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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 13 AUGUST, 2012

AT 10.05AM

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THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: Commissioner, we're continuing the evidence of Tony Theissen this morning and I neglected to raise two matters with him when he was in the witness box last Thursday.

THE COMMISSIONER: Sorry, I see Mr Lloyd is standing. I'll just hear what he has to say. Mr Lloyd.

10 MR LLOYD: Just one thing, Commissioner, if I may. I'm checking the transcript of Thursday and this is at page 1588 of the transcript, there appears to be a large slab missing of my cross examination of this witness.

THE COMMISSIONER: 1588.

20 MR LLOYD: 1588. Well, my cross examination starts the previous page at 1587 and it appears to complete at 1588 at about line 41 but the whole area of cross examination on Exhibit 66 which was the tender specification is just absent. I'm sure it's an oversight but I think it's something I should put on the record because we saw it as important.

THE COMMISSIONER: Well, I know nothing about that, Mr Lloyd and I don't know whether it's, I can see that there isn't any cross-examination about that but it doesn't seem to me when I look at it where the, where the gap would be, can you tell where the gap is?

MR LLOYD: The gap would be somewhere on 1588 but it's only here, probably at about line, line 28, 29. I think it's before line 28.

30 THE COMMISSIONER: Well, it certainly doesn't jump out to me that there's anything missing from the words, I'm not saying that it's not missing but I just can't see where it is missing.

MR LLOYD: Well it's hard to know where anything is missing because it's missing but - - -

THE COMMISSIONER: Well you - if it's missing you can see that the, the cross-examination doesn't flow but what was it you say you - it was cross-examination on Exhibit 66 which is what?

40

MR LLOYD: The tender specification. This is where, Commissioner, you'll no doubt recall that counsel assisting had taken this witness to the tender specification where we had on one page a system, system and that there was no reference to Verint as a benchmark and then in my cross-examination I took the witness a few page later where it clearly appeared.

THE COMMISSIONER: Yes. All right. Well, I - all I can say is we'll make investigations but either (not transcribable) the question is when. If I make it during the day.

MR LLOYD: No hurry, Commissioner, but I know there's going to be - - -

THE COMMISSIONER: I'm not sure about that. Only because we - I hope we finish this week.

10 MR LLOYD: Indeed heavens but I'm sure submissions will be after that. I really only need it for submissions.

THE COMMISSIONER: And if we - all right. Well, thank you for drawing it to my attention, Mr Lloyd, we'll - not sure what the best way of checking it. I'm just trying to see. I'll, I'll try and make arrangements for that to happen while we're here.

MR LLOYD: Thanks, Commissioner.

20 THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: Could the witness be shown Exhibit 47 please, Exhibit 1 tab 47.

Mr Theissen, I asked you some questions last week regarding that email to Mr Diekman and attached quotations?---Yes.

10

And if you can turn to page 558 there's a quotation by you dated 19 February 2009 directed to Mr Diekman?---Correct, yeah.

Was that last the quotation provided by you regarding the Pelco system to Kings prior to the tender?---I believe so.

You were in court when Mr Stokes gave some evidence last week regarding a projector being provided by Q Video to Daniel Paul?---I do.

20

Do you have any knowledge yourself of a provision of a projector to Mr Paul?---No, I don't.

Did you have anything to do with organising it or providing it to Mr Paul? ---No, I did not.

Those are my additional questions, Commissioner.

THE COMMISSIONER: Yes, thank you.

30

MR LLOYD: Mr Theissen, just a few questions. So you were taken - - -

THE COMMISSIONER: Sorry, Mr Lloyd, I'm, I'm - Thursday was such a long time ago. You have, you have questioned Mr Theissen haven't you?

MR LLOYD: The way it was left, Commissioner, was that I needed to look at a few documents.

THE COMMISSIONER: Yes, that's correct. But then I don't - I see that there's a reference to that at page 1587 of the transcript.

40

MR LLOYD: What page, Commissioner?

THE COMMISSIONER: 1587. And I'm just trying to just - I'm just trying to - I'm just trying to see if that's what you said there and where's, where would the missing part be?

MR LLOYD: The missing part is the following page, 1588, it's, the best I can do- - -

THE COMMISSIONER: All right.

MR LLOYD: - - -is in the middle of 1588.

THE COMMISSIONER: So we've really got to just look at the very end?

MR LLOYD: The very end of the tape will bring it up.

10 THE COMMISSIONER: Yes. All right. You can proceed with your questions.

MR LLOYD: I'd say the last eight to 10 minutes.

THE COMMISSIONER: Yes. All right. If you could proceed with your questions of Mr Theissen.

MR LLOYD: Mr Theissen, you've now got in front of you Exhibit 1, tab 47?---Correct.

20 Which is the quote by you to Kings for the Pelco product. I just want you to, in relation to that, turn through to page 558, they're numbered in the top right-hand corner?---Correct.

I hope yours are numbered the same as mine?---They are.

And at the same time you were shown an exhibit, I'm not sure of the number, 74, which was the quotation to Tony Grubisic dated 26 February. I'm not sure what exhibit number that is, is it- - -?---Exhibit 74.

30 It's 74. Okay. And I just want you, on my copy of that it is numbered commencing at page 2 at the top right-hand corner.

THE COMMISSIONER: Not, this is the, are you talking about the email of 18 February, 2009?

40 MR LLOYD: No. I think I'm referring to another exhibit. This is the, it's a tender, sorry, it's a quotation sent by Q Video to Tony Grubisic dated 26 February for the Pelco Endura product. Was it tendered, do you know the number? I'm just seeking some assistance, Commissioner. 142 it may be. I do apologise, Commissioner. Now, I hope that 142 is that quotation of yours to Tony Grubisic dated 26 Feb?---Correct.

Correct. And I'd just ask you to compare the first six or seven pages of that with the quotation you sent to Kings on 19 February starting at 558?
---Okay.

And I just want you to confirm that they are in effect identical quotations?

THE COMMISSIONER: That will take time, Mr Lloyd. I mean really, surely you've done it?

MR LLOYD: I've done it. I can assure him.

THE COMMISSIONER: Well, why don't you then proceed on the assumption that you're right?

10 MR LLOYD: That they're the same. Assuming they're the same, I want to suggest to you you gave the same quotation in effect to both integrators?
---Correct.

You were shown Exhibit 140 which on the lower half of the first page is an email from Paul Thompson to Charlie Diekman of Kings - - -?---Correct.

- - - attaching some information from Q Video about the Pelco Endura product?---Correct.

20 I think your evidence was to the effect that the details would have come from some other data, I think you said data sheet?---Correct.

Well, I want to suggest to you that in your experience prior to a product being available on the market frequently the manufacturer would issue a pre-release data sheet containing effectively the specifications expected of the product?---Correct.

30 And does it appear as though this information appearing on the last two pages of this exhibit, that is 566 and 567, has come from a Pelco pre-release data sheet.

MS LONERGAN: I object. Commissioner, this witness's evidence was that he didn't extract the document or prepare it and in those circumstances the question asked is not an appropriate one for this witness.

MR LLOYD: I'm asking about his experience.

THE COMMISSIONER: Well, what is the question?

40 MR LLOYD: In your experience does this sort of information come from a manufacturer's pre release data sheet?

THE COMMISSIONER: This sort of information?

MR LLOYD: Well, the specifications appearing on the last two pages.

THE COMMISSIONER: Well, I think you could ask him having regard to your experience could this sort of thing have come from.

MR LLOYD: Indeed.

THE COMMISSIONER: But you can't say to him this came from.

MR LLOYD: No, I'm not. I said in your experience.

THE COMMISSIONER: It could have come from.

MR LLOYD: Could have come from.

10

THE COMMISSIONER: Well, ask him that.

MR LLOYD: In your experience, and thank you, Commissioner, for phrasing the question, in your experience could the type of information shown on the last two pages of this exhibit come from the Pelco pre-release data sheet for the product?---Yes, it could.

20

Thank you. And the final document I want to show you is Exhibit 65, tab 18 which you were shown. It's a three-page email chain and the way these chains work is the earliest email is towards the back of the document?
---Okay.

So I think to pick up the first you have to go to the bottom of the middle page which is page 293?---Yes.

30

Where we see an email from Daniel Paul to Charlie Diekman subject, Defence and then it talks about the Lenel (not transcribable) in that Defence and it goes on, there's a response in the middle of 293 from Charlie to, to Damien Dunphy and Tony Theissen, again Defence, the same thing at the top of page 293?---Yes.

Over onto page 292, an email from you to the others, Defence, and then we have the top email on 292. I want to suggest to you that at that time, that is the time of these emails in December '08 your company was working on installation of CCTV of a Defence site in inner western Sydney?---Correct.

With a Verint system being used?---Correct.

40

And I want to suggest to you that these emails relate to that Defence site?
---Correct.

Thank you.

THE COMMISSIONER: Well, save to the extent that it's apparent from them that they don't like, for example, the top one, "if it works we could consider it for the Art Gallery too," I mean, that's the point that was being made.

MR LLOYD: I'm just going to the earlier ones, Commissioner.

THE COMMISSIONER: Yes, well, they speak for themselves.

MR LLOYD: They're my questions.

THE COMMISSIONER: Yes, thank you. I think that concludes Mr Theissen's examination does it?

10 MS LONERGAN: Yes, Commissioner.

THE COMMISSIONER: Thank you, Mr Theissen, you're free to go, you're discharged from the summons, thank you?---Thank you.

THE WITNESS EXCUSED

[10.24am]

20 MS LONERGAN: I call Damien Dunphy, Commissioner.

MR SMITH: Commissioner?

THE COMMISSIONER: Yes, Mr Smith.

MR SMITH: Before the witness is called, in order to save time- - -

THE COMMISSIONER: Yes.

30 MR SMITH: - - -there are supposed to be some questions about a document in one of the exhibits and we have prepared some adapted versions. I'll be asking (not transcribable) your associate has a copy of that actually, it's Exhibit 2, tab 4.

THE COMMISSIONER: Tab 4 of what?

MR SMITH: Exhibit 2.

THE COMMISSIONER: Exhibit 2, tab 4?

40 MR SMITH: This is the Kings tender response, Commissioner.

THE COMMISSIONER: Yes. Do you want this to be substituted?

MR SMITH: Yes, Commissioner.

THE COMMISSIONER: Yes. Your application is upheld. The redacted sheet will be substituted for the existing sheet in Exhibit 2, tab 4.

**THE REDACTED SHEET WILL BE SUBSTITUTED FOR THE
EXISTING SHEET IN EXHIBIT 2, TAB 4**

MR SMITH: Thank you, Commissioner. I'll circulate a copy.

THE COMMISSIONER: Yes, thank you. Yes, Mr Dunne?

10 MR DUNNE: Commissioner, my name is Dunne. I've already been given
leave to appear for Ms Newman whose evidence is yet to be given, I seek
leave to appear for Mr Dunphy. There is no conflict.

THE COMMISSIONER: All right.

MR DUNNE: And I've explained to Mr Dunphy section 38 and he seeks a
section 38 declaration- - -

THE COMMISSIONER: Yes.

20 MR DUNNE: - - -and will give evidence by affirmation.

THE COMMISSIONER: Pursuant to section 38 of the Independent
Commission Against Corruption Act, I declare that all answers given by Mr
Dunphy witness 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.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR DUNPHY WITNESS 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.**

40 THE COMMISSIONER: Mr Dunphy, we, you've given evidence before at
a compulsory examination, have you not?

MR DUNPHY: I have, yeah.

THE COMMISSIONER: And I have explained to you the order in the
terms that I have just made protects you against your evidence that you give

today being used against you in civil or criminal proceedings but it doesn't protect you in respect of false evidence.

MR DUNPHY: Yes.

THE COMMISSIONER: You understand that?

MR DUNPHY: Yes.

10 THE COMMISSIONER: Thank you.

THE COMMISSIONER: Mr Dunne, I think it's preferable if you come and sit at the front. Yes, Ms Lonergan?

MS LONERGAN: Thank you, Commissioner. Could you state your full name, please, Mr Dunphy?---It's Damien Dunphy.

10 And, Mr Dunphy, you have quite a soft voice and, and a- - -?---Ah hmm.

- - -reasonably thick accent. Would you mind giving the answers slowly as they all need to be taken down?---Will do.

And, Mr Dunphy, are you currently employed by Kings Security?
---I contract to Kings, yeah.

Right. And the name of your contracting company?---Dunphy Technology.

20 Dunphy Technology?---Technology.

Again, if you could speak slowly, please?---Okay.

And you're an expert in large-scale system design. Is that correct?---That's right, yeah.

And you have a tertiary qualification in relation to that?---I do, yeah, mechanical engineering.

30 Mechanical engineering?---Yeah.

And in late 2008 and early 2009 were you an employee of Kings Security?
---I would have been a contractor at that point. I was an employee up until '07.

I beg your pardon?---Employee up until '07.

An employee up until?---2007.

40 2007?---For Kings.

Thank you. And you had a role in relation to the Art Gallery tender. Is that right?---Yes.

And in, in your role did you have a requirement to look over network design?---Exactly.

Did you design solutions that would meet the Art Gallery specifications?

---Exactly.

Did you do that individually or did you have an assistant?---It would have been a team effort but I would have focussed more on the technical aspects of network design and so on, servers and storage.

Were you in charge of the team that completed the network design?

---Would have been, yeah.

10 And did you – I withdraw that. Are you the person from Kings Security or on behalf of Kings Security who designed the technical aspects of the Art Gallery tender response?---I would have helped, yeah.

In- - -

THE COMMISSIONER: Would have helped, did you say?---Yeah. The design would, initial design would be done by the consultant.

You keep using the phrase would have?---Yeah.

20

Does that mean you can't remember but you're working out what, what would have happened or- - -?---No, typically speaking, in fact in all cases when a consultant is used, the consultant actually designs the project. That's the edge devices, the type of cameras and specification. What I would do is help design the actual network and infrastructure to help bring that design to, to the client.

30

I'm not sure. Do you mind saying that again?---A consultant's role would be to specify the actual edge devices, these would be the cameras, the number of cameras, locations and access control doors, things like that, the actual functionality of the system. My role would be then to design the infrastructure to bring all that together.

MS LONERGAN: In, in your role do you choose appropriate products that will meet the specifications - - -?---Yes.

- - - set out?---Ah hmm.

40

And if a tender specification provides a benchmark product - - -?---Ah hmm.

So in this case we all know it was the Lenel Verint in relation to the close circuit TV aspect of the job?---Yeah.

Would you - are you the person at Kings who has a role in putting forward alternative systems - - -?---Yeah.

- - - that would respond to the specification?---Exactly, yeah.

Could the witness be shown Exhibit 66, please.

Now, Mr Dunphy, this document is the tender specifications that were provided to the tenderers on the Art Gallery job. Now do you have a recollection as to what you did in relation to receipt of the tender specifications for the Art Gallery job or are you relying on your usual practice?---I have a recollection all right and usual practice, a combination of both. Typically when I receive a tender I go straight to the technical section.

All right. And where - and can you locate that in the document, please?
---From the contacts here I would go to section 5.

Section 5?---Yeah.

THE COMMISSIONER: What page is that?---That'll be 5.1. There are no pages on this now.

20 THE COMMISSIONER: Top right-hand side?---Sorry, the contents page is the 363.

Yes?---Down towards the bottom it gives a section 5 there attached to the spec.

Yes?---The actual page - - -

30 MS LONERGAN: It looks like page 401?---Okay. It's missing from this page. So it's 401?

Yes. If you could confirm that's, that's the page you're referring to?---Yes, it is, yeah.

All right. And I take it you read all of the technical specifications - - -?---Yeah.

- - - aspect?---Ah hmm.

40 And do you then discuss with others at Kings as to your views as to what would be an appropriate compliant - - -?---Yeah.

- - - solution?---Exactly.

And I want you to assume that although page 401 says the CCTV system shall be system, system that it was evident in other parts of the document that the system was a Lenel Verint - - -?---Ah hmm.

- - - close circuit TV system?---Yeah.

Does that accord with your recollection as to what was benchmarked for this product - - -?---It does, yeah.

And if you wouldn't mind just waiting for me to finish the question so that - - -?---Ah hmm.

- - - the transcriber can take things down?---Okay.

10 And, Mr Dunphy, did you have an opinion as to the appropriateness of the Lenel Verint CCTV system to carry out the requirements of the technical specifications for the Art Gallery?---I did. But at the time I knew the specs of the Pelco Version 2 those specs have been out for a while.

THE COMMISSIONER: Sorry, I can't, I can't hear you, I'm sorry, Mr Dunphy. Do you mind speaking a bit softer?---Will do.

20 I'm sorry slower?---Slower. Yeah, I do. I was familiar with the Lenel Verint Solution but I was aware of the Pelco Version 2 specifications at the time and I thought I would a much better job.

THE COMMISSIONER: Sorry. You thought what?---It would do a better job.

What, Pelco Endura 2?---Exactly.

30 MS LONERGAN: How were you aware of the Pelco Endura 2 specifications at that time and I'll just, I'll just place the time it's 3 February 2009 that this specification was provided to Kings and other tenderers?---Okay. Not too sure about dates but technical specs would have been released long before even pricing was released. In fact technical specs are actually part of the original design of Version 2 which were probably decided two years before but there's - - -

So you're - I'm sorry?---Yeah. This would have been from their website, PDF files and even the manufacturer themselves, would have been in their interest to actually publicise the specs of the new system.

40 So you were aware that the tender - what the specifics of the tender - I'm sorry, I withdraw that. You were aware of the technical aspects of the Pelco Endura 2 System - - -?---Ah hmm.

- - - from information already available?---Yeah.

Are you able to say whether at the time you looked at these specifications, that is Exhibit 66 whether there was information available regarding the pricing of that system?---You mean pricing of the Version 2?

Well what - yes. Of the Endura Version 2 what that would cost - - - Ah
hmm.

- - - to put in?---Not too sure about costing.

All right.---I just look at the technical details and that's it.

Okay. In looking at the technical details you, we assume you then speak to
the people who are responsible for the sale - - -?---Ah hmm.

10

- - - side of the, the tender. Is that right?---Yeah.

And in this case it was Mr Diekman and Mr Roche?---Would have been,
yeah.

And if you propose an alternative solution - - -?---Ah hmm.

- - - let's just focus on the Pelco Endura 2 system - - -?---Ah hmm.

20

- - - you would have discussions with them wouldn't you about the
availability of the Pelco Endura 2 System?---I would have, yeah, don't
remember exactly but I presume that would have come up.

The fact of it being available would be intrinsic to it being able to be an
alternative that was put forward - - -?---Yes.

- - - in the Kings tender response?---Ah hmm.

30

It would be nonsensical, wouldn't it, to put forward an alternative solution
that is not available in Australia at that time?---Or that was not imminent.
Well, by the time the tender's actually answered and the project begins it
could be several months after so - - -

Several months down the track before - - -?---Exactly.

- - - the equipment's required?---Exactly.

40

So - - -?---Not only that, the infrastructure can actually begin long before
the original equipment gets installed as well, that'd be the last item of the
project.

THE COMMISSIONER: So are you saying that it doesn't, a particular
solution can be part of a tender even if certain products aren't available as
long as it is known that the products will become available at the required
time during the construction of the project?---I'd imagine so and you would
also - - -

No, I'm not asking you what you imagine, I'm asking you is that the practice?---Not usually because a lot of times the product would already exist. This was an unusual case where version 2 - - -

I understand that. So do you know that if the Pelco Endura 2 was available at the time of the Art Gallery tender or not, that is at the time that the tender was made?---No, I can't confirm.

You don't know whether it was or not?---Whether it was or not.

10

But you're saying that if it wasn't available that doesn't mean that you wouldn't necessarily put it in the tender as long as you knew - - -?---Yeah.

- - - that it would become available in good time?---Yeah.

Is that right?---Yeah.

MS LONERGAN: Mr Dunphy, if - you're aware of the company Q Video? ---Yeah.

20

And that's a company that distributed Pelco, at least in 2009?---Yeah.

Yes. And did you have any discussions yourself with anyone at Q Video as to the availability of the Pelco Endura 2 system for the Art Gallery project? ---I wouldn't have.

That wasn't part of your role to discuss - - -?---No.

- - - availability with them?---No.

30

I'm distinguishing that from pricing?---Yeah.

It still wasn't part of your role?---That's true, yeah.

Okay. Who from Kings would discuss matters to do with availability and pricing of the Pelco Endura system with, I'm sorry, the Pelco Endura 2 system, with Q Video staff?---I would have presumed the present managers which in that case would have been Peter and Charlie.

40

So Peter Roche and Charlie Diekman?---Peter Roche and Charlie Diekman, yeah.

Was there anyone else at Kings involved in the project management of the Art Gallery?---There could have been other salespeople involved, I'm not too sure but they were the two that I would have worked closely with.

All right. And, all right, I withdraw that. Are you able to say what the release date was for the Pelco Endura 2 system?---No.

And does the release date have a particular meaning within your industry?
---It does, it means when it would be officially available for installation but it may be a bit of a grey area because a test or trial site or especially the first site might actually get an early release of the equipment and this would be a pre-release.

10 Information regarding pre-release would be available on the Pelco website would it?---I wouldn't have thought so. I would have thought that would be a very direct thing between the integrator and the actual supplier themselves, that they might make a special case for such a large project where we get the first versions of equipment.

THE COMMISSIONER: Mr Dunphy, we're really concerned with what you know?---Ah hmm.

Not with what you think might have happened?---Ah hmm.

20 There may be instance where we would like to know what you think might have happened?---Mmm.

But it's very important for us to know when you're giving answers whether your answers are based on your personal knowledge or whether they're based on what you imagine might have - - -?---Okay.

There's a very big difference between those two and I'm not always sure in your answer now whether you're talking about what you actually know about or what you think might have happened?---Ah hmm.

30 You understand that?---I do, yeah.

MS LONERGAN: Thank you, Commissioner.

So from your answers you're unable to state when pre-release was in terms of specific dates?---Yeah.

Pre-release of the Endura 2 product, is that correct?---That's right, yeah.

40 And you're unable to state with any certainty what the formal release date was - - -?---Exactly.

- - - was of the Pelco Endura 2?---Yeah.

THE COMMISSIONER: And you weren't concerned with that?---And?

You were not concerned with those matters?---I wasn't, no.

Could the witness be shown Exhibit 2, tab 3. Now, Mr Dunphy, this is an email from Daniel Paul to the various tenderers and it's just to place the time that the tender was released which is 3 February, 2009?---(No Audible Reply)

MS LONERGAN: You're nodding yes?---Oh, yes, yeah.

Did you go to the tender briefing at the Art Gallery on 3 February, the initial tender briefing?---I'm not sure if I would have. I don't remember exactly.

10

It was a presentation by Mr Paul for some hour or so to a group of potential tenderers and integrators, both integrators and suppliers. Does that prompt - - -?---It doesn't, no, so probably not.

Probably not?---Ah hmm.

Okay. How soon after 3 February, are you able to say, did you commence work on reading the specifications and designing solutions?---I'm not sure, don't remember dates. I would have started as soon as I received the tender.

20

Working backwards, the tenders, the tender responses were provided on 23 February, so 20 days after this initial tender briefing?---Ah hmm.

Working backwards, does that assist as to how long you personally worked on the Art Gallery tender response for Kings?---It wouldn't do, no.

Did you personally discuss the Pelco Endura 2 system with anyone at Pelco?---I would have, yeah, technical staff.

30 Technical staff only?---Ah hmm, yeah.

Would you have – I'm sorry, I withdraw that. Who was that with?
---At the time it would have been a guy called Robin from tech support.

I beg your pardon?---Robin from tech support.

Robin?---Yeah.

Surname?---I don't know a surname.

40

Did you discuss any aspect of the Pelco Endura 2 system with Mr Yallouris who was the manager in New South Wales of Pelco?---I wouldn't have talked directly, no.

You confined your discussions to technical aspects of the system only?
---Yeah.

At any time during 3 February and when the Kings tender response was put on 23 February, did you have discussions with Mr Diekman or Mr Roche regarding which supplier would be used for the contract?---No.

Does your, any part of your job depend on knowing who the supplier's going to be- -?---No.

10 - - -for the goods? Do you have any understanding as to a price difference that may be associated with using a distributor in New South Wales such as Q Video as opposed to buying the goods direct from Pelco?---No.

Mr Dan Paul was the consultant on the Art Gallery job as you, as you're aware?---Yeah.

Had you worked with Mr Paul prior to the Art Gallery job on any projects for Kings?---I had, yeah.

And what were they?---They would have been Westfield Shopping Centre.

20 Right. When you say would have been- -?---Ah hmm.

Do you know for a fact that you worked on that?---Yes, it was, yeah.

Yeah. And that's prior to February 2009?---Yes.

Did you have a working relationship with Mr Paul during that period on the Westfield?---I would have, yes, yeah, towards the end of those project.

30 All right. When you say would have- -?---Yeah, I did.

- - -you did in fact meet Mr Paul?---Yeah.

And did you have any association with him outside your working relationship on the Westfield projects?---No.

Did you – I withdraw that. Were you informed by Mr Paul that the Art Gallery contract was coming up?---Not at the Westfield project, no.

40 In the context of the work you did with Mr Paul on the Westfield project, did you have discussions with him regarding the Pelco Endura 2 system and its availability or otherwise?---Not version 2, no.

Not version 2?---No.

Did the Westfield project you were working on have Pelco Endura- -? ---It didn't.

- - -systems?---No.

No. In between 3 February and 23 February, so the period the Art Gallery tender was open, did you have any conversations yourself with Mr Paul about the Art Gallery project in terms of technical inquiries or questions about the specifications?---Not that I remember, no.

Right. Did you attend any meetings at Kings at which Daniel Paul was present during the period the tender was open?---Not that I remember, I don't know.

10

You would remember that, wouldn't you?---I'm sure I would.

Could the witness be shown Exhibit 72.

THE COMMISSIONER: 72?

MS LONERGAN: 72. And if you can turn to page 527, Mr Dunphy. And you see that's an extract from an electronic diary?---Yeah.

20 Can you see it's headed, sorry 'Art Gallery Review Meeting'?---Ah hmm.

See that. And it's dated 13 February?---Yeah.

See that. And there's a list of required attendees that include you?---Ah hmm.

Do you see that?---Yeah.

And you see it also includes Mr Paul?---Yeah.

30

And the organiser was Mr Roche?---Yeah.

Does that diary extract prompt any recollection on your part of a meeting at Kings that you attended that Mr Paul also attended to discuss the Art Gallery job?---No.

To your recollection did such a meeting take place that you - in terms of your attendance at least?---Possibly so but I had been invited to meetings that I couldn't attend because of other tasks so.

40

Because of, sorry?---Because of other tasks that are more important - - -

Of other tasks?---Yeah.

Yes. Do you recall any discussion in the office about a meeting to discuss the Art Gallery tender when Mr Paul was going to be asked to attend? ---Don't remember.

Did you observe any meetings between Daniel Paul and Mr Diekman taking place between 3 and 23 February 2009?---Can't remember.

Did you have a physical presence in the Kings office in that period?---It varied, maybe two days a week.

Two days a week?---Yeah.

10 And did you have an office at Kings premises?---It was a, a location, a desk location.

A desk location?---Yeah.

And where was that in proximity to Mr Diekman's office?---At the time I don't remember, possibly downstairs.

Downstairs from Mr Diekman's office?---Exactly, yeah.

20 All right. Was Samantha Jarvey's work position near yours?---I thought she was upstairs at the time.

All right. Did you observe Ms Jarvey having any meetings or discussions with Daniel Paul?---Not that I remember.

And I mean that generally not necessarily during that 23 February period? ---Possibly so but can't remember exactly.

30 Did Rod Waring have any role in the Art Gallery contract to your recollection?---I remember talking to him about it so he might have, yeah.

Was that prior to the tender specifications being provided?---Not sure.

Okay. Could the witness be shown Exhibit 2 tab 4, please.

And I'll give you a moment to just familiarise yourself with this document. You'll see it's the, the Kings tender response that was provided for the Art Gallery job?---Ah hmm.

40 See that. And you see the first page is dated - I'm sorry. The, the second page of the document which is page 59 in the top right corner there's a letter from Mr Roche dated 20 February 2009?---Yes.

THE COMMISSIONER: Sorry, I'm in the wrong place. I'm looking at tab 4 of Exhibit 2.

MS LONERGAN: Yeah.

THE COMMISSIONER: And what page?

MS LONERGAN: It should be - I'm sorry, 593, Commissioner. I'm terribly sorry, it's cut off my copy. It's the second page of the tender response document.

THE COMMISSIONER: Do you have that, Mr Dunphy?---I do, yeah.

MS LONERGAN: And you see that's a letter dated 20 February by Mr Roche to the Art Gallery?---Yes.

10

Yes. And you see that Kings put forward three options for meeting the specifications that were provided?---Yes.

Whose decision was it to put forward three options?---Not too sure.

In terms of your role as the technical advisor - - -?---Ah hmm.
- - - did you provide information to Mr Roche and or Mr Diekman as to what systems would be appropriately compliant with the needs of the specifications?---I would have, yeah.

20

When you say you would have you did so?---I did, yeah.

And did you have a view as to the response or the option that would best meet the requirements of the tender specification?---Exactly, yeah.

You did?---I would, yeah.

And what was that?---Pelco.

30 The Pelco?---Yeah.

And when you say Pelca, sorry. When you say Pelco you mean the Pelco Endura 2?---Exactly.

THE COMMISSIONER: And you, you thought that from when?---From earlier stages from as soon as I found out the specs out of Version 2.

I'm sorry, I can't - - -?---From early stages, from whenever I found out the specs of the Version 2. In fact - - -

40

So what are we talking about? The beginning of 2009 or late 2008?--- Probably as soon as I saw the tender I would have placed the Pelco 2 as the perfect solution for it.

MS LONERGAN: So as soon as - - -

THE COMMISSIONER: Pelco Endura 2?---Exactly.

MS LONERGAN: As soon as you read the tender specifications - - -?
---Yeah.

- - - it was clear to you - - -?---Yeah.

- - - at least that the Pelco Endura 2 would be the best solution?---Exactly.

Did you, given that view, did you share that with Mr Roche and/or
Mr Diekman directly?---I would have.

10

When you say would have, you did?---I don't remember exactly but it
would have been obvious for me to do that, yes.

All right. And did you provide them with advice as to your views about the
Lenel/Verint specification?---I would have made a comparison, yeah.

THE COMMISSIONER: But you don't remember having done so?---I
don't remember.

20

MS LONERGAN: And your opinion about the comparison was that the
Lenel/Verint would work or would not work?---Would work but not as well.

Did you decide - I withdraw that. Did you also recommend Lenel dedicated
micros?---We had a look at that and (not transcribable) spec but not as good
as the other two.

Did you have any discussion prior to the submission of the Kings' tender
response document about, with Mr Diekman and/or Mr Roche about cost of
the alternative systems?---No.

30

None at all?---No. I may have but I don't remember that at all, it's not in
my interest.

If you could turn to page 597 of that document and you'll see - - -

THE COMMISSIONER: Sorry, but I take it, we know that the Pelco
Endura 2 formed a basis of the, of Kings' tender at least as an alternative?
---Ah hmm.

40

Is that right?---Yes.

So whatever discussions you had about cost, if you had any, could have had
no effect on the decision of Pelco, of Kings to put in an alternative
submission based on Endura 2?---I'm not sure exactly how cost - - -

Well, it was in the tender, wasn't it?---It was and then from that I would
assume that the cost was very similar or better.

Yes, thank you.

MS LONERGAN: Did you have any discussion with Mr Roche and/or Mr Diekman along the lines of an inability to put forward the Lenel/Pelco Endura 2 solution because it was going to be prohibitively expensive?---No, I don't remember, no.

Did you take any interest at all in the costing of the alternatives that you had given advice about?---No.

10

If you could have a look at page 597 and you'll see that's a schedule of pricing, part of the tender?---Yeah.

And you see there's three options on that page, the Lenel/Verint?---Yeah.

The Lenel/Pelco?---Ah hmm.

And the Lenel dedicated micros?---Yeah.

20

You see that. And from your answers we can assume you had no role whatsoever in preparing that page of the document?---No, no.

Now, you see pages 598 to 601 provide tenders, I'm sorry, schedules of pricing, you see that?---Yes.

Did you have any role in identifying any of the pricing information on those four pages?---No.

30

Did you have any role in identifying the description of the equipment contained in the left-hand column of each of those pages?---I can't see, it's blacked out on this one.

THE COMMISSIONER: Sorry.

MS LONERGAN: If you wouldn't mind just looking on the screen, Mr Dunphy, thank you. You'll appreciate that that, those aspects are blacked out on the copy that you had Mr Dunphy, because of some confidentiality aspects?---Okay, yes.

40

So unless it's absolutely necessary there's no need to state for the record what the subject matter of that left-hand column is on any of those pages?---Okay.

If you could simply advise whether you prepared that side of the pricing schedules in terms of identifying equipment?---Not directly in some of the text that's written but I would have been consulted about some of the items.

All right. Do you know who prepared these schedule of pricing pages in the tender response?---No.

Now, I'm going to ask you to leaf through the tender response and advise whether any parts of the tender response were prepared by you. Stop when you get to page 721?---Yes, exactly, that's what I was looking for. So diagrams and schematics I would have been a part of.

Right. Diagrams and schematics?---Yes.

10

Where are they?---So beginning, well, text on 721.

Yes?---Diagrams on 722.

All right. Now, focusing on the text on page 721, did you complete that page yourself?---Not directly but would have been consulted.

So the information on that page was provided by you to your knowledge?
---Some aspects would have been.

20

Some aspects?---Yeah.

So can I suggest to you, and please correct me if I'm wrong, that the aspects you advised on are those under the line across the middle of the page in the box area?---Probably the items below the line I would imagine.

Below the line?---Yeah.

30

Yes. So that's starting with "82 off Pelco 1X10", that there?---Quantities, quantities I wouldn't have but other specifications which are storage RAID6 I would have.

Right. And when you say quantities you wouldn't have, what quantity are you referring to there?---The number of cameras, 82, 13 Pelco Sarix. I had nothing to do with quantities?

I beg your pardon?---There's two quantities given there, 82 Pelco Sarix at the top. .5 megapixel.

40

Yes?---13 Pelco 3.1 megapixel.

Yes?---I wouldn't have anything to do with quantities.

Okay. So the top line is talking about 82 cameras?---Ah hmm, yeah.

82 in number, that is?---In number, yeah.

Yes. And the bottom line in bold above the last three dot points if 13 cameras in number?---Yeah, exactly.

And the term megapixel cameras, what is the significance of this?
---It's um, it's high resolution and power, it's much better image quality basically.

10 Are you able to say whether cameras that were not megapixel cameras could have responded to the specifications for the Art Gallery job?---I'd have to look back through the tender but I don't believe so.

And are you able to say whether the precursor to the Pelco Endura version 2 was able to manage megapixel cameras?---No.

It was not?---No, version 1.5 couldn't.

Version 1.5 could not?---1.5, exactly.

20 So a solution based on Pelco Endura version 1.5 would be no solution that you would put forward to the Art Gallery because it was unable to manage megapixel cameras. Is that right?---I presume so, yeah.

Amongst other things or just that?---Probably just that, but the specs for the version 2 were much better, better features.

Yes?---They exceeded the tender.

30 Those dot points under the two headings you've just taken us to, that's technical information, is it?---Yes.

Are you able to say where you obtained that technical information?
---Probably from the spec sheets of the actual hardware.

Are you able to say where you obtained the spec sheets?---Not directly, possibly at a website or directly from the manufacturer or supplier.

Is the information from a spec sheet from the manufacturer or supplier available to any person working within your industry?

40 Usually it would be but possibly for certain integrators or suppliers they might get early releases of the documentation.

Would consultants be able to obtain that information?---I would imagine so as well.

And that would be so they could specify the product for - - -?---Exactly.

- - - specifications they're preparing for work?---Yeah.

So they'd be a good market for that material and that information would they not?---I would imagine so.

Now, on the other side of the boxed area under the heading Endura NVR and Edge Devices, is that also technical information regarding the Endura 2?---Yes.

10 And is there anything in any part of the boxed area, either on the left side or the right side, that deals with storage capabilities?---Storage specification, not actual numbers, no, or capacity but RAID6 is mentioned and storage ability such as the storage (not transcribable)

Now, RAID6, could you explain what the significance of RAID6 is and please do so slowly - - -?---Yeah.

- - - so that we can all follow?---Basically RAID5 and RAID6 use a parity drive in their (not transcribable), you might have - - -

20 I'm just going to stop you there?---Yeah.

They use what kind of drive?---A parity drive.

How do you spell that?---P-a-r-i-t-y.

P-a-r-i-t-y?---Yeah.

30 Yes. So for example if you have a RAID with 12 discs, two of those drives in RAID6 would be used for parity for redundancy and what that means is in a 12 drive system you can lose two drives and not lose your information. With RAID5 only one drive is used for parity and that means you can only lose one drive.

Does that mean better quality of images that are stored?---No.

Does it mean less storage space is required?---No.

40 What's the advantage of RAID6 over RAID5?---It's more redundant, it's more redundant so greater redundancy, greater reliability and also where the drive does fail performance doesn't degrade as it does at RAID5.

All right. Is there any cost-saving associated with using RAID6 as opposed to RAID5 based systems?---Not initially but you could argue long-term yes, because it's more reliable and the likelihood of it losing information is much less.

All right. But in terms of initial equipment outlay there's no particular cost saving associated?---No.

And I appreciate that you've already given evidence that you weren't involved in the costing aspects of the Kings' pricing schedules or indeed you weren't involved in any negotiation of price with distributors, that's your evidence, isn't it?---Yes.

Are you able to say within your experience, however, whether a newer version of a camera system and associated software is generally more expensive or is that outside your expertise?---It varies.

10

All right?---I've seen it either way.

Thank you.

20 THE COMMISSIONER: Now, Mr Lloyd, while Ms Lonergan is checking through her papers I can tell that the transcribing company have rechecked the audio with the transcript from last Thursday and they confess that they have left out parts of your cross-examination and this has been remedied and apparently the pages with the missing cross-examination have now arrived at the Commission and will be distributed at the adjournment.

MR LLOYD: Thank you, Commissioner.

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: Thank you, Commissioner.

30 I'm sorry if I've already asked you this, Mr Dunphy. As I understand it you were the person who came up with the idea of the Pelco Endura version 2 in terms of the Kings side of things?---In terms of Kings, I'm not sure who would have mentioned it first but I absolutely would have pushed for that system.

Yes. Did you have any discussions with Mr Diekman or Mr Roche regarding pricing of Pelco Endura 2 in terms of availability of the necessary information so that they could put a price together for the initial tender response?---Probably not, no.

40 You don't recall any?---No.

In the lead up to the meeting, the tender review meeting that occurred on 27 February, 2009 did you prepare any additional documents, that is, in addition to the parts of the tender specification that you'd already prepared? ---Probably not although I do remember there was a list of questions that you might be referring to and I answered those questions in preparation for the second meeting.

All right, I'll show you those. Could the witness be shown Exhibit 21 please.

All right, I'll show you those. Could the witness be shown Exhibit 21 please. And just before, just before we look at those, Mr Dunphy, in your role as the, the technical advisor are you as a matter of general practice shown copies of quotations from distributors that may be - sorry, that list equipment to be used in the project?---I would have access to them but in terms of rendering quote details I wouldn't.

10

Is it part of your role to incorporate anything that the distributors put in their quotes into the technical aspect of the tender response that you prepare? ---Not directly from the quotes typically you would have had discussions beforehand but no, not directly from the quotes.

I'm sorry to back track. Could the witness be shown Exhibit 1 tab 47.

And just keep that document with you for the moment, Mr Dunphy, and - - - ?---Ah hmm.

20

- - - and we'll come to it. Just to complete this, Mr Dunphy, you're being shown a copy of an email from Mr Theissen to Mr Diekman that attaches some quotations from Q Video Systems, do you see that?---Yeah.

Would you mind looking at those quotations. Are you able to say whether you saw those quotations at the time you were working on preparing the Kings tender specification?---Don't remember, no.

30 THE COMMISSIONER: You mean you may or may not have or you don't think you did?---May or may not have but don't remember.

MS LONERGAN: And then turning back to Exhibit 21, please. Can you see attached to that email is a list of questions for interviews?---Yes.

Do you see that? And now you just gave some evidence about a list of questions that you assisted with the answers for. Is that the questions that you were referring to?---No. The ones I'm referring to are more technical asking about RAID and so un-stored systems.

40 All right. Just looking at the questions that you do have in front of you, see question 7 clarify what version of software is being offered by you for the CCTV?---Ah hmm.

Is that a question that would normally be directed to you or would you expect the directors of the project to be able to answer that?---Yeah. They would do, they could answer that. It's not really a technical question.

All right. So these questions that you have in front of you part of Exhibit 21 are any of those focusing on technical aspects to your understanding?---Not really, no.

Could the witness be shown Exhibit 2 tab 5.

Now you see, Mr Dunphy, that's a tender proposal interview document prepared by Kings apparently?---Yes.

10 And you see it notes the attendees for the interview as yourself, Mr Diekman and Mr Roche?---Yes.

And if you wouldn't mind reviewing that document, please. Look through it briefly to the last page which is page 41. And just tell me when you've completed doing that?---Yes.

First of all do you recall this document being provided to the Art Gallery staff at the tender interview?---I don't remember exactly.

20 All right. Do you recall speaking to this document in terms of you reading any parts of this document during the tender interview out loud for the Tender Review Panel?---I wouldn't have read anything directly, no.

All right. Are there any parts of this document that incorporate information that you have prepared or provided?---Not really but the page 40 does contain technical information but that may have been taken from another doc or PDF, so I may not have needed to put that together.

30 Say that last bit again please?---I may not have needed to put this together because that could have been taken off the technical specs.

All right. So by PDF and technical specs you mean information available - - -?---Exactly.

- - -on a website or- - -?---Yeah.

- - -in a location of that nature?---Exactly.

40 Is there anything about the items listed there on page 40 that suggest that it is of necessity materials taken from a pre-release data sheet?---Pre-release, no.

Are you able to say from your expertise that, that the material on that page is suggestive of it being later than a pre-release data sheet and more like a release data sheet?---Can't really specify from that, no.

Thank you. Do you have a recollection of what occurred at the meeting on 27 February in terms of statements made by Kings staff to the Art Gallery tender team?---Not too sure. My focus was on technical only and when

non-technical questions were answered I probably don't remember what it was.

All right. Do you recall what Mr Diekman said to the tender panel in terms of pricing- - -?---No.

- - -for, for the three options?---No.

10 Was there any discussion to your recollection about the comparative merits of the three solutions put forward?---Yes.

Right. Who led that – I'm sorry, I withdraw that. Did Mr Diekman say anything in relation to that aspect?---That part would have been left up to myself to explain why we were pushing for the Pelco version 2.

All right.

20 THE COMMISSIONER: Sorry, would have been left to explain why you were pressing for- - -?---Yeah, it would have been my recommended or our recommended- - -

So somebody, did somebody say that, did somebody tell those present that Kings was pressing for a Pelco solution?---Don't remember exactly but I presume so because that was the solution that I described, I went into detail about RAID6 and why the version 2.

30 But did you, did the Kings people walk in and you suddenly start talking or did they walk in and an explanation given and you were called upon to- - -? ---Exactly.

The latter?---Yeah, the latter.

MS LONERGAN: And within that, from your answer can we surmise that the interview was conducted in a particular structure where the bosses went first, if I can use that terminology?---I believe so, yes, yeah.

Yes. And when you say you believe so, is that your recollection?---It is actually, yeah.

40 All right. And who, was it Mr Diekman or Mr Roche who was the spokesperson for the company in the first part of the interview?---That I don't remember.

You can't remember?---No.

Within what Mr Diekman or Mr Roche said in the first part of the interview, was there mention of Pelco Endura 2 being the favoured solution by Kings? ---Not sure at that point but it would have been before I spoke.

So when you say it would have been before you spoke, are you, are you saying that your recollection is there was a mention at least that Pelco Endura 2 was the favoured option?---Yeah, I would have thought so, yes.

And when you say you would have thought so- - -

THE COMMISSIONER: During the course of the opening statement- - -?
---Not sure.

10

- - -by the bosses?---Not sure exactly when, but before I spoke because I gave details of the Pelco 2.

So whoever would have said it would have been one of the bosses?---Would have been, I would imagine so.

MS LONERGAN: When you- - -

THE COMMISSIONER: You don't have a clear recollection?---No.

20

But one thing is clear I gather from what you say, is that it wasn't you who said Pelco is the favourite solution first?---That's not clear either, but one thing is clear, that I did describe the Pelco version 2.

Yes, but you didn't speak, you, how did you know that you were going there to do that?---Because that was planned, that was always on my mind, I had the specs of the version 2.

30 But did you speak to Messrs Diekman and Roche about that first?---Oh, yeah, I wouldn't have mentioned that without talking to them first about it.

So you went to the meeting and the three of you agreed that you were going to talk, pressing the case of Pelco Endura 2?---Yes.

MS LONERGAN: Did you have a discussion about that as you travelled out to the meeting?---Probably so.

Did you all travel out together? And I'm asking about recollection now rather than- - -?---Yeah, don't remember.

40

Don't remember.

THE COMMISSIONER: But whatever it is, you spoke about it, whether when you were travelling or before at the office?---Yes.

MS LONERGAN: You're certain prior to the meeting- - -?---Ah hmm.

- - -at least that between you, Mr Diekman and Mr Roche there was an agreement that you would, that Kings were favouring- - -?---Ah hmm.

- - -the Pelco Endura 2 solution?---Yes.

That's consistent with your advice is it being the best - - -?---Yeah.

- - - solution for the Art Gallery - - -?---Exactly.

10 - - - needs? Okay. When you - - -

THE COMMISSIONER: And was it agreed that you would explain why Pelco - what the merits were of Pelco Endura 2?---Exactly, yeah.

So it didn't come as a surprise to you that you were going to - - -?---No.

- - - give the talk?---No.

And you were ready and prepared for that?---Ah hmm.

20

That's yes?---Yes.

In accordance with instructions?---Yes.

MS LONERGAN: When you gave the technical information about the Pelco Endura 2 did you make any reference to Pelco Endura 1.5?---Not on the day.

30 And is that because Pelco Endura 1.5 is largely irrelevant because it couldn't have responded to the Art Gallery specifications?---Probably so, yes.

If you could have a look at page 41 of the tender proposal interview document you have and you see that page is headed 'Our Pricing', see that? ---Sorry, page 41?

Yes?---Oh, yes, yeah.

40 Yes. Did you have anything to do with any of those six dot points on that page in terms of the information included in it?---No, I wouldn't have.

Can you enlighten us as to why those points were set out on that page of the tender proposal interview document?---I'm not sure.

Do you recall Mr Diekman or Mr Roche saying anything regarding price of the Pelco Endura 2 option within that first tender interview?---I don't remember exactly.

THE COMMISSIONER: When it says priced using Version 1/Version 2 provide significant cost savings, do you understand what that means?---I don't. Maybe it means Version 1 compared to Version 2 I'm not too sure.

Pardon?---It might mean one, Version 1 compared to Version 2, I'm not too sure, it's not too clear.

Version 1 and Version 2 of what?---Of Pelco.

10 That's clear to you?---Yeah.

MS LONERGAN: But as I understand your evidence and correct me if I'm wrong there was no aspect to your preparation of the technical part of the Kings tender response that required you to carry out a comparison between Pelco Version 1 and Pelco Version 2?---I didn't know.

Yeah. Because Version 2 was the only one that would have responded appropriately - - -?---Yeah.

20 - - - to the tender specs? Thank you. And you'll see the, the dot point above the one the Commissioner has just taken you to, "We use the Verint storage calculations on the Pelco Solution." Is that information that came from you?---I do remember at one point we were waiting for the exact bit rates from Pelco because that was one point it wasn't on the spec sheets, so I'm thinking that for network design we may have used a competitor (not transcribable) rates for those calculations. So that might what happened there.

30 THE COMMISSIONER: But Pelco Solution - what Pelco Solution, Endura 2?---2.

No, I'm talking - that's the dot point above priced using Version 1/Version 2?---The third one from the bottom use Verint storage calculations.

Yes. You use the Verint storage calculations on the Pelco and Version 2 Solution?---Yeah.

40 MS LONERGAN: And by that you - I'm sorry, I withdraw that. That is a reference to the technical aspects - - -?---Yeah.

- - - of the storage calculations?---Yeah.

Is that right? Do you know anything about the price associated with those technical aspects of the storage calculations?---Not really but (not transcribable) has a very big effort on how much actual storage you need. So I seem to remember for this we had to assume worst case which (not transcribable) the Verint and we knew that the Pelco Version 2 would be

better. So for those kind of pricing and calculations we would have gone by from a number that we knew worst case.

And you didn't have any particular role in negotiating or understanding what repercussions if any were had by the change in the storage calculations?---No.

10 In the meeting of 27 February do you have any recollection of what Daniel Paul said about Endura 2 and it's availability?---Don't remember exactly.

Did you - do you recall anything that Daniel Paul said in the meeting in relation to the Pelco Endura 2?---Not exactly, can't be sure.

When you say you can't be sure, you had no recollection, is that - - -?---No.

Is that what you're saying?---Ah hmm.

Right. What about Mr Morris - - -?

20 THE COMMISSIONER: You mean, you mean yes?---Yes.

MS LONERGAN: I'm sorry, that's a bad question. Mr Morris, do you recall Mr Morris from the Art Gallery?---I do, yeah.

Do you recall his response in terms of the availability of Pelco Endura 2?---Don't remember exactly.

All right.

30 THE COMMISSIONER: Was the availability of Pelco number 2 raised at the meeting?---I don't remember.

MS LONERGAN: Do you recall whether Mr Diekman tabled a document in addition to the one I've, that you have before you at the moment?---No.

Okay. Do you recall Mr Diekman tabling an envelope?---I don't, no.

40 Okay. If you could have a look at Exhibit 2, tab 6 please and do you still have with you the Kings' tender response document, the large document?
---Yeah.

Now, first of all, have a look at the document you've just been handed and it's headed "Kings Security revised schedules", have you seen that document, I'm sorry, I withdraw that. Did you see that document before attending the meeting at the Art Gallery on 27 February?---I don't remember.

Do you recall seeing that document before today?---You might have showed it to me before.

All right. But in terms of your time at Kings in February 2009 do you recall seeing the document then?---No.

THE COMMISSIONER: That sounds to me as that's not a document you worked on?---What's that?

10 It sounds to me as if this is not a document you worked on?---No.

You're agreeing with me?---Yes.

MS LONERGAN: And Mr Dunphy, if you could notice on pages 28 to 31 of that revised schedule there's various schedules headed 1A to 1D, you see that?---Yeah.

20 And if you could turn back to the initial tender response and have them both open at the same time but in relation to the initial tender response which is Exhibit 2, tab 4, have a look at pages 598 to 601?---Yeah.

And the question about which I seek your assistance is whether the schedules of pricing in both those documents in terms of those schedules 1A to 1D is the same.

THE COMMISSIONER: As?

MS LONERGAN: As each other.

30 THE COMMISSIONER: Which is the tab, I've got the documents at tab 6, which is the other tab that I must look at?

MS LONERGAN: The other one is the tab, it's the initial tender response, it's Exhibit 2, tab 4, pages 599 to 601, I'm sorry, 593 to 601, no, I'm sorry, Commissioner, the pagination's - - -

THE COMMISSIONER: Yes.

40 MS LONERGAN: It's 598 to 601, forgive me.

THE COMMISSIONER: Yes, thank you. Do you have that Mr - - -?---I do, yeah.

MS LONERGAN: Mr Dunphy, do you need some time to do that, I certainly don't mean to rush you?---No, that's okay, just on the last page. It's only those four pages, yeah?

Thank you, yes.

THE COMMISSIONER: Well, we can take an adjournment now if you wish?

MS LONERGAN: Would it assist if we took an adjournment for 10 minutes, Mr Dunphy, while you do that?---No, I'm okay.

Okay?---Yeah, the only difference is on the last page there.

10 I beg your pardon?---The only difference is on the last page it looks like.

Okay. The last page of which, which document?---It looks like page 31 on one and 601 on the other.

Okay. So page 31 is Exhibit R, tab 6, yes, and the difference on that page, that schedule 1D is what?---It looks like the other two options have been removed, (not transcribable) and Verint towards the top.

20 Okay. So turning back to page 601, next to bullet point 19, the DM and Verint options have been removed, is that right?---Yeah, yeah.

Okay. But otherwise the schedules of pricing are on your reading identical?---Point 21, it's also, those two items are removed.

Say that again?---On point 21 the other two options are removed as well.

Yes, so the one stating "Access 92,000" has been removed?---That's there on both.

30 Yes?---But the DM and Verint options have been removed.

All right?---And the only difference point 22 is a different price.

And that's the cost of failover server?---Yes.

Yes. And on the revised schedule, the failover server's \$10,000 plus GST as opposed to \$144,000 plus GST?---Yes.

40 And do you recall now why there was a difference in the revised situation regarding failover server or are you unable to assist?---Not too sure. I can, I can imagine though. There was- - -

When you say imagine, you mean within your expertise- -?---Yeah.

- - -you can provide an informed answer?---Ah hmm, a possibility.

Yes?---The word Pelco's beside the one for 10,000, the 144 might actually include the access control failover as well, which is a different system.

To do with the access control?---Access control, and Pelco bundled it into one price, that's a possibility.

All right. Are you able to say whether a failover server was something that was installed at part of the Art Gallery works?---Yes.

It was?---Ah hmm.

10 So, Mr Dunphy, you see on page 27 of the revised schedules document the lump sum price for Lenel/Pelco is identified as two million plus GST?
---Yeah.

See that? And if you turn back to the overall schedule of pricing on page 597 of the other large document which is Exhibit 4 tab, or sorry, Exhibit 2, tab 4, you see the pricing there for Lenel/Pelco is 2.6 million plus GST?
---Yeah.

20 Is there any explanation in those schedules that I've just taken you to as to why there is a \$600,000, sorry, \$690,000 price difference?---I can't see.

After the meeting on 27 February, do you recall any discussion between yourself, Mr Diekman and Mr Roche about the next stage of the Art Gallery tender or what had happened in the tender review meeting?---I'm sure we did but I don't recall details.

No details?---No.

30 Between the first and second interviews do you recall attending any meetings at Kings where the next phase of the Art Gallery project was discussed?---I'm sure we did but don't remember.

All right. Did you prepared any new technical documents between the first interview and the second interview?---I seem to remember that list of questions I mentioned before.

All right. Could the witness be shown Exhibit 2, tab 7. Can you see that's a Kings document headed Tender Proposal Clarifications?---Yep.

40 And could you have a look at that document and tell me when you've finished looking at it?---Yeah.

Now, within that document is, is there the technical information that you were mentioning, sorry, you were mentioning before as being responsive to some further questions?---Yeah.

Okay. And where, where are, where is that?---Page 124.

THE COMMISSIONER: Sorry, I beg your pardon, I didn't hear, I'm sorry?
---Oh, sorry, 124.

124?---Yeah.

MS LONERGAN: 124. Okay. Does our solution include recording redundancy. It's that section, is it?---Yes.

10 Okay. Any other parts of the document?---No. The other technical specs could have been taken from the PDF file from the manufacture. That's on page 134.

134. Well, I can take you back to the – I withdraw that. Your, your recollection is that you may have extracted those tender specifications?
---Yes, I may have, yeah.

All right. But you don't, you're not confident whether it was you or somebody else?---Exactly, yeah.

20 All right. Do you recall being told the purpose of the second interview at the Art Gallery?---Not exactly, I believe to find out more detail about the company and about our technical ability.

Did you know at that stage whether there was another – sorry, I withdraw that. Did you know prior to attending the second interview whether there were other preferred tenderers who were also receiving a second interview?
---No.

30 You had no knowledge as to who else might be in the running?---No.

Was it discussed in your presence by Mr Diekman and Mr Roche or either of them as to who your closest competition was?---It may have but I don't remember.

All right. Was price discussed at this second meeting?---Possibly but I don't remember.

No recollection at all as - - -?---No.

40 - - - to discussions about price?---No.

Excuse me, Commissioner.

Going back to the first meeting on 27 February - - -?---Ah hmm.

- - - do you recall the personnel who were there for the Art Gallery?---I believe it was Tony, Tony Morris, Anne Tregheagle and is it Flannery, I think?

Flanagan?---Flanagan, yes, yeah.

Yeah. Anyone else from the Art Gallery there that you recall?---I don't believe so, no.

All right. Do you recall Ms Tregeagle taking the role as chairperson during the interview?---I believe so, vaguely.

10 Do you recall Ms Tregeagle at, at one point during the interview stopping the interview because Mr Diekman had presented a new price?---Don't remember.

Did you personally take any notes of either the meeting on 27 February or the, or the second meeting on 3 March?---No.

Did you keep a diary in relation to meetings you've had in 2009?---No.

Excuse me, Commissioner. Those are my questions, Commissioner.

20

THE COMMISSIONER: The Commission will adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Mr Lloyd.

MR LLOYD: Commissioner, I think for the first time I have no questions.

30 THE COMMISSIONER: Does anybody else have any questions of Mr Dunphy? Mr Dunphy, it looks as if you have stunned everybody with your evidence and no one wishes to ask you a question so you're discharged from the summons and free to leave?---Great, thank you.

Thank you.

THE WITNESS EXCUSED

[11.46am]

40 THE COMMISSIONER: Mr Smith.

MR SMITH: Before we go to the next witness, might I ask for a suppression order?

THE COMMISSIONER: Yes.

MR SMITH: In Exhibit 2, tab 7 to which Mr Dunphy was recently taken. Page 124.

THE COMMISSIONER: Yes.

MR SMITH: It's in the second last paragraph on the second line.

THE COMMISSIONER: Yes.

MR SMITH: The suburb mentioned there.

10 THE COMMISSIONER: Yes. The suburb mentioned on page 124 of tab 7
in Exhibit 2 is suppressed.

**THE SUBURB MENTIONED ON PAGE 124 OF TAB 7 IN EXHIBIT
2 IS SUPPRESSED**

MR SMITH: Thank you, Commissioner.

20 THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Yes, I call Maurice Ciot, C-i-o-t.

THE COMMISSIONER: Please be seated, Mr Ciot.

MR CIOT: Thank you.

THE COMMISSIONER: You're not represented?

30 MR CIOT: No.

THE COMMISSIONER: As a witness appearing before the Commission
you are required to answer all relevant documents, all relevant questions and
produce any document that you are required to produce and you must do
this even though your answer or production may incriminate you or tend to
incriminate you. But if you object to answering any document or producing
any document the answer or the document cannot be used against you in any
civil or criminal proceedings or in any disciplinary proceedings. But this
protection does not prevent you from being, from being prosecuted for
giving false or misleading evidence. Now - and the best way of getting the
40 protection if you want it is for me to make an order which would have the
effect that all your evidence will be regarded as having been given on
objection. Do you want me to do that?

MR CIOT: Yes, please.

THE COMMISSIONER: Pursuant to section 38 of the Independent
Commission Against Corruption Act, I declare that all answers given by
Mr Ciot 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.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR CIOT 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.

THE COMMISSIONER: Mr Ciot, now, Mr Ciot, as I have explained to you the order I have made protects you against the evidence being used against you in criminal or civil proceedings but it does not protect you should you give false evidence and should you be prosecuted and convicted for giving false evidence the penalty can be imprisonment of not more than five years so it's particularly important for you and for all those involved in this inquiry that you tell the truth which I'm sure you will.

MR CIOT: Thank you.

THE COMMISSIONER: Do you wish to give your evidence under oath, do you wish to affirm the truth of your evidence?

MR CIOT: Under oath, thanks.

THE COMMISSIONER: Could you swear Mr Ciot in, please.

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: Could I ask you to speak slowly and clearly because every word you say is being transcribed. What's your full name?---Maurice Peter Ciot.

10

And what's your occupation?---State sales manager.

And who do you work for?---Rittal Propriety Limited.

How do you spell that?---R-i-t-t-a-l.

Okay. Now you were - you did - you were employed by Austar, is that correct?---That's correct.

20

And what was your position there?---State manager.

And when did you begin your employment at Austar?---Approximately six years ago, probably 2006.

Excuse me. And when you say the state manager, when you say the state manager you mean the New South Wales state manager, is that right? ---That's correct.

30

Okay. Now you were a mentor to Mr Charlie Diekman, is that correct?---In the very early days I'd say that is correct, yes.

And, and can you describe how you mentored him?---From memory going back probably very close to 15 years ago he was a locksmith and (not transcribable) was asked by his customers if he could do security systems that came into our branch, at that stage I was working for Hills Industries direct alarm supplies and I recall demonstrating to him the simplicity of our systems to put into a domestic situation and it went on from there so.

40

And when was that approximately?---As I said approximately 15, 16 years ago I'd say.

And when Charlie bought the business at Kings did you assist him or did you assist Kings in obtaining business?---Not that I recall, no.

What was your business relationship with Charlie when you were at Austek and he was at Kings?---At Austar.

Austar, I'm sorry, Austar?---After moving to direct alarm supplies, yes, I went and as a salesperson does go and see all the customers you previously knew and new ones of course and tell them of the new or the products that you have currently with that company and that's about as far as it went. Yeah. We made some sales for DVRs to Kings Security and some camera sales and some housings from time to time.

So you supplied certain security products to Kings Security from time to time?---Yes.

10

Now what about your relationship with Daniel Paul, you became a close friend of his, is that right?---Oh, yeah, that's a long friendship going back many years.

And you knew him to the security industry?---I beg your pardon?

Did you know him through the security industry?---Oh, yes, yeah.

20 And what kind of business relationship did you have with Daniel Paul when you were at Austar?---Not a great deal because he was - he had moved on to major projects and we didn't have the equipment that would ever meet those specifications.

So when you were at Austar you did not tender to do major projects, is that right?---No, we never tendered for anything.

And what did you - sorry, you never tendered for anything, is that right?---That's right.

30 And even if it was - did you ever engage in major projects or tender for major products?---No, I never tendered for a major product.

And what do you call a major product?---Anything over 100 odd thousand dollars.

You socialised with Daniel Paul over the years. Is that correct?---Oh, yes, a lot.

40 You've travelled with him?---Yes.

And together with Michael Hingerty?---Yes.

You had a, you were the four buddies, were you?---Yeah, pretty well that's it, yeah.

You were old buddy and Daniel Paul was little buddy. Is that right?---That's correct.

Michael Hingerty was cheeky buddy?---That's correct.

There was fourth buddy. Is that right?---And then there's big buddy, yeah.

Who's that?---Risto?

Risto Haja?---Haataja, yeah.

10 Okay. Do you gamble with Daniel Paul?---We've had the odd bet here and there.

Yeah?---He's very pesting on that?

Pesty?---Yeah, he's very pesty on that. He talks, he talks people into it, put it that way. He never leaves you alone until you end up having a bet.

20 What's the biggest bet you ever had with him?---They all start off at about \$100. I have always been on wages so I haven't really been able to afford any of the larger bets and it's always been double or nothing and so I've never ever gone into the thousands of dollars, unless it's been double or nothing and, and it's kept going up and up and I'm still in a winning position.

I beg your pardon?---And I'm still in a winning position.

You are now in a winning position?---No, no, I said if I'm still in a winning position- - -

30 I see---?- - -yes, I would agree to double up, but if I was in a losing position I'd ah, probably pay up the smaller amount and move on to another day.

So what's the largest amount you've actually paid him pursuant to, or what's the largest amount you've ever paid him under a bet?---Oh, I don't recall ever paying more than \$200.

Okay. And what's the largest amount you ever received?---I'd say roughly the same amount. In money you mean or, there was one time when we had, we'd normally just bet on football- - -

40 Yeah---?- - -'cause he's ah, an avid Rooster fan and I follow South Sydney so I'm a soft touch there. There was one time where it kept doubling up and I don't know how the mathematics got to 17,000 but it did get to 17,000.

And did either of you ever pay on that debt?---He was buying a bike or he'd just bought a bike and I've always wanted to own a bike and I knew it was roughly \$30,000-odd and I walked up to him and I said, "I now own half your bike", and he agreed to it. So I kind of own his bike, half his bike.

So you were the person who was up \$17,000. Is that right?---Yes.

He didn't actually pay you the 17,000, is that right, in cash?---That's, that's correct.

But you claimed half-ownership of his motorbike. Is that right?---I did, I have.

10 Right. And is that, is that, has that been reflected in any legal document?
---No, we'd never do that.

You can use his bike when you want. Is that right?---If I ever made the time to go and get a licence, yes.

Have you ever used his bike?---No, never. I haven't got a licence.

20 And now in relation to the Art Gallery tender, do you recall that, did your company ever take any steps towards making a bid for the Art Gallery tender in 2009?---No. As I said, we don't have, we never had the equipment that would meet those specifications, not even close.

Could I just have the index, please. Excuse me. Could the witness please be given Exhibit 2, tab 3?---I apologise but I wasn't expecting to read anything and I didn't read anything on the first one so I didn't think that I'd be required to read, I didn't even think about it, to tell you the honest truth, but I haven't brought my reading glasses so I, I could- - -

Can you read without them?---I can kind of make it out.

30 Well, look, I'll just read out to you the relevant parts?---All right.

Would that, would that - - -?---Yes.

- - - be sufficient? If anyone, if I don't read a note correctly someone will jump up and correct me?---All right. Thank you.

This is an email from Daniel Paul who - - -

40 THE COMMISSIONER: You've been offered a pair of glasses, Mr Ciot?
---Oh, okay. Oh, they work. Okay. Wow.

We try and help?---Thank you.

MR STRICKLAND: This is an email from Daniel Paul to a number of people on 3 February, 2009 inviting integrators to tender for the Art Gallery. You're, you are copied into that, do you see that?---Yes, I do.

And do you recall receiving an email inviting you to tender for the Art Gallery?---Well, it's obvious that I must have received it but I don't recall it, no.

Okay.

MR LLOYD: It's also to suppliers and on sellers?---Yeah.

MR STRICKLAND: Do you see that?---Yes.

10

Now, do you, do you remember Austar, how, how do I pronounce it?
---Austar.

20

Austar, do you remember Austar ever, anyone from Austar actually going to the Art Gallery in relation to the tender, the tender process?---I recall going to the Art Gallery, as, as suppliers Daniel would invite you along in case you had peripheral equipment, in our case or if you had a better solution or if you knew your manufacturers were producing a product that was going to be the ideal solution for those premises so we always got the opportunity to go along and offer some advice if there something obvious that we could involved in.

Do you, did Austar distribute the Lenel or Verint security products?---No.

Pelco security products?---No.

30

So did you have any discussions with Daniel Paul as to whether your company or Austar would ever make any bid for any part of the Art Gallery tender?---Well, I recall going there so, and once I started to see the type of analytics that they required and what they were trying to do no, at that point there was nothing that we could offer.

And did you advise Daniel Paul about that at some stage?---I don't recall.

Thank you. If that document can be returned. Now, do you remember going to, for an overseas trip in March/April 2009 with your then, with your, sorry, with your partner, Michelle Kellet?---Yes.

40

And how did it come about that you went on that trip with Michelle Kellet?
---We were playing golf on the Wednesday morning, it was my birthday I believe the next Monday.

Who's we?---Myself, Daniel Paul and I think Michael Hingerty.

Yes, go on?---And Daniel was telling us how he had to go and do a risk assessment job in South Africa and he said I'm going to miss your birthday, that's not good enough or words to that effect, I can't remember the exact words but it was, it went on for quite a few of the holes that we were

playing golf at and he kept on insisting you've got to come, I can't miss your birthday and I said there's no way, I'm not coming away for a week and it just wasn't happening as I was, at that stage I think we were just buying a block of land and thinking about buying, building a home, there was no way I could afford it.

So what happened then?---Either that night or the night after we received an email which had two non-refundable return tickets to go to Africa and then on to Switzerland and back home again within a week.

10

Who's the email from?---Daniel Paul.

And when you say - you mean it attached some tickets in the email, is that what you're saying?---I remember seeing the tickets, yeah, so he must have attached them, yes.

And where was the email - which email address was it sent to?---I can't recall.

20

Your personal email address or business email?---I only ever had business email address so.

Was it sent to your email or someone else's email?---I can't recall honestly.

Have you kept a copy of that email?---No.

30

Just continue on?---Yeah. So we discussed it and decided oh, well let's see if we can get away from work and if we can let's go and that was it. It was my birthday and that was, yeah, and that was how it came about, that simple.

So when you say - I'm sorry. You said we discussed it who was the we?
---Michelle and I.

Okay. And you say you were saving up to buy a deposit for a house, is that right?---It was about that time, yes.

So you had no spare money at that time?---None whatsoever.

40

You were not planning to go to the ISC conference in Las Vegas were you?
---Absolutely not.

And so you told Dan Paul that you would go, is that correct?---I think the next day we arranged it and we said we could go, yeah, and we would go.

And so on that trip who went with - you and Michelle Kellet went and who else?---Daniel and Michael.

Michael Hingerty?---Hingerty, yeah.

And, and what were the places you travelled to?---First place was South Africa, Cape Town, stayed there for two days, three days I think and then we went to Switzerland and we stayed in Montro, we went on a trip to Milano and Venice by car all in one day and then returned home.

10 So was it your understanding that it was Mr Daniel Paul that purchased the tickets and the accommodation?---At that time, yes.

And when you say at that time you mean at the time you did the trip, is that what you mean?---I beg your pardon?

Your answer was at that time - - -?---Yes.

- - - and my question was does at that time mean when you did the trip with Ms Kellet?---That's correct, yes.

20 So you had no idea that Mr Diekman was involved in paying for that?---No, I didn't.

And you had no discussions with Mr Diekman about that trip, is that correct?---That's correct.

At that time?---Yes.

30 That is before you did the trip or at the time you did the trip, is that right?
---Even after coming back from the trip I had no idea that he'd contributed any money towards it.

I didn't hear that last answer?---I had no idea until some time later coming back that he contributed some money towards it.

And when did you first hear that he contributed some money towards it?---I honestly can't remember but it was weeks or several, several days, weeks after returning back here.

40 And who told you that Mr Diekman contributed some money towards it?
---To the best of our recollection it was Daniel that told me.

What did he say to you?---It would have been words to the effect of by the way for your birthday Charlie has contributed towards some of the expenses of that trip. It would have been words to that effect.

And did he say what percentage or proportion?---(No audible reply)

He said some of the expenses. Did he tell you how much?---It was a present, it was my birthday, you don't go and ask how much a present is. I had no idea of the value, I still don't.

I see. And, I see. Mr Diekman has given evidence, this is page 462 of the transcript that the circumstances in which he gave - in which you came to have your trip to Ms Kellet was this, he said, "It was another one of my spontaneous moments. When I was out drinking with Mr Ciot and was talking about his birthday and getting out of the industry and not going to Vegas and I said oh, bugger it you're coming and I'm paying for it and he said no, no." Then there was some talk about going to Africa or something, going the next couple of days and just getting the two cheques, and I said, "Well I can recall I said if Michelle doesn't go just rip one up." That didn't happen did it?---No. Not that I can recall, absolutely.

Absolutely?---I cannot recall it.

Now, did you supply some housings for the Art Gallery?---Yes, we did

20 And what was the value of that supply, do you know?---I think there was 100 of them and I think they would have been about 20 to \$30 each, probably a maximum of \$3,000 I would say from memory.

Mr Ciot, you have had some discussion - I withdraw that. When you were advised of, that you required to go to ICAC, I mean your first hearing - do you recall going to your first hearing?---Yes.

At some point before that first hearing you spoke to Mr Daniel Paul, didn't you, about the circumstances in which you were paid, you and your partner were paid to go to, overseas in 2009?---Let's make that very clear. I was not paid, I've never been paid, I knew nothing about cheques, it was my birthday, it was that simple, it was a present for my birthday.

Well- - -?---And that's honest truth.

I just, the question is, in relation to that birthday gift- - -?---Yes.

- - -from, that birthday gift- - -?---Yes.

40 - - -you discussed that, didn't you, with Mr Daniel Paul before you gave your evidence at the private hearing last year?---I can't see any reason why I would have, no, I don't recall that at all.

Did you have any discussion with Mr Diekman about that?---Absolutely not.

Excuse me for one moment, excuse me. Can I just ask you about the, the timing of the email and the timing, the timing of the email from Mr Paul and

the timing of the trip. Is it the case you received the email from Mr Paul, did you say it attached anything, is it attached tickets, electronic tickets?
---I remember seeing the tickets, I remember seeing the actual tickets or the itinerary, put it that way.

And what was the, and you actually left a few days after that. Is that correct?---Well, that was Wednesday morning when all that was discussed
- - -

10 Yes---?- - -and I'm positive we left on the Sunday.

Right?---Yeah, so it was all that quick.

So when, when did you provide Mr, or did you provide Mr Paul any details about your passport to enable you to make arrangements to travel to Africa?
---No, I don't recall any of that.

You have no recollection of that?---No.

20 Do you recall any, anything about visa requirements, how they were arranged?---I don't believe any were necessary.

Well, what about your, what about your passport details, how were they conveyed to Mr Paul?---I can't remember.

Now, how long were you travelling with Mr Paul for on that trip?---Sorry?

How long were you travelling with him for?---On that trip?

30 Yeah?---Practically all the time except in Africa, for some reason he had to go and meet someone I believe in London and him and Michael left the day before from Africa and we met them at the airport as a transit stopover in London to go on to Switzerland.

So about how many days were you, were you with him for?---I think it was just one week I think. It was a week. I think we left on the Sunday and returned on the Saturday.

40 And during that time did you, did you go out to events or did you do things?
---Yeah, on my birthday he actually had arranged to go on a safari.

Right. And who paid for that?---Daniel.

Do you know how much that cost?---No idea.

And did you go out for meals?---Yes, regularly.

And who paid for that?---Daniel most of the time, from memory I think it was Daniel all the time, I don't remember paying for anything, I'd have to check. I may have bought a meal and a couple of drinks here and there.

Did you do any other things apart from going on a safari?---In Africa, no.

10 Whilst you were with Daniel on that overseas trip?---Yeah, in, as I said once we arrived in Montreux he hired a car and we drove to Milano and then we drove on to Venice and back to Montreux and I think the very next day we were leaving, it was a whirlwind trip, yeah.

And who paid for the car?---Daniel did.

So did you pay for anything apart from the odd meal?---No, nothing.

Excuse me, Commissioner. Thank you, I have no further questions.

THE COMMISSIONER: Any questions of Mr Ciot?

20 MR LLOYD: One question, Commissioner.

Who paid for the accommodation, Mr Ciot, on that trip, your accommodation?---As I said, Daniel.

Thank you. Nothing further.

THE COMMISSIONER: No, no further questions? Yes, thank you, Mr Ciot - sorry, M Naylor. Sorry, you have some?

30 MR NAYLOR: Commissioner, the evidence of this evidence was unexpected. I need a short opportunity with your indulgence to seek some instructions. A phone call can be made right now, Commissioner.

THE COMMISSIONER: You'll be ready after the phone call?

MR NAYLOR: I'm hoping so, Commissioner, yes.

THE COMMISSIONER: Ten minutes.

40 MR NAYLOR: Thank you, Commissioner, I appreciate it.

THE COMMISSIONER: We'll adjourn for ten minutes.

SHORT ADJOURNMENT

[12.19am]

THE COMMISSIONER: Mr Naylor?

MR NAYLOR: Commissioner, thank you for that indulgence. Mr Ciot, my name's Naylor and I appear in these proceeding on behalf of Charlie Diekman, so I just want to ask you a couple of questions to clarify aspects of what you've already said to Counsel Assisting, Mr Strickland, if I may. You remember Mr Strickland asked you some questions and indeed put to you aspects of what Mr Diekman had said in his evidence, and I just want to clarify aspects of that if I might. Mr Strickland had put to you that part of what Mr Diekman had said was that, "In one of my spontaneous moments", said Mr Diekman, "When I was out drinking with Mr Ciot and we were
10 talking about my birthday, about his birthday rather, and getting out of the industry and not going to Vegas and I said, 'Bugger it', I said, 'I'm coming', I said, 'You're coming and I'm paying for you.'"

THE COMMISSIONER: Can you just give me the page, please, Mr- - -

MR NAYLOR: Yes, of course, Commissioner, 462.

THE COMMISSIONER: Thank you.

20 MR NAYLOR: Starting at line 13.

THE COMMISSIONER: Thank you.

MR NAYLOR: Mr Ciot, was there an occasion as best as you can recall when you were out with Mr Diekman at around the time of your birthday? ---I don't recall around the time of my birthday there was an incident where I vaguely recall him saying word to that effect that he would pay because I wouldn't go to a Vegas security show. Certainly there was no mention about this particular trip to South Africa 'cause on that trip and my birthday
30 I am positive there was never any mention of me going to that, on that trip until that Wednesday morning on the golf course. It was conceived that Wednesday morning and I've never had conversations about my birthday or that trip prior to that Wednesday morning.

Thank you, Mr Ciot. No further questions, Commissioner.

THE COMMISSIONER: Mr Strickland do you- - -

40 MR STRICKLAND: Nothing arising.

THE COMMISSIONER: Nothing. Yes. Any other questions of Mr Ciot? Thank you, Mr Ciot, you are excused and discharged from the summons? ---Thank you.

THE WITNESS EXCUSED

[12.34pm]

MR STRICKLAND: I call Robert Husky or Huskic, I'm afraid I don't know how to pronounce.

THE COMMISSIONER: Yes. Please sit down, Mr Huskic. Ms Hughes, you appear for Mr Huskic.

MS HUGHES: I do, Commissioner. I can indicate he'll be seeking a section 38 declaration.

10 THE COMMISSIONER: Yes. And you've explained to him what that's all about?

MS HUGHES: I have, Commissioner.

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

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR HUSKIC AND ALL DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC ENQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE
30 OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

Mr Huskic, as has been explained to you that order protects you in the sense that none of the evidence you give today can be used against you in criminal or civil proceedings but it does not protect you against false evidence. Do you understand that?

40 MR HUSKIC: Yes.

THE COMMISSIONER: And should you give false evidence in the course of the public examination and you are prosecuted for that you render yourself liable to potential sentence of imprisonment of not less than five years. Do you understand that?

MR HUSKIC: Yes.

THE COMMISSIONER: Now do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR HUSKIC: Affirm.

THE COMMISSIONER: You affirm it. Can you administer the affirmation.

THE COMMISSIONER: Ms Hughes, there has been previously an application made by Mr Huskic for a suppression order on some material which has been refused. Now the Commission has received further application by Mr Huskic to the same affect or you have notice of that. Do you know anything about that?

10 MS HUGHES: No, Commissioner, I don't.

MR STRICKLAND: I understand that might be from Michael Huskic I've been advised.

THE COMMISSIONER: I see.

MS HUGHES: That's his cousin.

20 THE COMMISSIONER: That's his cousin, all right. Very well. Yes, Mr Strickland.

MR STRICKLAND: Thank you.

If I could ask you to speak slowly and clearly every word you say is being transcribed. What is your full name?---Robert Huskic.

Keep your voice up if you could?---Robert Huskic.

30 And your occupation?---Security Projects Officer.

Are you currently employed?---I believe so.

What do you mean when you say you believe so?---Well I've been stood down from work so, I believe I'm still employed.

When were you stood down?---Earlier this year once ICAC visited my residence the day after or that day.

40 Now you started employment for, for North Sydney Central Coast Area Health in about 2003, is that right?---Yes.

Were the two amalgamated at that stage, that is North Sydney Hospitals and Central Coast Hospitals?---No, not at that stage.

When did they become amalgamated?---I'm not sure of the exact time. It was a couple of years later I'm guessing.

Now in 2006/2007 you were a Project Officer, is that correct?---I believe so.

Or a Systems Officer?---Yes.

And what was your - what were your duties in 2006 to 7, 8?---I believe it was the project management of security equipment installations across the area.

10 All right. So your job was to ensure that security - your job was to ensure the proper security systems were installed across the hospitals that you were responsible for. Is that correct?---Yes.

And part of those duties include raising purchase orders for equipment?
---Yes, raising purchase orders.

And ensuring that those orders were filled, is that right?---What do you mean by ensuring they were filled? It wasn't up to me to ensure that.

20 You also managed, later on you managed larger projects is that correct, yourself?---Well, it was part of the team, I, I might have led the project, yes. You're talking about Gosford Hospital?

That's right?---Yes.

Gosford car park security system?---The car park, yeah.

That was in 2010?---Ah, yes.

And what was your role in relation to that?---I was the project officer.

30 And what does that, what did that involve?---Project managing the installation.

And what did that involve?---Gathering quotes, submitting that to the hospital or to the area for approval and then once that was approved then we would proceed to have works commence.

Now, part of your duties was also to scope up buckling projects, is that correct?---Yes.

40 To determine what particular security equipment was required?---Yes.

THE COMMISSIONER: What does that mean?---Basically if, if a department had an issue with theft for example we would, I would go in or my colleagues would go in, have a look at what they had in regards to security to prevent that and then make recommendations to prevent that from happening again.

MR STRICKLAND: So you had to for example determine if there was sufficient or any CCTV cameras, correct?---Correct. We also relied on a risk review that was done by the area as well.

But you were looking at security cameras, alarm sensors, access control, et cetera?---Yes, yes.

That was your job, your overall job?---Along with two other employees, yes.

10

Yeah. And to assist you in doing your job you hired security consultants where, where necessary, is that right?---Well, we contracted security companies, yeah, one of two that we were permitted to use, yes.

All right. And when you say the two that you were permitted to use, one of them was Sielox, is that correct?---Yes.

And one of them was Kings Security?---Yes.

20

And to your recollection when did, when did the two preferred contractors commence at Kings, sorry, commence at the Area Health Service?---I'm not sure exactly, it may have been before my time. I'm not sure.

But since you, is it the case since you were involved in that kind of work - - -?---Projects.

- - - there was two preferred contractors, is that correct?---Yes.

30

The two that you've mentioned?---Yes. I've always known that to be, yes.

Okay. Now, you reported to Cameron Creary, is that correct?---Yeah, he was, yes, I guess my line manager, yes.

Yes?---Or supervisor.

40

And what were his duties as you understood them?---He was a systems administrator for the Area Health Service so he was more IT background but because he had, I believe he had an engineering background and he picked up the installation side of it quite quickly so then he, he was given the role to supervise myself and Eric Kuiper.

Were you also supervised by Stewart Adams from time to time?---Yes, Stewart Adams, yes. Stewart Adams the, the sector manager for the northern sector. He's, he was operational and manpower, I think he concentrated more on the manpower side of it but yeah, we did report to him as well.

The manpower being the actual security guards - - -?---Security - - -

- - - at the hospital, is that right?--- - - - officers, yes.

Because your job involved that side of it as well, is that correct, is that why you reported to him?---No, we didn't do any security officer type work, we reported to him because he was the, the manager of our sector.

If I can ask you a little bit about the system and I'm talking really from 2006 on?---Yeah.

10

The system of obtaining, of you seeking and then obtaining work from the two contractors you have referred to. Is it the case that the North Sydney hospital has used a Honeywell Prowatch access control system?---Yes.

And is it the case that both Kings and Sielox were authorised installers of that equipment?---Yes, I believe so.

20 Did you need to have authorised installers of that equipment?---I believe so for warranty purposes and back up support, that sort of stuff. You know, I've always been told that they're the two companies that we use so I, that's what I've been going with.

By the way, did the Central Coast hospitals also use that particular type of access control system?---No, they didn't at first, they were using the Concept system and then, and then when we, I think it was when we merged they might have, we might have put Honeywell in there then to standardise the area. I'm not sure of the exact dates.

30 Now, was one of your duties to be a relationship manager between the Area Health Service and Kings Security?---I've never heard that, apart from these hearings.

You mean you've heard it before?---No, never.

Until today?---Or until reading transcripts.

I see. So you didn't understand that to be your- - -?---No, no.

40 - - -role?---Because why would I be with Kings and not Sielox? I deal with both of them.

Well, would, would it be more accurate to say you're a relationship manager of both Kings and Sielox?---No, I'm a projects officer.

I see. Is it the case that the quotations for particular jobs from those two contractors went to you?---Not in all cases, no.

In, in the majority of cases?---No.

Was it your job to confirm whether the work of the contractors who had been retained by Area Health Services were completed?---What do you mean, completed?

Well, when they contracted to do a job, they completed and did that job?
---Yeah, jobs that were assigned to me, yes, not, not the other two officers.

10 I beg your pardon?---I was only, I was only asked to look after the jobs that I was assigned. Other installation jobs that were assigned to the, my colleagues, it was their job to look after, make sure it was completed.

So how was it that you awarded a contractor work, what, how, how did the system work?---I never awarded a contractor work.

Never?---No, that wasn't my role. My role was to provide the information to the Area Health and they were to award it.

20 Right. Is it the case that there was a different system in place for different values with the contracts, so contracts about \$30,000 were treated differently to contracts below 30,000?---Yes.

30 So, well, tell us about the system for contracts below \$30,000 how, how were those contracts entered into by Area Health Service?---So I would get a call or an email from Cameron Creary asking me to go and have a look at a department that wanted a security upgrade. I would go to that department, speak to that department manager, find out what had been going on in the past, what they required, what they were looking for. I'd then obtain quotes for that and then provide those quotes to that department manager for approval.

How would you contact – how – and what about your dealings with the contractor?---Yeah, I'd email them, call them up on the telephone, ask them to come out. So they'd come out and do a site inspection with me.

So you would call them or email them?---Yeah.

40 And then one of their representatives would come out and do a site inspection. Is that right?---Yes.

And then, and then what happened after that?---They they would provide me a quote.

Yes?---And then I would submit that quote to the department manager.

Right. And who was that?---Could be anyone. It's whoever department I was doing the project on.

I see?---So it could range from a nursing ward down through to engineering, it could be anywhere.

Because there were many different cost centres in the Area Health Service
- - -?---That's correct.

- - -at that, at that time. Is that correct?---Yeah.

Is that a yes?---Yes.

10

I just, if I can just digress for a moment. That changed, didn't it, in the last year or two?---No, we, each department has their own cost centre that I'm aware of.

So when – your, your evidence is, is it, that you simply were a conduit for the quote, a quote was given by the contractor and you passed it on and it was approved by someone in some cost centre. Is that correct?---Yes.

20 And that's why you say you had no responsibility for approving a quote?
---That's correct.

THE COMMISSIONER: Would you only get one quote for a job?
---No, there, there would usually be two quotes.

What, you say usually, sometimes only one?---Sometimes only one, yes, under 30,000 only required one quote.

30 MR STRICKLAND: So in relation to - was it your - if you provided a quote to a cost centre was it generally the case that quote would be approved?---No, I provided the quote to the department manager not the cost centre.

Okay. To the department manager. And was that generally approved?---It depends if they had budget or not. Sometimes yes sometimes no.

But if was your decision which contractor to obtain the quote from, is that correct?---No.

40 Well whose decision was it to call up or email a particular contractor?
---Area Health.

I beg your pardon?---Area Health.

So you were told by - well Area Health is not a person. Which person - are you saying a person from Area Health rang you or advised you to call or email a particular contractor?---Always two contractors, yes, Sielox or Kings 'cause they're our preferred contactor.

Okay. But I thought you - your evidence is that for quotes under \$30,000 you only needed one quote?---Yes. On occasions. It depends what the department manager, they may ask for two quotes.

Well - - -

THE COMMISSIONER: Is there no policy rule?---Not that I'm aware, no.

10 And where do you get the idea that only one quote is needed where the contract's under \$30,000?---I think I read it some time ago in our - the New South Wales Health procurement guidelines or something like - along - - -

So is there a policy?---Yeah, that's what I'm saying under 30,000 you only need one quote.

No. I asked you if there was a policy you said no?---For what?

You know very well what I'm talking about.

20 MR STRICKLAND: Mr Huskic, when only one quote was obtained - - -?
---Yes.

- - - you were the person weren't you who decided which contractor to obtain the quote from?---Not necessarily. Some department managers knew of the service levels provided by each company and referred one to another. I see. So you mean sometimes you were told which contractor to get the quote from, is that right?---Yes.

30 But sometimes you made that decision yourself?---Yes, I'd make that decision on availability, time frames that the department manager wanted the works done, so I might ring both companies and, and speak to them and ask them you know if they've got time to do a certain job, some may turn around and say no, we can only get around to it in a couple of weeks and if it's urgent then I'd use the other.

Now you've describe the system when it's under 30,000. What about the system when contracts were over \$30,000, what was the system then?

---I believe it was - you had to have three quotes.

40 Right. So did that - was there a capital works program in Area Health?
---Yes, there, there is, yes.

And what was the capital works program in Area Health?---What do you mean what was it?

Well - - -?---A figure?

No. What was, what was your - what was the role - what was your understanding of the Capital Works Program in Area Health, how did that work?---Capital Works would handle larger projects, anything over, I don't know I would, I would have said 100,000 it could be more, I'm not sure.

I see. And where did you get that figure from?---I just - it's just a guess.

I see. And so if it was a larger project worth say more than \$100,000 were you involved in that at all?---Recently yes, with the Gosford car parking.

10

And before that?---I think I was involved to an extent with the Royal North Shore Hospital upgrade, car park upgrade but I was more working alongside the manager at the time on that project, I was assisting him.

And when three quotes were required and it was a project that was under your control were you responsible for getting the three quotes?---Yes.

20

And did each of the quotes if it was for a North Sydney Hospital did each of the contractors used were required to be certified or authorised to install the Honeywell system?---If it was a Honeywell, if it was access control Honeywell, yes.

It had to be, is that correct?---Well the alarm system was a different system so - - -

30

No. I'm talking about access control?---Yeah, access control, yes. So if it was an access control project you needed - and you needed to get a third quote all of the companies from which you would get quotes needed to be Honeywell authorised installers, is that correct?---That's correct. They should have been, yes.

Well do you say it should have been are you saying it - - -?---Well they have - well I guess they have to be, yes.

When you say they should have been, are you saying, are you aware of any occasion when they were not?---No.

40

Are you aware that from 2007 on Kings began to obtain a considerable amount of work from the Area Health Service?---I'm not sure I've looked into it that much.

Well, do you recall that there was a point in time when Kings went from doing very little work at the Area Health Service to doing a lot of work at the Area Health Service?---Yes, I would say yes.

I tender a statement, this is one of the statements that were provided to the parties, I tender a statement of Dr Thomas Mayne who's a manager of

financial accounting for the Central Coast Local Health District dated 15 June, 2012.

THE COMMISSIONER: The statement of Thomas Mayne dated 15 June, 2012 is Exhibit 144.

#EXHIBIT 144 - STATEMENT OF THOMAS MAYNE DATED 15 JUNE 2012

10

MR STRICKLAND: Could the witness just be given a copy of Exhibit 144. Just go to page 416 and perhaps if you, I'm sorry, if you start at 414.

THE COMMISSIONER: Perhaps we should do this at 2 o'clock.

MR STRICKLAND: Yes, certainly.

THE COMMISSIONER: The Commission will adjourn till 2 o'clock.

20

LUNCHEON ADJOURNMENT

[12.57pm]