at the very bottom of that page paragraph 12 where reference is made to that revised price by ACG between 1.9 to 2 million?---Yes.

And where did you get that information from in this report?---Off the, off the notes that Anne Tregeagle gave me to write the report on.

10 Whilst I'm with you on this point about the meeting, as far as you could observe within that meeting who was taking notes?---Every, all of us took some level of notes and we all collated at the end and gave them to Anne Tregeagle who essentially collated them to, to be one summary set.

Did you keep a copy of your notes?---No, I didn't, I gave them back to Anne.

Did you see Tony Morris make notes?---Yes.

And did you see what happened to his notes?---He would have given them back to, to Anne.

20 THE COMMISSIONER: You say would have, does that mean he did?
---Well, we all did, we all gave our notes to Anne. I don't know whether he kept a copy for himself.

MR LLOYD: A related issue, we've seen emails and you may or may not have been taken to one but they're amongst the documents somewhere, where Ms Tregeagle sent to each of you, that is each of the four on this committee, the assessment sheets where you were to mark your scores - - -?
---Yes.

30 - - - for the bidders in various categories. The only results we have appear to be those in Ms Tregeagle's handwriting. Did each of you keep as far as you could observe your own scorecards?---Not that I'm aware of, again, I gave mine back to Anne Tregeagle.

No, in the meeting, did you - - -?---Oh, oh, yeah, absolutely, yes, yes.

Each of you?---Yes, we all scored, yes.

40 And what did you do with your score sheets?---Gave them back to Anne so she could collate them into one summary document.

What did you see her role as as the chairwoman of that committee?---She ran the tender. She was the, she was the predominant person that we reported through for the tender.

You were shown Exhibit 79 where there is, as I understand it, on page 185, halfway down an email to you from Paul Thompson responding to an earlier email from you regarding guarantees and warranties?---Yes.

And we've seen somewhere that earlier email that you sent which you'd copied to Mr Morris and Ms Tregeagle - - -?---Yes.

- - - requesting information on warranties and rebates?---Yes.

Why when requesting that information from these suppliers did you copy it to Ms Tregeagle and Mr Morris?---For transparency.

10 Prior to sending those emails had you had oral conversations with them - - - ?---Yes.

- - - about warranties and guarantees?---Yes, with Tony Morris and Anne Tregeagle, yes.

20 And what was the purpose in trying to get these responses?---To get a better result for the Art Gallery. Ultimately in, in, if you don't push, if you don't ask the question you'll typically get a one year warranty so we ask the question and we know we're specifying particular products then we ask the question of those wholesalers and they typically come back before tender and say we'll give you three years or four years or five years or whatever the, whatever the result is so it gets them a better, it gets the client a better result.

30 And what might be the difference, for example, looking at a warranty between the, between one year and three years?---Oh, if a, if a product fails during that period, even if you're not getting it from the contractor, you're getting the, the guarantee from the manufacturer's rep that they will support that product and therefore replace it during that period so you're, you're saving a lot of money.

You were shown an email which became Exhibit 27 of 3 March, 2009.

THE COMMISSIONER: I'm now lost again, Mr Lloyd. I'm sorry, you say Exhibit 27. It is 27 of some other exhibit or is it actually independently 27?

MR LLOYD: Commissioner, that's a question I can't immediately answer.

40 MR STRICKLAND: I think it's, I think it's Exhibit 27, I think.

THE COMMISSIONER: I've got Exhibit 27 which is a Gold Card statement of account.

MR STRICKLAND: Exhibit 27 in mine is an email from Mr Diekman to Mr Roche. So 21 August, '07.

THE COMMISSIONER: No, it's not. It's not. My own personal notes is the Amex account, Exhibit 27.

MR STRICKLAND: I'm sorry, I've got the wrong - - -

THE COMMISSIONER: I'm sorry, that's wrong.

MR STRICKLAND: I'm sorry, I'm wrong, yes, I beg your pardon.

MR LLOYD: It's R27, sorry, Commissioner. No it's not, I apologise.

10 THE COMMISSIONER: It's not, no.

MR LLOYD: It might be F27.

MS LONERGAN: Yes, it's Exhibit 27 Mr Lloyd.

MR LLOYD: Is it Exhibit 27? All right.

THE COMMISSIONER: Sorry, it's exhibit what?

20 MS LONERGAN: 27.

THE COMMISSIONER: It's not Exhibit 27, we've been through that. What document is it and I'll try and find it myself.

MR LLOYD: It's an email of 3 March, '09, sorry, Exhibit 24, I do apologise?---Thank you.

Do you have it in front of you?---I do, yes.

30 And it's from you to Tony Morris and Terry Yallouris?---Yes.

As I understand it Terry Yallouris is from Q Video?---No, Pelco.

Pelco, sorry, Pelco?---Yep, national manager.

40 You've sent that early it would appear on the morning of 3 March, copied to yourself and Anne Tregeagle, meeting re Pelco Lenel integration. "Hi, Terry. Further to our telephone conversation earlier today, Tony and I would like to meet with you at your office this Thursday" and the time is given, "to review and discuss the Pelco product latest version of software and the potential for Pelco/Art Gallery relationship and potential for support of products moving forward." Firstly, can I ask you why did you send this email?---Because on the 27th we were told by Kings that the Endura 2 was now available. That the software was available. So to check and make sure that that's a fact we went and met with Pelco.

Taking you back to the 27th, at the time with the interviews with Kings and ACG, what was your understanding prior to those meetings commencing

that day of the availability of the Endura 2 software?---I understand that, it to be imminent. Any day now it was to be released. I wasn't aware prior to Charlie saying hey, it's now available, I wasn't aware that it was actually available. But with any software, in particular these guys asking me questions about, about the official release of the software, it was being officially released in, in April. But we wanted to know, because it was being put forward to us as a product available, whether it was available or not.

10 THE COMMISSIONER: It was being put forward. When was it being put forward as a product that was available?---Well all - through their entire tender but - - -

So what was the news of it being available then?---That it was, that, that the mega pixel cameras and, and the product was now operational. They, they had it ready for release, it was there.

What's the difference between being available and, and being ready for release?---Imminent. Is, is - the difference is every time I'd spoken to Pelco
20 yes, it's coming, yes, it's coming and at this meeting where Charlie turned up he's thrown that thing on that table and said for 2 million bucks and it's available, so we went beauty let's go and have a look at it.

That sounds to me, that sounds to me as if you were saying in the beginning - you were being told in the beginning until 27 February that it was not available?---No, they never said - - -

'Cause it wasn't released yet?---No, they never said it wasn't available in
30 their offer.

How could it be available if it's not released?---It was imminent.

But how could it be available if it was not released even though it was imminent?---Depends on when it was going to be available.

All right?---So the point is that, that they stated at this meeting that it was available so we wanted to check that out to make sure.

I thought you - see that's what I don't understand. 'Cause you've said that
40 you were told from the beginning of the tender being submitted that it was available. So what was new when they told you the meeting of the 27 February that it was available?---It was written in their tender that they were using version 2. They never - the first time we spoke to them was at the interview so, so it wasn't written in their tender that said - it didn't say in their tender oh, this is what we're proposing but it's not available.

When I asked you a minute ago - - -?---Yes.

- - - about, about - when I asked you a minute ago, it might be 2 minutes ago whether, whether it was available before the meeting of 27 February you said there are - words to the effect that it was their attitude from the beginning of the submission of the tender that it was available?---Who are you talking about, Kings?

Kings?---Yeah. Their offer, their original offer - not originally, what is it, alternative one offer, right stated that they were going to provide Endura 2.

10 And their attitude that it was - was that it was available I thought you said?
---Well how could they have an attitude, we hadn't spoken to them yet.

I'm not - that's your evidence I'm putting to you back, it's not my words it's your words?---I can only assess of what's put in front of me in a document.

All right. Yes, Mr Lloyd.

MR LLOYD: Well why were you excited?---Because I hadn't been told that it was released until that point, that was what we - Charlie's come in
20 and gone it's, it's ready, we're, we're, we're putting it in, it's available, we've gone beauty let's check it out. I don't - I actually don't understand what the big fuss of that release date is in that they wouldn't install it until several months later anyway, it's an integrated system, you've got to run cables, you've got to install cameras and everything else - - -

THE COMMISSIONER: Mr Lloyd, are you going to let your client run on like this?

MR LLOYD: Mr Paul, listen to the question?---Sorry.

30 Okay. Now in this email you have latest versions of software. What were you referring to? Look at the email?---Endura 2.

What was the earlier conversation referred to? You see, "Hi Terry, further to our telephone conversation earlier today"?---Oh, that was to, that was to discuss the availability of a meeting, right. So I, I called him and said we're going to - I'm going to send you an email, I want to know can we come down, it's, it's urgent because we've got a decision to be made in a day or two's time or whatever it was. So it was a matter of - it was a matter of
40 urgency, right.

Well we - we see here in the email that you're asking to meet with Mr Yallouris?---Yes.

Between 9.30 and 11.30 on 5. We know that the Thursday is 5 March?
---Yes.

We know on that day the second round interviews were held with Kings and ACG?---Yes.

What was the importance of this meeting being conducted prior to those second round interviews?---We wanted to verify that it was a fact.

THE COMMISSIONER: Why couldn't you, why - - -

10 MR LLOYD: What was a fact?---That Endura 2 was available.

THE COMMISSIONER: Why couldn't you verify that at the meeting?
---Which meeting? This one?

MR LLOYD: (not transcribable)?---With, with, with Terry on the 5th?
Sorry.

Slow down. Listen. Was Mr Yallouris going to go to the second round interviews?---No.

20 Obviously. So what was the importance of meeting with Mr Yallouris of Pelco prior to the second round interviews?---He's the manufacturer, you get the truth from the manufacturer, no disrespect to the contractors, but we weren't going to just take their word for it, we wanted to speak directly to the manufacturer and say is it available, show us it working.

THE COMMISSIONER: But Mr Paul, I mean, much as I don't want to prolong this, which I am sure is as much agony for you as it is for me, I have difficulty in understanding why you wanted to confirm this with Mr Yallouris if the contractual, if from the beginning you thought that the
30 contractual obligation of, that Kings were offering to bind themselves to was to supply this software in accordance with the terms of their tender offer?---Right, so what's the question?

Well, I don't understand why you wanted to confirm something that Kings had offered to bind themselves to in law?---Sure, in lead up discussions with Terry he'd never told me it was released. The first time I hear it is Charlie throws it on the table so - - -

40 Had you asked Terry Yallouris before the meeting, before the meeting on 3 March, 2009 whether Endura 2 was available or not?---He said it will be available, I don't recall the - - -

Did you ask him?---I don't recall the details of those conversations.

But you were told?---Told what?

But he told you that it was, what did he tell you?---That it was about to be released.

So are you now saying that you knew at the meeting when Kings reduced their tender by some \$700,000 that at that stage, well, before that meeting you knew that it wasn't available?---No.

All right. Thank you.

MR LLOYD: Did you go to that meeting?---Yes.

10 Who with?---With Tony Morris.

And how long did it take?---Well, we were there for an hour or two, between 9.30 and 11.30 having a look at the product working in his office.

What product?---The Endura 2 product.

Why was it important to look at it working?---Because we knew - all, all - the lead up was, it was almost available, it was imminent, the release was going to come but we wanted to see it working, we wanted to know that,
20 that what we were buying was going to actually be released. It was, it was, that there was available product. I don't - sorry, yeah.

And of course we see at the second last paragraph in this email that's part of Exhibit 24 that you've asked in effect for confidentiality?---Yes.

Why was that?---Because at this point we hadn't made a determination on the winner of the, the winner of the contract.

30 THE COMMISSIONER: But why was, why was that a reason for keeping this confidential?---Because Tony Grubisic's company, ACG, had put forward other product also and, and Kings, the only offer that, that, that we were looking at there was the, was the Pelco offer so we didn't want Pelco talking to anyone about that.

But was it going to be kept confidential from the Art Gallery?---No, the Art Gallery were involved. Absolutely, they were - - -

They were at the meeting?---In fact Anne Tregeagle and Tony Morris are on copy of this, Tony Morris attended the meeting with me or I attended with
40 him.

You mean Tony Morris got a copy of it?---Of course. But Anne Tregeagle's on copy of this email and Tony is a, is a - - -

Yes. No, you're quite right Mr Paul. I'm just trying to understand what you're saying. What is the difference - do you think there's a difference between a product being available and an product being released? Can you

just answer that yes or no first without having a speech?---Can you ask the question again?

Do you think that there is a difference between a product being available and a product being released?---Yes.

What is the difference, please?---A product release is, is when they, they formally, formally allowed out into the, out to the, to the retail world. Available, you could get a pre-release version couldn't you?

10

I don't know what a pre-release version is, I'm sorry?---In software you can get, you can get earlier releases of software just prior to it going to a full release. That allows you to use the product. Right.

20

I don't, I don't understand what you're saying the difference is?---There is a difference, I've just explained it. It's a technical term in relation to the release of software. It's a standard sort of process. When a company develops software they develop an alpha version and then a beta version and then a full release. An alpha is when they're developing the product. Beta is they go into a, into a test process just before they release the thing. In other words making sure that there's very few bugs in it or no bugs in it. A full release means that they're happy to release it to the industry.

MR LLOYD: Taking you back to that meeting of 5 February, the second interviews?---Yes.

You've seen Pelco that morning by the sounds of it?---Yes.

30

You then sit on second round interviews - - -?---Yes.

- - - with Kings and ACG. Would you have voted for a product if you understood it was not yet available?

THE COMMISSIONER: Well you better define what you think is available, Mr Lloyd.

MR LLOYD: True, Commissioner.

40

THE COMMISSIONER: This, this word has become a word in the English language which has very many meanings for which I haven't previously heard. So you tell or explain what you mean by available so that everybody knows.

MR LLOYD: What was your understanding Mr Paul of available of a product being available because you've told us that that's what Charlie King said for the first time to you in the meeting on the 27th?---That's right.

What did it mean to you?---It meant that we could, we could, we could with

confidence place an order on that and it would be installed with our, with our projected.

And worked?---And worked, yes.

What else?

10 THE COMMISSIONER: Are you saying that had absolutely nothing to do with the reduction in the price?---I have no idea whether it had - - -

Are you're saying you have no idea whether that had anything to do with the reduction in the price. Is that your answer?

MR LLOYD: This is on the 27th?---Sorry, I'm confused. Can you ask the question again in context?

Going back to 27 February - - -?---Yes.

20 - - - you said in your evidence to Counsel Assisting that there were two components of your excitement in that interview - - -?---Yes.

- - - the first round with Mr Diekman?---Yes.

One component as I understood your evidence of excitement was the whatever it means, availability of Pelco Endura 2?---Yes.

The second component was a reduction in price?---Correct.

30 At that meeting, forget what you may have been told afterwards and what you've heard in this hearing room, were you given any information as to how it came about that that price had been reduced in that (not transcribable)?---No.

Taking you to the meeting of the 27th, I want to show you Exhibit F9 as part of Exhibit 17. These are the scoring sheets. There are three of them?---Yes.

Because we know that representatives for three tenderers were interviewed on that day?---Yes.

40 I want to take you to the Kings' score sheet, it's the first of the three if you're exhibit's the same as mine, it's paginated at the top 48?---Yes.

Now, we've seen an email, I think it was the evening before or the afternoon before where Anne Tregagle disseminated to the committee members - sorry, Mr Commissioner, this is Exhibit 17, thank you.

THE COMMISSIONER: It's, yeah, it's item - - -

MR LLOYD: I'm there, thank you.

THE COMMISSIONER: Yes, it's item 8 of Exhibit 17.

MR LLOYD: Anne Tregeagle disseminated the questions and I can turn up the email but at the commencement of it it said something like "As discussed" and then she attached the questionnaire?---Yes.

10 I want to take you to question 7 - - -?---Yes.

- - - on this page and this is the Kings score card?---Yes.

Question 7, "Clarify what version of software is being offered by you for the CCTV" and she's written next to it, "Pelco"?---Yes.

Forget the handwriting for the moment, who drafted the question to your understanding?---I, I would have drafted that particular question.

20 And what was your concern, what motivated you to ask that question?
---Just to confirm the version that, that they're offering.

Version of what?---Of the Endura product.

THE COMMISSIONER: But if there was no issue about whether it was Endura 1 or 2 and you only were interested in Pelco what, wouldn't you simply ask whose product it was?---No, because the, because the version hadn't, to my understanding up until this interview hadn't been released, right, yet, I was - and we'd seen the offer that says version 2 in writing from Kings, we're asking them questions at a tender interview, it stands to reason
30 that you would say what version are you offering?

Yeah. Well, so you wanted to know whether it was Pelco version 1 or Pelco version 2?---I was trying to confirm that it was version 2, yes, because they'd offered version 2.

If they'd offered version 2 why did you want to confirm that it was version 2?---Because I wanted to know about the release of the product.

40 That has got nothing to do with the release?---It does, of course it does, you can't buy it if it's not released, can you, or it's not a pre-release or it's, you know, if the wholesale, if the manufacturer's not releasing the product you can't get it.

Yes, Mr Lloyd.

MR LLOYD: You were asked some questions about budget and I'd like to show you a budget spreadsheet, it's been marked as Exhibit 23?---Yes.

And perhaps at the same time show you a document that I showed to Ms Flanagan which was an extract of the BRI report into security at the Art Gallery. It wasn't tendered in the end but it was one of the documents that we supplied which has on the second page a figure of some \$2.7-odd million?---Yes.

And was it your understanding that that figure - - -

10 THE COMMISSIONER: Can you tell me where this document is, please?

MR LLOYD: It was in the - I know it's not a criminal trial, Commissioner, but if I could use the analogy to - - -

THE COMMISSIONER: No, I think I've found it. It's got - is the document headed executive summary?

MR LLOYD: That's right.

20 THE COMMISSIONER: Yes, thank you.

MR LLOYD: That's right. I'd call it a defence document but it's not a defence of course. It maybe close but it's in a different forum.

THE COMMISSIONER: Well I think you could call it Mr Paul's document.

MR LLOYD: Mr Paul document. Thank you, Commissioner.

30 Mr Paul, you can see there about a third of the way down that second page it says it's been estimated as part of this review the cost for the above works would be in the vicinity of \$2,717,000 plus ongoing costs.

THE COMMISSIONER: I'm sorry, I'm now - I'm sorry, Mr Lloyd, I'm (not transcribable) that page headed executive summary where, yes.

MR LLOYD: The second stage of that document.

THE COMMISSIONER: Right.

40 MR LLOYD: After the bullet points.

THE COMMISSIONER: Yes, I found it.

MR LLOYD: And you were shown this BRI report by people from the Art Gallery?---Yes. This is the budget that they gave me.

And who gave that to you as a budget?---Anne Tregeagle when I was first appointed.

Did that budget change? If so how?---Yes. That, that budget changed. They asked me to go away and look at the costs et cetera and I created in conjunction with assistance from the wholesaler spreadsheets to the effect of the one you've just given me here which the ultimate result was a \$2.19 million budget which I gave back to the Art Gallery and said we can save them some money.

10 THE COMMISSIONER: Do, do we have a, do you know the date on which you gave the spreadsheet back, Mr Paul?---The date of this particular spreadsheet?

Yes?---I'd need to go back to my files, no, not off the top of my head.

And what stage in the process did, did you provide it?---Long before tender. In fact at some stage - - -

THE COMMISSIONER: All right. That's enough. Thank you.

20 MR LLOYD: Did you ever get the figure (not transcribable)?---On the work up to this, yes. There was, there was - I think this was version 8 or version 7 or something of my budget so there was a range of budget spreadsheets.

But was this the final (not transcribable)?---But not - this was the one that was submitted to the Art Gallery, yes.

And who did you submit it to?---To Tony and, and Anne, Anne Tregeagle.

30 THE COMMISSIONER: And this was long before the tender was, was called for was it?---Absolutely, yes.

MR LLOYD: And were you ever told by anybody from the Art Gallery that the budget was in fact 1.8 million?---I've never heard that number before, before this hearing, no.

THE COMMISSIONER: Were you told that it was 2 million?---No.

40 Never?---No. It was 2.1 million, 2.19 was what I thought it was after I created that. Prior to that it was the 2.7 off the BRI report.

You were shown - I want to show you exhibit F3 as part of Exhibit 17?
---Thanks.

Which is the, the invitation you sent to Tony Morris, sorry you sent to the Art Gallery concerning Tony Morris and a proposed visit to the security conference in Las Vegas?---Yes.

I want to take you over to the second page where there's some handwriting in the bottom right. This is on page 303?---Yes.

Where we see LACMA then Getty SF and then SF?---Yes.

10 MR LLOYD: Do you know what they refer to?---That's not my handwriting but that refers to the LA Temporary Museum of Arts or something I think, the LACMA. The Getty Museum is a museum in either, by the looks of this San Fran or, or LA and the San Francisco Museum I assume.

And to your knowledge did either you or Mr Morris or both of you go to any of those places?---Yes. We visited a place in, in LA and I think before we flew out to come back via, yeah, before we flew out I think Tony went back to, through San Francisco, I think, to those locations.

You were taken to an email R10.

20 THE COMMISSIONER: Mr Lloyd, I'm sorry to do this, I know the documents are not beautifully organised, but every time you say R10, I have to try and work out what exhibit you are talking about.

MR STRICKLAND: Exhibit 2, Mr Commissioner.

MR LLOYD: Exhibit 2. The years are catching up with me, Commissioner. I'm becoming a bit senile on numbers or maybe it was the women's marathon, I'm not sure.

30 THE COMMISSIONER: I'll desist from responding Mr Lloyd.

MR LLOYD: Thank you, Commissioner. R10 is an email, well there are several there, the lower one is an email from yourself dated 24 January, '09 to Charlie Diekman the subject being the security conference?---Yes.

“Charlie, who of these are being sponsored by you? I'm happy to pay and arrange then invoice you, but I'll want payment within 21 days.” And then a number of persons are mentioned, including yourself and Tony Morris, typically \$6,000 per person. In fact did anybody pay for you?---No. Me.

40 And did you pay for anybody?---Just myself.

So what was the purpose of the email?---It was a joke. It was a jab at Charlie.

THE COMMISSIONER: Mr, sorry to interrupt here, there's just something I want to clarify, Mr Lloyd. Mr Lloyd has taken you Mr Paul, to this document which we called your document in which the budget was put at being \$2.717 million plus ongoing costs?---Yes.

Which we estimated at around \$150,000 a year. Was that – I know you say it's long before the tender was published, but was that at one point the budget of the Art Gallery?---When I was first appointed they gave me that. And did you understand that to mean that that reflected the budget of the Art Gallery at that stage?---Not really because they asked me to develop a budget. They said this is the indicative of what we're basing our, our budgets on.

10 All right. There was an indicative budget then?---Was that, 2.7 million.

Was that?---Yes.

Then you said you prepared a number of spreadsheets?---Yes.

And did you submit each one of those to the Art Gallery or did you keep working on it yourself?---No, I kept working on it. So until your last spreadsheet which we've seen and which you were shown a few moments ago, til that was agreed by the Art Gallery, the indicative budget remained at
20 \$2.7 million?---I believe so. They may have seen working budgets as I was working through them.

All right. But, but they may have seen them but the understanding was that the indicative budget was \$2.7 million?---Initially, yes.

Yes. And then it came down to the amount shown in the spreadsheet?
---2.19, yes.

And it's simply a coincidence that Kings' bid was, first bid was \$2.7 million
30 and later bid was around \$2 million?---There was a bunch of them around 2.7 million coincidentally.

So that's just a coincidence is it?---Yeah.

Very well.

MR STRICKLAND: You were shown tab 15, and I'm not sure what exhibit that is, whether it was an independent exhibit.

40 THE COMMISSIONER: There are about five tab 15's. What are you actually looking for? What is the document, Mr Lloyd?

MR LLOYD: Commissioner, I'm not sure. I've just got a note that he was shown tab 15.

THE COMMISSIONER: Well, I've got one tab 16 which is a Notice to Attend and Produce Documents, is that the right one?

MR LLOYD: I'm not sure. In any event, your response on being shown this document was that it was in the best interests of the wholesalers to keep a price to themselves.

MR STRICKLAND: I think it's exhibit, sorry, I'm not standing up, Exhibit 17, I know the document, Exhibit 65 I think, tab 15, I think that's it.

THE WITNESS: Tab what, sorry?

10 MR LLOYD: Tab 15.

THE COMMISSIONER: That's the email that says "Tony, this is the budget spreadsheet I'm using."

MR LLOYD: That's right, that's it, Commissioner?---No, I'm not looking at that sorry, this is a Sydney Ports document.

It is, it is in fact Exhibit 65 or part of it?---Thank you.

20 And you gave evidence in relation to this email to Mr Theissen of Q Video that you enclosed a budget and you said when saying you're 300K over that you were in effect foxing?---Sorry, which tab are we looking at?

15?---15, sorry. Ah, yes.

You were questioned about that?---Yes.

And you responded that it was in the wholesaler's best interests to keep a budget to themselves?---Yes.

30

I want to ask you in what was is it to the wholesaler's best interests?---Well, if they, if they released the prices that means it leaves them with less, less flexibility in relation to selling product to their, to the contractors et cetera so it's, it's - they're not going to tell the contractors their, their base price, their cost price.

40 THE COMMISSIONER: But doesn't that assist them in pricing out their product to various people who purchase from them for the purposes of the tender?---If there were the only ones that could provide that product, yes, but in this case certainly under the Pelco and the cameras and the, and the networking components and product they weren't, they were, they were themselves in competition with others also.

Yes. But they had an advantage over others because they were given the budget and the others were not?---They helped me develop the budget on the basis of the Verint product. They were the only ones that could.

Do you mind just answering the question? Is it correct that they were given an advantage because they were given the budget while the other manufacturers were not?---No.

Are they not - were they manufacturers or do you - what do you call them, suppliers?---Wholesalers.

10 Wholesalers. So they were given the - that - this is a wholesaler who's given a budget, there were other wholesalers competing with this wholesaler for supplying into integrators. That's right isn't it?---That's correct.

But you're saying the knowledge of the budget gives them no advantage? ---No.

Over their - over other wholesalers?---No.

20 But don't, don't - doesn't it mean that if they supply at a price that will enable their purchaser, the purchaser from them to get the tender then are they are more likely to get the business?---Sorry, can you repeat that question?

No, I won't, forget it. I'm tired of repeating the question. Every time I ask you a question that I think is difficult you always say repeat the question?--- 'Cause I'm trying to get an understanding of it so I can give you an answer.

Mr Lloyd, you're free to ask the question yourself but I'm not going to try again.

30 MR LLOYD: You were taking in the same volume to tab 11 that's a few earlier in Exhibit 65?---Yes.

And I'm just using this is an example but we see it's an email from yourself to Mr Tyson and Mr Thompson of Q Video of 3 October '08?---Yes.

So that's a long time before the tender specifications were finalised?---Yes.

40 "Hi Paul and Tony, as discussed we need to do some testing of cameras." Why did they need to test cameras?---I was testing cameras in locations within the Art Gallery to see whether, whether my theories on the locations and, and quantities of cameras were correct and whether those particular cameras would, would meet the need et cetera and so typically I work with a wholesaler to do that.

Now the testing was obviously going to be in the Art Gallery?---Yes, it was.

Would Mr Morris have known of that despite the fact this email wasn't sent to him?---Absolutely. He had to coordinate with me. We can't, we can't go

into the, in the Art Gallery with (not transcribable) without, without the Art Gallery's knowledge.

THE COMMISSIONER: Well without Mr Morris's knowledge or without someone else in the Art Gallery?---No, without Mr Morris's knowledge.

MR LLOYD: Which brings me to this, you said in your response when first questioned about that by counsel assisting that regardless of the email Tony Morris was kept in the loop?---Absolutely.

10

What did you mean by that?---I was in conversation with Tony Morris on literally daily basis on all sorts of different things that we were talking about the Art Gallery security and not everything we did, he and I were put in writing between each other, we, we met, we talked.

THE COMMISSIONER: Mr Lloyd, if you're going to be longer I'm going to adjourn for ten minutes.

20

MR LLOYD: I'm - I might be five minutes but I might shorten it if we had a break now. I'm just checking documents.

THE COMMISSIONER: Is that (not transcribable)

MR LLOYD: Depends how you construe it.

THE COMMISSIONER: We'll adjourn for five minutes.

30

SHORT ADJOURNMENT

[11.33am]

MR LLOYD: (not transcribable) break you were shown Exhibit 39?---Thank you.

Which is just a one page document headed 'Code of Conduct'?---Yes.

40

Yes. It was shown to you in the context of a tender, a Tender Evaluation Committee on which you were sitting in relation to contract at UWS and you say right in the middle of that page in your writing, "I have previously awarded tenders and denied tenders to Kings and the other contractors as stated"?---Yes.

I think I asked you to see if you can go away and make a list of jobs where you had sat on in a Tender Evaluation Committee where Kings have not been awarded a tender?---Yes.

I'll show you a - some spreadsheets?---Thank you.

Picking it up on the first page and I take it this is a summary page where you obviously - a year means the, the year - - -?---Yes.

- - - 2006 through to 2011? Projects and numbers are given. Are these projects on these years on which you sat on a Tender Evaluation Committee or (not transcribable) like?---Yes.

On each project Kings made a bid?---Yes.

10 And I gather the heading there the column Kings are those projects which Kings at the end of the tender evaluation process were awarded the tender? ---That's correct.

Are you percentages merely to represent 6.1 per cent of 33 and so on?--- Correct, yes.

And then you go through the actual projects - - -?---Yes.

20 - - - for each year? And where did you get the details from for each of these charts?---Again from my records on my computer system, my invoicing et cetera.

So for the Art Gallery year which is 2009 you appear to have sat on committees in 31 projects where Kings made a bid and they were awarded five of those 31 or about 16 per cent?---That's correct.

And so on. I tender that. Thank you.

30 You were shown - - -

THE COMMISSIONER: Just - sorry, a minute, just a moment, Mr Lloyd. Exhibit 109 is a bundle of documents listing the project in which Mr Paul was involved on the evaluation panel and a number of contracts awarded to Kings.

#EXHIBIT 109 - BUNDLE OF DOCUMENTS SHOWING PROJECTS WORKED ON BY DANIEL PAUL FROM 2006-2011

40 THE COMMISSIONER: Mr Paul, this of course doesn't reveal the amounts involved so I take it, it relates to contracts with very small amounts to contracts with very large amounts?---Typically contracts that are of small amounts are not tendered, your Honour, they're typically 80 to \$100,000 plus projects.

So what are we looking at in this bundle? Are these statistics, contracts starting at what value about, approximately?---I would think about \$80,000 and above.

All right. Thank you. Yes, Mr Lloyd.

MR LLOYD: You were shown some phone records, Exhibit 73?---Thank you.

10 And they were phone records of calls between yourself and other persons on 13 February 2009 and you gave evidence that about half way down the first page you made a call from Mascot?---Yes.

At around 10.37 and then later that day a call from Duntroon. I think you told us as a result of looking at that you recollected you went to Duntroon for the purposes of your work?---Correct. Canberra, yeah.

Now the question I want to ask you is at 13 February the third entry is a call
20 made at 7.35 from East Lindfield?---Yes.

It's not disputed that 13 February was a working day, that is not a weekend. Do you do the journey regularly from where you live into the city and the inner-western and eastern suburbs?---Yes.

And could you tell us how long would you estimate it would take to travel from East Lindfield to, to the premises that were then being occupied by Kings?---Oh, easily an hour.

I just want to show you Exhibit 17, F11.
30

THE COMMISSIONER: Sorry, what? F11.

MR LLOYD: F11 of Exhibit 17 or tab 11 of Exhibit 17?---Yes.

And at the same time I would ask you to see as part of Exhibit 2, R8, it's the
--?---Thank you.

Is it the Tender Evaluation Report?---Yes, it is.

40 So looking at that last exhibit, the Tender Evaluation Report, it's dated in the top right-hand corner March '09 and it starts at 150, I want to take you through to page 154 and we see at paragraph 17 you say "Subsequently the panel agreed to advise both Kings and ACG that they are jointly the preferred shortlisted contractor"?---Yes.

Now, I want to ask you where did this term "preferred contractor" come from?---Anne Tregeagle suggested it.

When?---At the end of the meeting on the 27th.

And does that description of those two relate in any way to a conversation you had with her about the tenderers being four per cent apart in their price?---Yes, we were all in that meeting together and she said that if we can score them so that they fall within four per cent of each other they could be listed as joint preferred tenderers which would give us the right and the ability under, under, under the tendering rules to go back and seek that alternative price.

10

What alternative price?---The, the \$2 million that Charlie had, had said verbally.

And well, taking you then to Exhibit 17, F11 or tab 11 of Exhibit 17, this is an email, or there are two emails. The first one is on the lower half, it commences on page 55, it's from Anne Tregeagle to Tony Morris, copied to both yourself and Anne Flanagan with the subject being preferred tenderers? ---Yes.

20 This would appear to be on the evening it's sent, 6.56pm of those interviews?---That's correct.

It's addressed to Tony, I take it that must be Tony Morris?---Tony Morris, yes.

On the expectation that Dan will establish that ACG and Kings will be less than four per cent apart once he has completed adjusting their assessment scores to meet the interview committee's decision to weight price at 40 per cent and other criteria as assessed following the interviews at 60 per cent.

30 Here are some words to consider and on it goes. I want to pick up a few phrases, clauses in her first paragraph in the email to Tony. Was there any discussion after the interviews on the 27th about an expectation that you would establish the bids were less than four per cent apart?---Yes. She took the scoring sheets and gave us back or gave me back her scoring sheet which, which effectively allowed to fall within four per cent of each other.

And the importance of that being obtained?---Allowing them to be within four per cent meant that we could then go back selecting them as joint preferred tenderers and asked them for revised pricing and allow therefore the, the bid for \$2 million in.

40

And to your recollection who made the suggestion of adjusting the weighting of price?---I believe Anne did.

Anne, there were two Anne's?---Sorry, Anne Tregeagle, I believe. But it was, it was a discussion at that point.

Just taking you back to the tender evaluation report whilst I'm there?

---Thank you. I think I've got it.

Page 154?---Ma'am, I've got it here, thank you. Yes.

Paragraph 16, the second clause of the first sentence I want to take you to. "As a result of the product set forward by Kings, it was agreed to investigate further the readiness of the latest release product from Pelco"?---Yes.

10 Now I don't want to throw any further meanings to the word available, but here is a contemporary document of yours what did you mean by readiness there?---It's availability, is it, have they released it, is it available.

THE COMMISSIONER: So readiness is availability? Is that what you're saying?---Is the product available from the manufacturer.

20 No, no, that's my question. I thought you said, I just don't -- maybe I misheard you, but I thought you said readiness meant that -- I thought you said that availability meant readiness. Did you or didn't you?---Is the Endura 2 product available.

No, did you say that readiness meant availability?---I don't know. You'd need to go back to the transcript. I don't recall what I just said.

I'll look at it so carefully, I promise you.

MR LLOYD: Now you there say the latest release product from Pelco?
---Yeah.

30 What was that to your understanding then?---The software, Endura 2.

Fine.

THE COMMISSIONER: So that's the latest release product is it?---Yes, it is.

It's not the product that was in the tender was it?---Yes, it was.

40 So why is it the latest release product then?---Why is the latest release product? It is the latest product they are selling.

But this is a, this is a product they originally put in the tender. Why was it suddenly necessary to investigate it further?---We were checking with the manufacturer to make sure that the product was available.

I'm not -- I know you've said that. That's not what I'm asking you about. I'm asking you about the phrase "latest released product from Pelco"?
---Yes.

Why do you describe it as that if it was always in the tender?---I'm making a point that it's the latest release product. In fact it goes on to say - - -

It's all right I don't need your expansion?---Okay.

MR LLOYD: Now, whilst I'm with this document I take it it's signed by all members of the Tender Evaluation Committee at page 156 on 6 March?

THE COMMISSIONER: Well, we can see that.

10

THE WITNESS: Yes.

THE COMMISSIONER: You described it as your document when you, in a question that you asked a few minutes to Mr Paul and - - -

MR LLOYD: Well, he drafted it.

THE COMMISSIONER: I'm not, I'm not disputing that I'm just making sure that you meant what you said.

20

MR LLOYD: In the sense that he, he drafted it. I'll cover that (not transcribable)

THE COMMISSIONER: Yes.

MR LLOYD: I take it you drafted this?---Yes, I drafted it.

And would you have circularised it in advance?---Absolutely.

30 Why?---So that they can check the content of it.

How far in advance?---Oh, I did a report on the, after the 27th, after the initial, sorry, after the initial, initial tender opening and review of their, of their, of their tenders, everybody's tenders and there was a first report, this one being March is the second report, is the final report.

40 As an example it refers to the various tables which must have been annexed, I'll give you an example, if you go to page 153 we see in the lower half of the page, in 4 you see reference to table 8, the very final paragraph on page 153 at 7 you see references to tables 12 and 13. Are you with me?---Yes, I am.

When you circulated this did you circulate together with it the various tables?---Absolutely.

Were you trying to hide anything in this report?---No, not at all.

THE COMMISSIONER: So this, this was written after the meeting at which Kings offered to reduce their price by about \$700,000?---This document dated March - - -

Could you just answer whether that - - -?---I'm answering.

Well, is it yes or no?---It was written after the final meeting on the 5th.

Your answer I take it is yes?---Yes.

10

MR LLOYD: Finally, we have a document, I can't recall whether you were shown this or not, it's part of Exhibit 17, it's Exhibit F12 and three pages in - do you have it?---No, I don't.

THE COMMISSIONER: Is that the tender response that you're talking about, Mr Lloyd?

MR LLOYD: Tender response, it's got various dates on different pages.

20

THE COMMISSIONER: Yes, yes. I'm just checking that (not transcribable)

MR LLOYD: I don't know the source of it.

THE COMMISSIONER: As the phrase goes on the same page.

MR LLOYD: We're finally getting there, Commissioner, we're on the same page?---Was it in there, oh, thank you. Yes.

30

The front page is, is dated 20 February, it can't be a correct date but in any event the next page that's dated is the third page, top right-hand corner at 64?---Right.

And it appears to be a document from ACG to Tony Morris dated 3 March, '09?---Yes.

40

And it says about two-thirds of the way down the document "provide certification applicable to the Pelco solution" there is then a three line response and it goes on in the final line there of that paragraph, "The product we're proposing is Endura 2 accreditation for Endura 2 is not yet available until April '09"?---Sure.

Was, was that your understanding then of availability?

When is then?---No, they're saying, they're saying - - -

When is then?--- - - - accreditation is not available until April 2009, right, because it was a new product obviously they've got to go through relevant training for that product and that was, that was the dates, so be it.

THE COMMISSIONER: So what, what - Mr Lloyd, you do understand that it is important to - you asked the question your understanding then I'm not sure - I think - is it - do you mean as at 3 March 2009 which is the date of this letter?

10 MR LLOYD: Yes.

The 3 March?---Right.

Do you see this is different from the availability of the product, that is the software?---No.

So it appears to be the, the understanding of the author of this letter from ACG to Mr Morris - - -?---Yes.

20 - - - that Pelco Endura 2 was not yet available until April '09?---That's what that says.

Well I'm just asking - - -?---Yes.

- - - what was your understanding as of 3 March?---As at 3 March?

Yes?---I wasn't sure whether it was available. Charlie had told us on 27 and until we went and saw Pelco on 5, on the morning of the 5 that's why we wanted to make, make certain.

30

Okay.

THE COMMISSIONER: Was it your understanding that it was available in April?---No, it was - I, I had no understanding of when it was available until such time as I spoke to Terry on the 5. I'd been told in this letter the 3 - - -

Hadn't you asked?---Numerous times.

40 And what had you - had you not been told some - - -?---That was imminent was what I was told.

Do you mind if I finish my question? May I finish my question?---Yes, absolutely.

Thank you - - -?---Sorry.

- - - Mr Paul. Did you - were you told ever that it was available in April 2009? It would be available in April 2009?---No, I understood April 2009.

So your answer is no. You were never told it was available in April 2009, is that right?---No, that's not right.

Well what is your answer to my question, please?---My answer to your question is I was told that the official release date was going to be April 2009. At this point in time that was what I understood.

When were you told that?---I don't recall the specific dates.

10 Were you told that before the meeting at which Kings reduced their tender price during the meeting or after the meeting?---After the - I actually don't recall the dates, I don't know.

This is something that's really important?---Why?

Because you're advising your client when they'll be able to start using this product?---No, when it would be available. Now - - -

20 Exactly?---Right. So that was the reason after this we went and saw Pelco.

Well I'm asking you whether you were told this before the meeting when the price was reduced during the meeting or after the meeting?---I don't recall.

Well I find that a very strange answer because it is something of which you would have to have been acutely aware in order to properly advise your client as to whether the tender should be accepted or not. Do you understand that?---No, I don't.

30 All right. Yes, Mr Lloyd.

MR LLOYD: Just finally on that document that is F12 of Exhibit 17. Did you ever receive this document or not?---I don't recall seeing it.

Thank you. I've nothing further, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Strickland.

40 MR STRICKLAND: Just on the last point first, did anyone from ACG advise you in either in writing or verbally as at 3 March that ACG believed that Endura 2 was not available at that time?---That letter was available, I don't recall seeing that letter.

Okay. So did it concern you then - - -

THE COMMISSIONER: Sorry. You said, you said that the letter was not available?---No, I said the letter was available. That, that letter was - - -

The letter was available?---That letter was sent to - - -

Available to whom?---Tony Morris. It was addressed to Tony Morris, I don't recall seeing that - - -

You haven't, haven't asked - answered Mr Strickland's question.

MR STRICKLAND: By the letter you're referring to the letter at page 64, correct?---We just saw, yes.

10

Okay. So did it concern you at that time, that is before the final interview but after 27 February interview with Kings and ACG did it concern you that Kings had told you on 27 February that their information was that Endura 2 was available but ACG had advised in writing but their understanding was it was not yet available?---It would have concerned me I guess had I seen that letter. I don't recall seeing that letter and the first thing we did after the meeting of 27 - - -

20

THE COMMISSIONER: No, no, it's all right, you've answered the question, sorry, you've answered the question?--- - - - was arranged to go and - - -

Stop, stop.

30

MR STRICKLAND: Now as I understand it what you told the Commissioner this morning was that at the 27 February meeting when Kings presented the price of \$2 million, Ms Tregeagle stopped the meeting and said she cannot accept the bid, but there was no discussion about how Kings was able to reduce the price. Is that your recollection of the evidence you gave to the Commissioner?---I don't recall that discussion regarding Kings and how they were able to reduce the price, correct.

THE COMMISSIONER: You told me and I asked you twice - - -?---That's right.

40

- - - and you answered unequivocally that there was no discussion about why Kings were able to reduce the price because Ms Tregeagle put a stop to the discussion. Do you recall saying that?---I don't recall the detail of it, yes.

Do you recall saying that to me this morning?---Yes.

MR STRICKLAND: And was that the truth what you told the Commissioner this morning?---Everything I'm telling you is the truth.

Answer the question?---I just did.

No, was that the truth what you just told - - -?---Yes.

Okay. Now between - - -?---To the best of my recollection, yes.

- - - between 27 February - - -?---Yes.

- - - the first meeting and the time the contract was awarded to Kings did you have any further discussion with Mr Diekman about the reduction of the price and how that, how he was able to achieve that reduction?---I don't recall.

10

Between, between the first interview and the time the contract was awarded obviously there was still a competitive tender process. Is that correct?---I don't recall - - -

THE COMMISSIONER: Going on.

MR STRICKLAND: Going on, there was still a competitive tender process going on?---I don't recall whether, whether the contractor for Kings were told after the meeting of the 5th at any stage verbally whether, whether they won the tender.

20

Well between the time – I'll put it another way then, between 27 February meeting and the time that the Art Gallery had decided to award the contract to Kings there was a competitive tender process going on?---Yes.

That was a very soft answer, I don't think we heard - - -?---Yes.

And so do you agree it would have been highly inappropriate for you to have provided any information to Kings to assist them in that competitive tender process?---Yes.

30

And if Kings relayed any information to you about their tender, and that's something you would have relayed to other members of the Tender Evaluation Committee?---Typically, yes.

Would there be any circumstances that you can think of when you would not have relayed such information to the Tender Evaluation Committee? ---Not that I'm aware of.

40

Okay. If you go to, go back to Exhibit 2, tab 8, please?---Thanks.

And if you go to page 154?---Yes.

What you, what you are doing in this section is providing a – and if you go back to 153, you're providing a chronology of events leading up to your recommendation. Do you agree with that?---A loose chronology, yes.

Right. And part of the chronology is contained in paragraph 17 where you write, “subsequently the panel agreed to advise both Kings and ACG that they are jointly the preferred shortlist contractors”?---Right.

“And pending the outcome of the next round of interviews”, do you see that?---Yes.

Now that obviously relates to an advice, that is the panel advising Kings and ACG after the first round of interviews on 27 February. Correct?---Right.

10

Do you agree with that?---Yes.

You then say that the panel requested, this is the third line, “the panel request clarification of their Lenel/Pelco solution, solutions”, I’m sorry, “so the panel may review the solutions and subsequent price savings offered as a result of the new solution”. Do you see that?---Yes.

20

Well what you’re writing there isn’t it is that you had been told by Kings and ACG or one of them that the – they had – there were subsequent price savings offered as a result of the new solution, ie the Pelco/Endura 2 solution. Isn’t that what you – isn’t that what that means?---No.

What else could it mean?---Well, Tony Grubisic came in with a, with a solution of 1.9 to \$2 million, whatever that number was, I don’t have it in front of me, my apologies if that’s not specifically accurate but it was somewhere in between which is on Anne Tregeagle’s notes and he was offering a different solution, an Andover solution so - - -

30

THE COMMISSIONER: You’re not answering the question. What else could it mean is the question?---I just told you that, it could have been, it could have been meaning that.

What?---About ACG’s offer between 1.9 and two.

MR STRICKLAND: Well, the problem with that answer is that’s not what the document says?---I’ll read the document again.

Paragraph 17.

40

THE COMMISSIONER: Just paragraph 17, you don’t have to start at the beginning?---Right.

MR STRICKLAND: You see, what the words state is that the panel at that meeting on 27 February requested clarification of their, that’s the plural, for Kings and ACG, their Lenel/Pelco solutions - - -?---Yes.

- - - such that the panel may review the solutions and subsequent price savings offered as a result of the new solution. So what I’m suggesting to

you is that those words must mean that the panel had been advised at that meeting that there were, (a), there were price savings offered by the new solution and that the price savings were as a result of the new solution, that is the Pelco Endura 2, do you agree with that or not?---No, I don't, I don't recall the detail of what the price savings were, that might have been a part of it but there would have been other things as well I assume.

But what I'm asking you to focus on is your words - - -?---Yeah.

10 - - - about where you say as a result of, that is the subsequent price savings offered as a result of the new solutions. What did you mean by that phrase other than that you had been told that the Endura 2 was a new solution and could offer pricing savings?---When they came in on the 5th, right - - -

But that doesn't relate to the 5th?---This report is a result of the 5th, it's the, it's the March report.

No, it relates - sir, paragraph 17 - - -?---Right.

20 - - - relates to 27 February as you've agreed before because it refers to pending the outcome of the next round of interviews which is the 3rd?
---Right.

The 5th, so this paragraph 17 is relating to what had, what the panel had advised Kings and ACG on 27 February.

THE COMMISSIONER: And what they had advised the panel as well.

30 MR STRICKLAND: And what they had advised the panel?---Right.

So can you answer my question or would you like me to repeat it?---No, no, and they, they, at the same time when they threw that \$2 million number out they were talking about hand readers and keys and all sorts of stuff so that goes into the mix of any solution doesn't it?

THE COMMISSIONER: That has nothing to do - - -?---Sorry.

40 That has nothing to do with the new solution which is the new Lenel/Pelco solution?---A package is a solution, the package.

What, the new, new - - -?---The new package, that's correct.

There is only one new solution and that was the Endura 2 - - -?---No.

- - - solution?---You're wrong.

I'm wrong am I?---Yes.

Hasn't that been your evidence consistently from the beginning of this inquiry?---They've offered Endura 2 - - -

Just answer that question please?---No.

Hasn't it been your evidence from the beginning of this inquiry that the only solution being contemplated was the Endura 2 solution?---By who?

10 I won't do that, I'm sorry. My question is so clear and you understand, I am satisfied that you understand very well what I'm asking you and I will not repeat the question.

Yes, Mr Strickland.

MR STRICKLAND: Thank you.

20 Now, you gave this evidence in relation to rebates last Thursday, this is at page 1187, line 40, it was put to you your job was to chase up whether any rebates in relation to the Art Gallery were actually paid and you said no, not at all and then you said, only unless you were instructed to do so?---That's right.

If you just go please to Exhibit 65, tab 7?---Yes.

If you just have a look please at page 150. If you just go please to, do you remember that this is the document which is your August 2008 proposal? ---Yes.

30 And halfway down the page you say, "some of the additional debt benefits, Daniel brings to his clients include but are not limited to" and there are three dot points. Do you see that?---Yes.

And the second dot point is costs saving rebate – successfully negotiating a substantial dollar rebate which is issued back to the client on a quarterly basis for components and products purchased. And then you give some more detail about the rebates. Do you see that?---Yes.

40 So let me ask you the question again, based upon your own proposal your job was to negotiate rebates which – on behalf of your client. Isn't that correct?---Negotiate them, yes.

And negotiate means chase them up doesn't it?---No, it doesn't.

Doesn't it?---It means negotiate, it means ask, ask the suppliers whether they were going to provide any rebates.

Okay. So you, you – even bearing in mind this document, your own proposal, you deny do you that it was your job to chase up rebates that were

owing or could be owing to your own client. Is that correct?---Unless the client asked me to, yes. It's an option, it's not a, it's not a mandatory thing.

Yes, but assuming the option is exercised by the manufacturer then your job would be to chase up the rebate, I suggest?---If the client asked me to.

I see. But if they didn't because they say have forgotten, then you don't consider it to be your job. Is that right?---If the client asked me to I would do it.

10

Okay. You were good friends with Mr Yallouris. Is that correct as at 2009?---I was friends with him, yes.

You rode your motorbikes together didn't you?---I don't know whether, yeah, yes, I think we did, yes.

So you socialised with him from time to time?---Occasionally.

20

And you went on trips together?---Trips to where?

Anywhere?---Business trips.

Did you go to the ISC conference with him?---I've seen him there. He never travelled with us.

He was a good friend wasn't he in 2009?---He was a friend, yeah.

30

Now you gave some evidence in relation to the letter you wrote Mr Diekman about inviting to pay for a number of attendees at the ISC conference in 2009. Do you recall that evidence?---Yes.

And you said that that email was a joke?---Yes.

Did you write a similar letter to any other tenderer?---I don't recall.

Are you sure about that?---No, I don't recall. I don't know who I wrote to.

Is there any reason why you would have repeated the joke to any other tenderer?---I could have, I don't know.

40

Austek was one of the original companies invited to participate in the Art Gallery tender. Is that right?---I don't recall.

I just want to show you, excuse me, this email, please. I tender that email.

THE COMMISSIONER: Is there a copy?

MR STRICKLAND: I beg your pardon?

THE COMMISSIONER: Is there a copy?

MR STRICKLAND: I'm sorry, that's the 19 January, I beg your pardon. I'm sorry, I'll read out the date.

THE COMMISSIONER: Sorry, it's an email from who to who?

MR STRICKLAND: It's an email from - - -

10 THE COMMISSIONER: I have it, it's all right.

MR STRICKLAND: No. I'll just give it to all the parties.

Email from Mr Paul to Mr Nguyen dated 19 January '09.

THE COMMISSIONER: Email from Mr Paul to Mr Nguyen of 19 January 2009 is Exhibit 110.

20 **#EXHIBIT 110 - EMAIL FROM MR PAUL TO MR NGUYEN SENT AT 19:30 ON 19 JANUARY 2009**

MR STRICKLAND: Have you got that document that?---Yes, I do.

And you can see it's re: I - it's headed 'Re: ISC West'?---Yes.

And you refer to - you tell Mr Nguyen that clients invited, I assume that means to clients invited to ISC West. Do you see that?---Yes.

30

Do you know why you sent that email Mr Nguyen?---To let him know who was going or who was invited.

And for what purpose?---So he knew.

And why did he need to - why did you want him to know?---'Cause he used to go on some of the trips.

What, were you, were you suggesting he should be invited as well?

40

---Suggesting John Nguyen should be invited.

That's right?---No, he used to - he goes on the trips, he takes himself and his people. He's saying it there.

Okay. I'm sorry, what exhibit was that please, Commissioner?

THE COMMISSIONER: One hundred and ten.

MR STRICKLAND: Thank you.

THE COMMISSIONER: He's not saying at all it's your - - -?---Yeah.
Down below he is.

I'll show you another email?---This is from - - -

THE COMMISSIONER: He's saying below, I don't know.

10 MR STRICKLAND: - - - from yourself to Mr Nguyen copied to others
including a copy to Mr Morris dated 21 January '09?---Thank you.

I tender that.

THE COMMISSIONER: An email from Mr Paul to Mr Nguyen of 21
January '09 is Exhibit 111.

20 **#EXHIBIT 111 - EMAIL FROM MR PAUL TO MR NGUYEN SENT
AT 20:40 ON 21 JANUARY 2009**

MR STRICKLAND: So having seen this email does - do you recall now
inviting Mr Nguyen to tender for the Art Gallery security upgrade?---I don't
know that that's a invitation to tender, that's an invitation to sign a
confidentiality agreement beforehand but, yes, I remember sending it, yes.

30 But it's a confidentiality agreement that was required to be signed in order
to participate in the tender wasn't it?---That's right.

So was it, was it - you wouldn't have asked him to sign that agreement
unless you wished him to or wished to invite him to participate in the
tender?---I don't know whether he was invited.

That's not my question.

THE COMMISSIONER: That's not the question?---At some stage he was
potentially going to be invited, yes.

40 MR STRICKLAND: And why did you want to invite - why did you
potentially want to invite him?---Well I don't know, I don't know whether
he was invited. Don't know - - -

THE COMMISSIONER: Well that's not the question again, it's not the
question - - -?---whether he was a Lenel dealer at the time, I'm not sure.

Why did you potentially want to ask him was the question?---I got no idea.
As a viable contractor I guess.

MR STRICKLAND: I'll show you this email dated from yourself to Mr Nguyen.

I tender that email.

THE COMMISSIONER: Yes. The email from Mr Paul to Mr Nguyen of 24 January 2009 is Exhibit 112.

10

#EXHIBIT 112 - EMAIL FROM MR PAUL TO MR NGUYEN WITH SUBJECT 'SORRY ADDITIONAL' SENT ON 24 JANUARY 2009

MR STRICKLAND: Having read this email do you recall now asking Mr Nguyen to - who he was going to sponsor in relation to the ISC trip and then saying that you would be happy to arrange and pay for it but that you'd want payment back after you'd invoiced him. Do you recall that?---Yes, I see that.

20

Now the - that email is not, that email is in the same terms as in relation to your email from Mr Diekman wasn't it?---It's not the joke that I had with Mr Diekman, no.

All right. It's in the same terms though isn't it?---Yeah. It's the same email, it's a copy and paste.

30

So why did you invite Mr Nguyen or why did you ask Mr Nguyen who of the people listed below did he want to sponsor for the ISC trip?---He used to sponsor people.

Okay. But why did you want him to, why did you issue that invitation to him?---Because of Brad Newton from Westfield.

THE COMMISSIONER: Why did you put Tony Morris on there?---It was the list, the whole list was there. So I put myself on there and he would never pay for me either. So - - -

40

Are you sure?---Yes, absolutely.

This was no joke was it?---Sorry?

This was no joke?---No, not to Nguyen it wasn't a joke.

MR STRICKLAND: But you see what you were doing in that email was you were inviting him - see it's an open ended question, "who of these are being sponsored by you?" And you list those eight names?---I'm showing him a list of people, yes.

Yes. You're not just showing him a list, you're saying and these are your words, "who of these are being sponsored by you"?---Because it's the same cut and paste email, that's all.

And so having invited him to participate in a tender, and I'm going to use that phrase for now, I'll show you a document – your document later. But why would you ask – isn't it highly inappropriate to suggest that someone who was a tenderer to the Art Gallery should be invited to sponsor an officer who worked for the Art Gallery?---No, I wasn't asking him for, for Tony Morris.

Well - - -

THE COMMISSIONER: You were?---No, I wasn't.

You just happen to put him on the, on the list?---It was the whole list. It was the entire list. It had me on there was well. He wasn't going to pay for me either.

MR STRICKLAND: Well why not delete your name and Mr Morris from the list then?---Because it was a copy and paste, it's the same damn email.

THE COMMISSIONER: Why didn't you cut Mr Morris and yourself from the email?---So he could see the whole list of people that were going.

No, no, that's not what it is?---Yes, it is.

You can read it, it speaks for itself?---No, it doesn't.

MR STRICKLAND: I'll show you Mr Nguyen's reply dated 28 January. What did you understand Mr Nguyen to mean when he said, "Dan, try to make my 12k last the distance. Pelco account overdue"?---I have no idea what he was meaning by that.

Well in relation to trying to make my 12k last the distance he was referring to the fact that he was prepared to sponsor two persons at \$6,000 each. Is that corrects?---I have no idea, you'd need to ask Mr Nguyen.

No, I'm asking you what you understood it to mean, as you'd, as you'd issued the invitation?---I don't know what it meant. I don't know what it meant.

Could the witness please be shown Exhibit 2, tab 3.

THE COMMISSIONER: Are you tendering that?

MR STRICKLAND: I'm sorry, thank you, I tender that.

THE COMMISSIONER: Exhibit 113 is an email from Mr Paul, sorry from Mr Nguyen to Mr Paul of 28 January, 2009.

**#EXHIBIT 113 - EMAIL FROM MR NGUYEN TO MR PAUL
REPLYING TO MR PAUL'S EMAIL OF 24 JANUARY 2009 (EX 112)**

10 MR STRICKLAND: You've got Exhibit 2, tab 3. Is that correct?

THE COMMISSIONER: Are you talking about, you want to go to - - -

MR STRICKLAND: No, it's okay. Don't worry, thank you, I'm sorry. I'll go to another document. Exhibit 109, please. So can I ask you this, was it your understanding that Mr Nguyen was ever invited to tender, was he ever invited to tender for the New South Wales Art Gallery?---I don't recall.

20 Do you know the circumstances in – did he decline to participate in the tender? Do you remember?---I don't recall, no. I don't know whether he was a Lenel evaluator re-seller. That was the list that we used.

I see. I want to suggest to you that the same email that you wrote to Mr Nguyen, which is Exhibit 112, the same email that you wrote to Mr Diekman, inviting him to sponsor people and saying you would repay him upon an invoice - - -?---Yeah.

- - - that was no joke either?---Yes, it was a joke.

30 Now if you go to Exhibit 109 I just wanted to ask you one question. If you go to the 2009 year, which is the second last page. I beg your pardon, the third last page?---Yes.

You can see that on that page, excuse me, there's two entries - there's an entry for Kings at 2009, I'm sorry, have you got that?---Yes.

And that relates to the, the large \$2 million or \$1.8 million contract, correct?---Yes.

40 And then if you go to 2008 - - -?---Yes.

- - - because you can see on the fourth line, 2008 AG NSW Sydney Kings, do you see that?---Yes.

Does that mean that you were involved in the evaluation panel which awarded Kings that job?---What job?

The 2008 Art Gallery contract?---No.

Well, that's what you - - -?---There was no, I don't think there was a contract in 2008, I think - I'm not sure whether that was to do with the, the storage facility in the other suburb. I, I don't know what that was, that particular thing was about.

But this is your document that you prepared in answer to questions - - -?---It might have, might have been, it might have been an error.

10 Well, it might have been but it also might have been accurate because you understand that Kings were awarded two contracts in relation to the Art Gallery?---Right.

Do you understand that Kings were awarded two contracts in relation to the Art Gallery?---Ah, yeah, I believe so.

One small one and one, and the big one that we've been asking all the questions about?---What was the small, which was the small one, the storage facility?

20

I've asked you that before, you, you know, don't you, that Kings were awarded a smaller contract before the large security upgrade?---That wasn't a tender though.

I beg your pardon?---That wasn't a tender I don't believe.

Well - - -

30 THE COMMISSIONER: So why have you put it in the Exhibit 109?
---2008, if it was in 2008 it might have been an error, it might be meant to be in 2009.

How many other errors are in there?--None that I'm aware of.

You've just chosen one?---None that I'm aware of.

The first one we choose is an error?---I beg your pardon?

40 The first one you're asked about is an error?---Well, I don't know that it is, I said it might have been, I'm not sure.

MR STRICKLAND: Well, assuming it was not an error, does that mean that you were on the Tender Evaluation Panel or involved in it in some way in relation to two different contracts for Kings in relation to the Art Gallery?
---The storage facility and the main, main building.

So is the answer yes to the question?---Yes.

And the, the storage facility one, was that in 2008?---I thought it came after, no, I think it, I thought it came after.

That's right, so what I'm asking you is in relation to the contract that Kings were awarded before the large 1.8, \$2 million contract in 2009, were you involved in another contract that was awarded to Kings in 2008?---Not, not a tender, no.

10 THE COMMISSIONER: Well, any contract?---No.

MR STRICKLAND: Then why is it on your list?---I said it might be an error.

THE COMMISSIONER: How can you make an error like that?---What do you mean how can I make an error, obviously - - -

20 I'm asking you how - - -?---I was making, I was putting this together on behalf of my, on behalf of a discussion I had with my legal counsel late one evening, it might be an error, I don't know. I'd need to go back and have a look at what that was.

MR STRICKLAND: Mr Paul, did you have any role at all in assisting Kings in getting the smaller contract that was awarded before the large contract in 2009?---No.

Just excuse me for one moment. You see, I want to suggest to you that in relation to the smaller contract before, the large contract in 2009 you recommended Kings to, to the Art Gallery?---In what way?

30 I'm asking you, you know what the word recommend means?---No, Tony Morris already knew Kings.

Irrespective of whether he already knew them I want to suggest that you recommended Kings to Mr Morris?---Not that I recall.

Yes, thank you, Mr Commissioner.

40 THE COMMISSIONER: Yes. This concludes your evidence for the time being, Mr Paul, you're not discharged from the summons. You'll be informed if and when you're required to return to the witness box?---Okay.

THE WITNESS WITHDREW

[12.44pm]

THE COMMISSIONER: Ms Lonergan.

MS LONERGAN: I call Anthony John Morris.

THE COMMISSIONER: Mr Gengos.

MR O'MAHONEY: It's Mr O'Mahoney.

THE COMMISSIONER: Sorry. I beg your pardon.

MR O'MAHONEY: Mr Commissioner, I just seek that a declaration under section 38 be made in respect to my client.

10

THE COMMISSIONER: Yes. What, is Mr Gengos representing Mr Morris at another stage?

MR O'MAHONEY: He is my instructing solicitor.

THE COMMISSIONER: I beg your pardon, Mr O'Mahoney. I'm sorry about that.

20

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Morris and all documents produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

Mr O'Mahoney, have you explained section 38 to him?

MR O'MAHONEY: I have.

30

THE COMMISSIONER: Yeah. Do you understand, Mr Morris, that the order I have made means that the evidence you give today can't be used against you in any criminal or civil proceedings or in any disciplinary proceedings that does not protect you in respect of any false evidence that is given, I'm not suggesting that you're going to give false evidence this is simply something I tell all witnesses who sit there.

MR MORRIS: Yes, I understand that.

40

THE COMMISSIONER: Yes. And do you wish to give your evidence under oath or do you wish to affirm?

MR MORRIS: Oath, please.

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: Mr Morris, you commenced working at the Art Gallery of New South Wales as the head of security and Gallery services in early 2008. Is that correct?---January 2008, yes.

10

Yes. And when you commenced your role there you previously worked at Westfield?---Yes, I did.

And how many years had you worked at Westfield?---From memory it would have been around three and a half years, maybe four years.

Was that in the period immediately prior to you commencing your role at the Art Gallery?---Correct.

20

During your time at Westfield did you meet Daniel Paul?---Not to my knowledge.

What was your first meeting with Daniel Paul?---My first meeting with Daniel Paul fact to face meeting was after I had phoned him seeking his services as a potential security consultant and that would have been around mid 2008.

30

And where did you get his name?---I got his - well I already knew of his name having worked for Westfield but I had to secure his contact details from the security journal that I subscribe to.

Why did you, why did you go Mr Paul's name as opposed to other consultants or did you choose a selection of consultants to contact at that point?---Anne Tregeagle the project manager had spoken to me prior to that and was looking for alternative security contractors that would hopefully provide good service to us.

40

Did you, sorry. Did you contact any other security advisors in addition to Mr Paul at that point in time?---Not that I recall.

Just Mr Paul?---Just Mr Paul.

THE COMMISSIONER: Why?---Because I believe Anne Tregeagle had already sourced other security contractors to tender.

Did she just ask you to find one?---It's some time ago, I can only assume that's to be the case, yes.

MS LONERGAN: You said that you've heard of Mr Paul, can we assume that when you – I'm sorry, I'll withdraw that. You said that you'd heard of Mr Paul before, was that in the context of his doing some works at Westfield?---Correct.

Did you follow up with anybody at Westfield as to their knowledge of Mr Paul's abilities and background?---No.

10 Why not?

THE COMMISSIONER: Why not?---Well I assumed that Mr Paul having worked for Westfield would have been a credible security consultant. Westfield aren't in the habit of procuring the services of, of consultants who aren't up to the, aren't up to the standard.

MS LONERGAN: Did you check with any staff at all at Westfield about Mr Paul at the point you recommended him to Anne Tregagle as a potential consultant for the Art Gallery upgrade tender?---No.

20

Did you – I'll withdraw that. When you commenced working at the Art Gallery, had there already been a decision made that there would be a security upgrade?---I believe so, yes.

Did Anne Tregagle suggest to you that an independent consultant needed to be engaged?---I think we came to that conclusion. My skills weren't up to that standard and I knew Anne Tregagle's weren't, so it made good sense that we needed the services of a competent security consultant to assist us.

30

You said that Anne Tregagle approached you to get a further name for a potential security consultant, did Anne Tregagle give you the impression that she had already decided that there needed to be an independent consultant for this particular upgrade?---I believe so.

Did you have any – as at the middle of 2008 did you personally have any professional qualifications that related to security equipment such as access control or closed circuit TV systems?---No.

40 And did you have any personal experience yourself or any technical knowledge that you gained on the job regarding closed circuit TV equipment as the middle of 2008?---No.

Can we take it from those answers that you were reliant on Mr Paul as the matter proceeded for all technical advice relating to closed circuit TV equipment?---That's correct.

Now in mid-2008 you were invited to what's, what's called a shootout, which is as I understand it a demonstration of camera equipment that was to take place on 1 July, 2008. Do you remember that?---Yes, I do.

And how did that invitation to you come about?---It came from Daniel Paul.

When you first made contact with Daniel Paul, you telephoned him you said?---Yes.

- 10 When you first telephoned him what did you tell him about the ambit of the potential work at the Art Gallery that may involve him?---I believe I sought his advice that we were going to be going to into a fairly large project and we were requiring the services of a security consultant and asked him if he would be willing to offer his services in a tender.

At that time had there already been - - -

THE COMMISSIONER: We'll adjourn.

- 20 MS LONERGAN: Thank you, Commissioner.

THE COMMISSIONER: We'll recommence at 2.00pm.

LUNCHEON ADJOURNMENT

[12.53pm]