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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 WEDNESDAY 15 AUGUST, 2012

AT 2.15PM

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

MR STRICKLAND: Commissioner, lunch I asked some questions of this witness about a quote in relation to seven, \$308,000 and the witness's evidence was that before he signed the agreement in relation to the \$308,000 he did receive a quote in relation to that. Over lunch a document has been discovered which is consistent with Mr Creary's evidence in relation to that and I tender that document which is an email from Charlie Diekman to Robert Huskic dated 24 January, 2007 which contains the relevant quote for \$308,000. So I will not be making any submission that there, there is any significance at all to, in relation to that - I withdraw that. I won't be making any submission in relation to the actual amount of the quote. The only issue in relation to that segment is whether, is the number of quotations obtained. Mr Creary's evidence is that he didn't understand there needed to be anything more than two quotes, that's his evidence. But the issue that I spent some time with him over the difference between 308 and 280, that is no longer an issue.

THE COMMISSIONER: Right. Well there'll be then no need for any questions to be asked of Mr - - -

20 MR STRICKLAND: I've spoken to Mr Lorkin about that.

THE COMMISSIONER: - - - Creary on that issue. Yes. Exhibit 195 is really a chain of emails, is it not? A chain of emails ending with an email from Mr Diekman to Mr Huskic of 24 January 2007 with a quote from Kings Security attached. Yes, thank you.

MR STRICKLAND: Now I showed you before lunch some extracts from the purchasing and supply manual for public health organisations. Let me show you the actual full document. And now did you ever see that document during the course of your employment?---No, sir.

10 And were you ever chained in that document during the course of your employment?---No, sir.

Okay. Could I - could that, could that be marked, please?

THE COMMISSIONER: Yes. What is it?

MR STRICKLAND: It's a purchasing - it's the purchasing and supply manual for the public health organisations.

20 THE COMMISSIONER: The manual to which Mr Strickland has referred - I think we should - it should be an exhibit.

MR STRICKLAND: Certainly. Well, and could I - - -

THE COMMISSIONER: Will be Exhibit 196.

MR STRICKLAND: Could I substitute that for Exhibit 153? In other words instead of just tendering the extract.

30 THE COMMISSIONER: Yes. Will be substituted for Exhibit 153 and it'll become the new Exhibit 153.

**#EXHIBIT 153 - PURCHASING AND SUPPLY MANUAL FOR PUBLIC HEALTH ORGANISATIONS DATED JANUARY 2006**

MR STRICKLAND: Thank you.

40 THE COMMISSIONER: Is that the - - -

MR STRICKLAND: That's the relevant one which - - -

THE COMMISSIONER: Is that the one that's current at that time?

MR STRICKLAND: No. It's not.

THE COMMISSIONER: Ms Furness, can you tell us, can you enlighten us what it is?

MS FURNESS: The document that's being tendered is the one that was updated following the change in the limits in about 2009. The relevant evidence concerning the changes is found in Gerald Kohn, K-o-h-n's statement which has been provided and I think handed in. He sets out the changes and the various requirements.

10 THE COMMISSIONER: Thank you for that. So on that basis do we need the document?

MR FURNESS: Well, Commissioner, can I say that I raise that with my learned friend because I was concerned that the document that was shown to the witness was a document that was only several pages long where as the actual document as can be seen is some centimetres in - - -

THE COMMISSIONER: I suppose all, all employees are supposed to familiar with each page.

20

MS FURNESS: Well it's also the case, Commissioner, that these documents certainly from 2006 onwards have been held electronically so it's quite possible an electronic version could have been viewed.

THE COMMISSIONER: I, I, I shouldn't have said what I said but anyway. Now, well the question remains do we need the document?

MR STRICKLAND: Look I think so, Commissioner, I mean I know it's bulky but, but - - -

30

THE COMMISSIONER: But, but I mean do we - - -

MR STRICKLAND: I think we should given - we don't need all of it - passed on and can be distributed to the parties but it's relevant because of - - -

THE COMMISSIONER: This is only relevant to corruption prevention isn't it?

MR STRICKLAND: That's - essentially that's so.

40

THE COMMISSIONER: Well, that, that be the case we only need the - we'll just mark it for identification.

MR STRICKLAND: I should say I don't think it is only relevant for corruption prevention because it is relevant to the conduct of this witness and Mr Huskic in terms of the - arranging for contracts over certain amounts with only two quotes or less.

THE COMMISSIONER: Is that the - is that document the one that was current at the relevant time?

MR STRICKLAND: No. It, it - - -

THE COMMISSIONER: Well then it's not relevant.

MR STRICKLAND: I understand.

10 THE COMMISSIONER: So we'll, we'll mark it for identification. It's the, it's the purchasing manual, purchasing and supply manual for public health organisations will be marked MFI 11.

**#MFI 11 - COMPLETE PURCHASING AND SUPPLY MANUAL  
FOR PUBLIC HEALTH ORGANISATIONS DATED JANUARY 2006  
(SHOWN TO MR CREARY)**

20 THE COMMISSIONER: Yes, thank you.

MR STRICKLAND: Mr Creary, did you, did you view that policy electronically, that is by looking at your - on the Internet or on your internal computer?---No, I haven't. I know what you mean, no, I haven't.

Can I just - if you would just go to the - have you got the large bundle still in front of you?---I've got a folder. Is that the one?

30 Can you just go to tab 16 please. If I could just, if you just look at the email at the bottom of the page at 305 from Rod Waring, he's from Kings, to Charlie Diekman. The subject is the Gosford Mental Health Unit. It's an email on 19 March, 2009. And the second paragraph refers to the job as 72,000 for the CCTV et cetera. That's the context of the email I want to ask you. And then the top email at page 305, sorry, Mr Roche asked Mr Waring on 26 March, "Any news on this?" And Mr Diekman replies to Mr Roche, "Cameron has no say in the CCTV, we should go tight on the CCTV and make up for it on the access as Cameron has a bit of influence." Was there any other person in AHS by the name of Cameron?---Cameron Green.

40 I beg your pardon?---Cameron Green.

And, and what was his role in, in the AHS?---A project director for Capital Works.

Did he have any dealings with Kings to your knowledge, direct dealings?  
---Ah, yes. Ah, I believe he did.

He did?---I believe so. I think he's tendered a statement saying he did.

I beg your pardon?---I think you've tendered a statement saying he did?

Yes, that is so?---Yep.

So are you saying this could, this could refer to either you or it could refer to Cameron Green?---I couldn't say.

10 No, I understand you didn't write it but- -?---I understand, yeah. I couldn't, I couldn't tell you who he's referring to.

Okay. But the person you had day-to-day dealing, or I won't say day-to-day, the person you had, the person you had regular dealings with was Charlie Diekman, wasn't it?---Correct, yes, and Dave McMicking, yeah.

I beg your pardon?---And David McMicking.

Yes, I understand?---Yeah.

20 To your knowledge, Cameron Green didn't have regular dealings with Mr Diekman, did he?---I wouldn't know, no.

Okay. Do you agree, assuming when he wrote this email it referred to you, do you agree that you had, in his words, "A bit of influence" in relation to who got contracts for access control-type products?---No, and I don't believe that's referring to that there.

30 I beg your pardon?---No, I don't, I don't have influence and I'm not sure if he's referring to that as being the influence that I have, you know, awarding the contract.

THE COMMISSIONER: What do you, what do you say that he means?  
---I'm not sure what this email, I know it's in relation to Gosford Mental Health but I'm not sure at what stage – the Mental Health project went through a number of stages in terms of there was a recommendation put to us with what equipment should go in, then it was stripped back and then it was added onto again and then there was disputes with Mental Health staff and Executive not wanting to occupy the building if our standard wasn't put in. So things were changed a lot in terms of adding cameras, removing  
40 cameras, access control doors and vice-versa, so I'm not sure at really what stage this is referring to. All I provided was the mark-ups for the building, so in terms of influence I don't know what he's referring to there.

Mr Creary, you had a good relationship with Mr Diekman. I seem to gather that from the documents. Is that right?---We had a good, yeah, a good working relationship, yes.

Were you friends?---Not outside of work really, no, no, I've never socialised with him ever.

Did you prefer dealing with, with him and Kings to dealing with the other preferred contractor? And I'm not saying there's anything wrong with it?  
---No, I know, understand. I've said it before. The workmanship with Kings and the quality of work, the quick response to any callouts, good pricing definitely was in favour of them in terms of Sielox who had poor installations and were very, and like I said before, dropping the ball.

10

So when you had the choice between two of them you would prefer Kings?  
---If I wanted no issues, yes, I would, I would honestly say that, I would.

Do you recall an occasion when Kings installed some security into your house?---I bought a panel off them and had a, one of their subcontractors install it. I later found out that one of their technicians came and helped the subcontractor that was there. I wasn't aware of that at the time so I had been, it has been brought to my attention now.

20

Again, you were speaking too quick and you dropped your voice?---Oh, sorry. Where, what do you want me to say?

I want you to repeat what you said, I didn't hear it?---Oh, sorry. Okay. I did buy an alarm panel, the hardware from them, with a subcontractor that used to do work for them come and install it. I later found out that a Kings person, technician, did come and help him install that.

Okay?---Or do some work on it, I don't know exactly what he did there.

30

Did you pay for that?---Yes, I did, yes.

Did you pay what you understood to be the, the normal retail price for that?  
---I believe so, yeah, it's, I only got a very cheap alarm put in.

So you don't believe you received any benefit in terms of price for that service, is that right?---As far as I know, no, I never asked for any discounts or, or anything like that.

40

There is - did you receive any cash from Mr Diekman?---No.

Or Mr McMicking?---No.

Or anyone from Kings?---No.

There is a, could the witness please be shown Exhibit 1 tab 39, page 115. It's an email from Mr Diekman to Mr Roche entitled "Marketing budget". I know, I'm not suggesting you're the author or you received this document, I just want to ask you something about it. It's 30 May, 2008, "I've paid for a

number of opportunities out of my account in the last year.” That’s Mr Diekman, and there’s a reference to “Cam C \$5,000 four-door cont”. Do you see that?---Yes, I do, yes.

Do you have any idea what that refers to?---No idea, no.

THE COMMISSIONER: What sort of vehicle did you buy from him?---A Commodore station wagon.

10 Do you know what “cont” stands for?---No idea, no.

And yours I take it has four doors?---It does, oh, it’s five doors if you include the tailgate, yeah, yeah.

MR STRICKLAND: In 2007, 200, 2009 you were aware of the AHS Code of Conduct, is that correct?---I was aware of it but I’d never read it.

20 Okay. Did you know that you were not, did you, were you aware of the Code of Conduct insofar as it related to not being able to accept gifts or benefits?---Like I said, I haven’t read it.

That’s not what I’m asking you. Okay. So listen to the question. Were you aware during that period about the policy about receiving gifts or benefits? ---I understood that you couldn’t accept gifts.

All right. But, but, but you could benefit is that right?---I, I don’t recall knowing about it or reading it, like I said.

30 You weren’t trained in it?---No.

You didn’t, are you sure about that?---I’m fairly positive, yes, yeah.

Could I have access please to the statement of Mr Griffith. Perhaps if I could just have a look at it first please. To save time, Commissioner, I’ll defer that in case someone else wants to ask any questions of this witness, I anticipate at least Mr Lorkin will so can I just defer that - - -

THE COMMISSIONER: Yes, very well.

40 MR STRICKLAND: - - - area until later, thank you. Yes. Apart from that matter, they’re the questions I have, thank you.

THE COMMISSIONER: Yes, thank you. Does anyone other than Mr Lorkin wish to ask any questions of this witness? Ms Furness?

MS FURNESS: Commissioner, I could lead in so far as the Code of Conduct training but I anticipate that my friend will ask those questions.

MR STRICKLAND: I don't mind if Ms Furness wants to.

MS FURNESS: I don't have the materials in front of me (not transcribable)

MR STRICKLAND: I'll do it. I'll do it and any deficiencies will be remedied by my learned friend. I'll just find, I'll just find the relevant pages later.

10 THE COMMISSIONER: Sorry, when are you going to do that?

MR STRICKLAND: After Mr Lorkin.

THE COMMISSIONER: All right. Mr Lorkin, the question that Mr Strickland is going to ask will have no bearing on any finding against your client.

MR LORKIN: Thank you, Commissioner.

20 THE COMMISSIONER: So you might as well go.

MR LORKIN: Thank you, Commissioner. Mr Creary, you went on long service leave in September 2011?---Correct.

When did you buy your milk run?---In October 2011.

And when were you – did you return to work after September?---No, I didn't.

30 Now, you've heard there's been some evidence given in these proceedings about the chain of command?---Yes.

Do you agree on the schematic of the hierarchy of the AHS, you were below Mr Anderson?---I am, yes.

And then it would appear that the other two gentlemen, Mr Kuiper and Mr Huskic, report in to you?---On paper they do, however in practice it's not a reality. It's fairly loose in terms of the reporting lines.

40 Were you replaced whilst you were on leave?---Not to my knowledge.

Would you be given their applications for annual leave?---No, I would know about it though.

Who would approve those?---My manager, Scott Anderson.

Would you have any supervision or control over Mr Kuiper or Mr Huskic on a day-to-day basis?---Not really supervision, they were in a different hospital, but I would touch base with them on a daily basis.

Would you – I don't know if I've asked you this because I'm a little tired, but were you replaced when you went on leave?---I'm not sure. I don't believe I was.

10 Now, perhaps I don't have the filing capacity that Mr Lloyd has, but perhaps Dr Hickey could assist me with the document that relates- - -

THE COMMISSIONER: He has nothing to do, I'm sure he will.

MR LORKIN: No. There's a document that was given to me in one of these bundles that has a training log where – it's a training log that Mr Creary and Mr Huskic and the like have signed in relation to courses they've undertaken. Have you – I think I've shown you that document? ---I have seen it tendered in, in the statements, yes.

20 And I don't want to mislead the – I want to save time but not mislead the Commission but there's basically two days that you've signed a lot of documents as you – that you've read and understood them?---Yep.

All right. Do you recall when you signed that log?---No, I don't recall when I signed it but I know I signed it and I do know that it was in a, I believe in one of our, what we call our operations meetings once a month and we were just told to sign the document so I signed it.

30 Well, there's just been some discussion between Counsel Assisting and Senior Counsel about one of those documents being about 50 pages and some discussion about tendering it. Do you remember was that document there when you signed- - -?---Oh, I'm not sure, I don't have the list in front of me of the documents.

THE COMMISSIONER: Do you want him to look at the document?

THE WITNESS: It looks more, it looks like more than 50 pages.

40 MR LORKIN: The Commissioner's holding a document.

THE WITNESS: I haven't got the list that, with the signatures on it.

MR LORKIN: Well, the Commissioner's holding a document. Was that there on the day?---I can't recall. I don't, I don't believe so.

Were you ever given a copy of these documents that you signed, the policies and the procedures?---No.

Did you ever attend any, any courses in relation to any of these policies or procedures?---Maybe bullying and harassment, that was before I think I was in security. I don't recall any others, no.

All right. Do you want to go back to work at the Area Health Service?

---Yeah, I'd love to.

What's happening with the milk run?---I'm not sure at this stage.

10 All right. But you'd like to return to work?---Yes, sir, yep.

If these issues came up again in relation to motor vehicles, TVs or alarm systems, what would you do, with the benefit of hindsight or this hearing?

---With benefit of hindsight I'd definitely declare them or speak to my employer.

Those are the only questions I have of my witness.

THE COMMISSIONER: Yes, thank you, Mr Lorkin. Mr Strickland.

20

MR STRICKLAND: Can you just be shown, this document I'm just going to show you, this is Exhibit - - -

THE COMMISSIONER: What is the purpose of this line of questioning?

MR STRICKLAND: Look, it's simply in relation to corruption prevention, that's all.

THE COMMISSIONER: Yes.

30

MR STRICKLAND: Simply that he's - - -

THE COMMISSIONER: Ms Furness, can I - there are these issues relating to corruption prevention and really they, as I understand it they concern largely the omission of the Area Health to comply with their own procedures or to implement them is really - or to monitor them. Now, if you, if your client accepts that there are matters there that it should have done better, if you are prepared to and formulate those in the form of a statement and in the same statement indicate what steps are being done to  
40 remedy the position we would be able to avoid calling any witness from Area Health but we would have to have that done pretty quickly. I'm really - what I'm trying to do is to save time so if you, if you can give me an indication that that's a good idea then perhaps we can just leave Mr Creary and not ask him any more questions and call him back if, if you and Mr Strickland can't come to an agreement on that but if there is no prospect of that occurring then Mr Strickland should just simply proceed.

MS FURNESS: Commissioner, with respect there were two points. The first is as I understand my learned friend was putting to this witness documents which have been tendered which indicate on their face that he has signed - - -

THE COMMISSIONER: Yes.

MS FURNESS: - - - having received (not transcribable).

10 THE COMMISSIONER: That's a different matter.

MS FURNESS: It is a different matter.

THE COMMISSIONER: Yes.

MS FURNESS: And, and I am content for my friend to put that and to leave that matter to one side.

20 THE COMMISSIONER: I thought had been put.

MR STRICKLAND: No, I haven't put the precise page but that's why I thought to reserve that particular question until I found the page which I have now done.

MS FURNESS: In relation to the first matter you raised, Commissioner, that's the first time it's come to my attention that there was any need for the two health districts I represent to put forward some additional material to the dozen or so statements that have already been tendered of Area, former Area Health Service people.

30 THE COMMISSIONER: Well, the position is this, and I know you know that, that the Commission by law is required to make recommendations if things have gone wrong and normally we don't like making recommendations that are impractical. I mean not normally, always we don't like to do that so - - -

MS FURNESS: I'm pleased to hear that, Commissioner.

40 THE COMMISSIONER: So that what we prefer to do is to pass the recommendations across to the agency and get their comments. If we agree with the comments we will incorporate them and if we don't we won't but I mean, we try and come to some arrangement with the agency concerned. So this is not a matter of statements, it's a matter of the final report of the Commission on these issues.

MS FURNESS: But as I understand it, Commissioner, that exercise was undertaken prior to these hearings commenced and there was an exchange of - - -

THE COMMISSIONER: Yes.

MS FURNESS: - - - communication between the Ministry of Health on behalf of the two districts and, and officers of the Commission and as I understood it that correspondence was concluded in that each party to it was happy with the outcome and I thought (not transcribable)

10 THE COMMISSIONER: Well, if that's, if that's the case then I stand corrected. Then if that's the case there's no need for you to do anything more and if that's the case no further questions need to be asked.

MS FURNESS: That's as I understood it and I'm sure somebody will contradict me, Commissioner, if it needs be but I understood that was concluded.

THE COMMISSIONER: Well, if it's all complete then that's fine.

20 MR STRICKLAND: Mr Commissioner, could I just add, the position as I understand it is this. Mr Kohn, K-o-h-n, has provided a statement that does cover a good - - -

THE COMMISSIONER: That's something different.

MR STRICKLAND: It's not entirely. I just, he does cover some of the matters. What's, what's emerged is that as a result of the evidence of Mr Huskic and Mr Creary there has been now some more precise evidence about the apparent failure to comply with procurement policies - - -

30 THE COMMISSIONER: Yes.

MR STRICKLAND: - - - and so what I would suggest is I will have a discussion with Ms Furness about simply about not the more general matters but about the evidence that's fall from those two witnesses in the last couple of days.

THE COMMISSIONER: I follow, yes, thank you.

40 MS FURNESS: I'm very happy to participate in those discussions for it.

MR STRICKLAND: I just to ask this witness about two pages.

I'd just like you to look, please at pages 429 and 431 and 432 and just tell me if you initials and signature appears on those documents, please?---so there's 429, 431 - - -

432?---32.

That's it. Are they your initials - - -?---Yes, sir.

- - - and your signature?---432 is it? It looks like Robert Huskic.

431?---431 is and 429 is.

So do you accept that you have signed that you have read on the dates that I stated in, on those pages?---I understand I've signed it, I, I didn't read the documents.

10

I see. Even though you have signed it you didn't read them, is that right?

---That's correct, sir, yes.

Yes. Thank you, Commissioner.

THE COMMISSIONER: I take it you have no more questions?

MR LORKIN: No, Commissioner.

20 THE COMMISSIONER: Well may Mr Creary be excused then?

MR STRICKLAND: Yes.

THE COMMISSIONER: Yes. Thank you for your evidence. You may be excused, Mr Creary. You're free to go.

**THE WITNESS EXCUSED**

**[2.41pm]**

30

MR STRICKLAND: Mr Commissioner, the next witness is Mr Eschbank and Ms Lonergan is leading him. Would you excuse me until - - -

THE COMMISSIONER: Yes, certainly.

MR STRICKLAND: Mr Commissioner, could there just be a one minute adjournment between Mr Eschbank and - not now, between Mr Eschbank and the next witness Mr Grubisic.

40 THE COMMISSIONER: One minute. There will be.

MR STRICKLAND: Thank you.

MS FURNESS: Commissioner, might I also be excused?

THE COMMISSIONER: Yes, certainly.

MR STEWART: Yes, Commissioner, for the record Stewart, solicitor, for Mr Eschbank. Commissioner, I'll be - - -

THE COMMISSIONER: Sorry, sorry, Mr Stewart, do you mind sitting down. Mr Lorkin, before you go there is something I wanted to ask you. Mr Lorkin, you've given us a list of witnesses - - -

MR LORKIN: Yes.

10 THE COMMISSIONER: - - - and people you want to question.

MR LORKIN: I may have revisited - - -

THE COMMISSIONER: I think that in the light of what has occurred with your client you may wish to reduce the list. So do you think you could do it this afternoon so that I can discuss this with both counsel assisting after 5 o'clock and then we'll tell what we'll do.

MR LORKIN: Yes, I will have it done.

20

THE COMMISSIONER: Yes, thank you. Mr Stewart?

MR STEWART: Yes, Commissioner, I've explained submissions of deception section 38 to my client in seeking declaration and I advised the Commission that he'll be sworn.

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

And as it's been explained to you, Mr Eschbank, that order protects you against the evidence you give today being used against you in any criminal or civil or disciplinary proceedings but it does not protect you against any evidence that is false and witnesses who give false evidence at public inquiries can face a - if convicted can face a penalty of up to five years in gaol. Do you understand that?

40

MR ESCHBANK: Yes.

THE COMMISSIONER: Do you - I forgotten what you said. Would you swear Mr Eschbank in.

THE COMMISSIONER: Ms Lonergan.

MS LONERGAN: Thank you, Commissioner.

10 Mr Eschbank, what you say is being recorded so if you wouldn't mind keeping your voice up and speaking clearly and slowly and that microphone doesn't amplify. It does not amplify. What's your full name?---Mark Andrew

And, Mr Eschbank, you're wearing some sunglasses and that's because you are legally blind, is that correct?---In my left eye, yes.

Yes. So the sunglasses are no disrespect to the court it's necessary for your eye function - - -?---No, they're not. The fluorescent light hurts my eyes.

20 Thank you. Now, I want to ask you some questions about your position at the University of Western Sydney in 2007. And what was your job title in 2007?---I believe it was facilities services officer.

And did you supervise staff in that role?---I did.

How many?---Six to 10 I think, it varied from time to time.

All right. And how long had you been in that role?---Only a short period of time. My previous role was a security supervisor.

30 At the University of Western Sydney?---At UWS, yes.

And prior to your employment at UWS you worked for ACP?---I did.

That's Australian Consolidated Press?---Yes.

And you worked there in a security services role?---I was the security manager.

40 And during that period did you have some contact with Kings?  
---Yes, I did.

And was that with Mr Diekman?---Mr Diekman, Mr Roche, Mr McMicking and various other staff over that period.

And in that role at ACP you had an opportunity to see Kings work in the security systems that they assisted ACP with?---I did.

And you had a favourable opinion about their services?---Yes, I do.

And you've known David McMicking for a long time I understand?  
---35 years.

Right. And are you still, you're a friend of his?---I am.

Yes. And still are?---I am.

10 And continue to socialise with him now?---Not at the moment.

Right. Not at the moment while this, this inquiry's going on?---No.

Thank you. Now, did you assist Kings in getting work at ACP?---I did.

And how did you do that?---I was asked by my boss, the engineering manager at the time, did I know anybody that was conversant with the Concept alarm systems. I phoned David McMicking and asked him were they accredited Concept installers, he told me they were. I made an  
20 introduction to my boss and he then contracted them to carry out over the years a significant amount of works.

And did you introduced Kings to the University of Western Sydney?  
---I made an introduction to the director at the time, Mick Serena.

Yes?---I had told him that I had an association with people from Kings and that they were interested in being considered for the access control project that was coming out to tender shortly.

30 And how, how were you made aware that they were interested, that is Kings were interested in being involved in the access control project?---Charlie Diekman phoned me and asked me what he needed to do to be considered for inclusion in that tender process. I said I didn't know but I'd speak to the director and find out. I then told Charlie – passed Kings' details on to the director and the director to my knowledge contacted them and it went from there.

Right. And when you say that they, Mr Diekman contacted you because Kings wanted to be involved in the tender process, you're referring to the  
40 large access control tender that took place between June and August 2007?  
---Yeah. I'm not sure when it took place, but yes.

All right. Well, if you can take it from me that the tender opened on 30 June and closed in late August and was awarded in November 2007 to Kings, does that accord with your recollections?---That would, yeah, I don't recall the dates but I'll take you on your word for that.

Right. Do you recall introducing Kings early in 2007, around about April, in the context of a smaller access control job that was going at Bankstown and Blacktown campuses?---No. I made the introduction on the basis of the upcoming tender.

Yes?---I then believe that the director or somebody else within Capital Works invited Kings to carry out some works so they could assess the quality of their work I believe is how it was put to me.

10 All right?---But I didn't introduce them specifically to do that work, the only introduction I made was by way of introducing them to the director and left it at that.

All right. So they'd already been introduced prior to this smaller contract coming up for discussion?---Yes.

Thank you. And you had no particular role in relation to the April 2007 smaller access control contract?---No role in procurement in any way.

20 Thank you. Thank you. And are you able to state the value of the larger access control contract for the UWS campuses?---Only that I was given a figure during a previous hearing- - -

Yes?--- - - - but prior to that I didn't know what the value of that contract was.

And, and it was about \$1 million, is that right?---I believe so, yes.

30 All right. Now, were you made aware of any problems with Kings' work at the, at the smaller Bankstown/Blacktown campus job that they had been completing in that, earlier in that year?---I was.

And, and what was the problem?---It was alleged by another facilities services manager who looked after Blacktown that the wiring that was installed didn't comply.

And did you receive or send any emails to other University of Western Sydney staff about that problem?---I don't know, I'm not sure but I spoke to my boss Adam Byrne about it.

40

Yes?---I also spoke with the other facilities services officer who made the allegations, Brian Castelli about it, and I believe that that was later rectified by Kings.

All right. Did you vouch, within those conversations did you vouch, vouch for Kings' expertise and ability or did you go along with the criticism or what, what was the content of what you conveyed?---Not at that time

because I had no technical knowledge of what the wiring should be but I passed it on to my manager for him to deal with.

All right. Did you reassure Adam Byrne in any way that in your experience Kings, Kings were a generally competent contractor?---I was confident in the work that Kings had done for me previously. At that time they rectified the problem fairly quickly I believe - - -

10 Yes?--- - - - and I still had confidence in the work that they were doing so I may have but I couldn't be sure.

Okay. You may have conveyed to Mr Byrne that you would expect Kings to complete the works competently and/or remedy any errors in the work to date? Is that a reasonable surmise?---I, I think I may have suggested to Adam that if there was a problem that they would fix it and I believe that that, that they dealt with that in a timely manner.

20 Thank you. did you have any discussions with Mr McMicking advising him that the large access control tender work was coming up for tender?---No.

Did you have - and so Charlie Diekman raised it with you first?---Yes, I believe so.

30 After Charlie Diekman raised it with you did you have any discussions with David McMicking about the large access control tender job generally? ---David and I had agreed that we wouldn't discuss the tender. We had daily dealings on the smaller job that was done prior to that tender as I was the facilities services manager on the campus where the work was being carried out.

David was, I believe he was project managing that role for Kings and we had many meetings on site discussing location of equipment, where cable runs could go, times that they had to carry out works, things like that.

So you had no discussions at all with David McMicking about the, the potential large access control tender?---We may have discussed it but I don't recall the context of any of those conversations.

40 All right. Did you speak to anybody else at Kings about it in addition to Mr Diekman?---Somewhat further down the track I spoke to Mr Roche about it.

And did he ask you anything specific about the tender?---Peter said that as they hadn't tendered for any university work previously was I able to give them any pointers as to points that they would need to make during their, the presentation of their tender.

All right. Was it at the time, I withdraw that. Was this at a time when the tender was formally open, that is after 30 June, 2007?---I'm not sure but I believe so.

10 All right. And did he ask about any other matters such as extended warranty?---I don't think it was Peter, I think that Charlie Diekman may have suggested that, would it be in Kings' interests to offer an extended warranty of a five year period and I said yes, I thought the university would jump at it and I also thought that by answering that question that that would be to the university's benefit.

Mr Eschbank, you have been shown by your solicitor an email from Peter Roche sent to, an email address to @ .com.au?---Yes.

And there was a large document attached to that email that was the tender specifications for the installation and maintenance Concept 4000 equipment at UWS campuses?---Yes, I believe so.

20 And Mr Stewart's shown you that document before you've given evidence today because you have difficulty reading a document quickly because of your eye, eyesight problems, is that correct?---I have difficulty reading full stop.

Difficulty reading. That's Exhibit 1 tab 21 and I'm going to ask the witness some questions about it.

30 I take it it's pointless to show you the document while you're in the witness-box although I'll be guided by Mr Stewart on that issue?---Dance around with it, waving over your head is not going to make any difference I'm not going to see it.

MR STEWART: Commissioner, just on that point could I have a suppression in relation to the email address of jolindsay.com.au that's his wife's email address.

THE COMMISSIONER: Yes. There'll be a suppression order.

40 **SUPPRESSION ORDER IN RELATION TO MRS ESCHBANK'S  
EMAIL ADDRESS**

THE COMMISSIONER: So it's D21

MS LONERGAN: Yes. Exhibit 1 tab 21.

THE COMMISSIONER: Sorry, 121.

MS LONERGAN: Exhibit 1 tab 21, yes, Commissioner.

Now, Mr Eschbank, you can rest assured that this is the email an attachment that I've just been referring to that your solicitor has shown to you and the covering document is an email titled 'UWS Installation and Maintenance of the Concept 4000 System' and it's from Peter Roche to your wife's email address Jo Lindsay and it's dated 10 July 2007?---Ah hmm.

10 And a text of the email reads, "Mark, a copy of the tender. Regards, Peter Roche." Okay?---Yeah.

And - - -?---What time was on that?

The time on that, thank you, is 15.51?---right.

20 Right. And it has attachments and it's got various files of different kilobyte sizes. So one's Sydney 438.27 kilobytes, there's a specification PDF that's 463.51 kilobytes plus an invitation to tender which is 493.64 kilobytes and I want to ask you some questions about the circumstances in which that email was sent to your home email address or you wife's home email address. First you share that email address with your wife?---I did and still do.

Yes. And - - -?---Amongst others.

30 The circumstances in which Mr Roche came to be sending those documents to that home email address I want to ask you some questions about. Why was it sent to your home email address rather than your work?---I would suggest at that time of the day I was on my way home and would have read it after work.

Right. And did you give your email address to Mr Roche?---I must have.

Yes. And had you arranged prior to the sending of this email with Mr Roche for him to send it to you?---I think he called me earlier that afternoon.

And, and is it the - when he called you did he ask you to do anything in relation to the tender document he was sending you?---I don't recall.

40 Can I suggest to you that he asked you whether you would have a read of the tender document and talk to him about it?---That's quite possible, yes.

Is there any other reason why he'd be sending you the tender document?---I wouldn't think so.

All right. Were you - did you have access to the tender specifications document that was sent to you by Mr Roche at your work hard drive?---I

believe I would have, I think it would have been on a common drive on the Capital Works and facilities site but I can't be sure of that.

Were you provided by your employer with a copy of the tender specifications as part of your role?---I don't believe so but I may have. I, I don't think so though.

10 If you sort to access the tender specifications through your work email would that be evident to other people at UWS that you had done so such as IT staff?---I would assume so, yes.

Did you ask Mr Roche to send it to your home address because you wanted to avoid anybody at UWS knowing that Kings had sent you the tender documents?---No.

Was there any other tenderer who sent the tender documents to you?---No.

20 Are you able to say now whether you read the tender specifications?---I would have looked at them I would think but I wouldn't have read the whole document.

And did you then have further contact with Mr Roche about the tender document or any suggestions you could make in terms of Kings preparing their tender response?---I did.

30 Yes. And what was the content of that discussion, of those discussions?---I don't recall the exact content of it but I, you know I don't believe I was able to pass on any information that would have assisted them with - towards pricing or anything like that because I didn't have access to any of that information.

No, I'm not asking you about pricing I'm asking you about any, anything you discussed in relation to the tender?---No, I don't recall it, it was five years ago.

All right. Did you – are you able to say now whether you assisted with completing any parts of the tender documents?---I don't believe I did. I don't recall. I may have but I wouldn't think I would have.

40 All right. You say you may have?---I'm not sure is what I'm saying.

Yes. Did Mr Roche, after the conversation, sorry. First of all was there more than one conversation about the tender documents with Mr- - -? ---I couldn't be sure.

Right. There may have been more?---There may have been.

Did you have discussions with Mr McMicking about the tender documents?

---No, I don't think Dave and I discussed it. As I said previously, we'd agreed that we would be poles apart in relation to conversing on that, on that side of the tender.

Did Mr Roche, after these discussions or this discussion, convey any gratitude to you that you had assisted at least in terms of looking at the tender document and discussing it with him?---He did, he thanked me.

10 And during the period the tender was open, did you provide any pointers to Mr Roche about how he may be more likely to be successful with the tender in addition to those you've already given evidence about?---I don't believe so but I may have. I don't recall the context of the conversation or the information that I gave.

Now, did Mr Roche or anybody else at Kings offer you any benefit or gift in relation to the assistance that you had given?---Sometime later I received a plasma TV from Charlie Diekman. Charlie said that it was a thank you for the work that I'd introduced Kings to over the years. He wasn't specific about it being in relation to UWS and I didn't believe it to be so.  
20

All right. So in terms of timing of this gift of the plasma television, I want to show you, I'll show others a document and I'll read to you the relevant parts of it. Now, just in terms of placing dates, the contract for the access control tender was awarded to Kings on 13 November, 2007. Do you accept that?---Yeah, if that's what you're telling me, yes.

Yes. I can show your solicitor a document confirming that fact if you would prefer?---I've got no reason to doubt you.

30 And the, the document I've just handed to the Commissioner is a, is a fax cover sheet dated 15 January, 2008, addressed to you, enclosing a docket for the TV put on order, and then the second page of the document is a sales order payment with the customer noted as Kings Security Group and the item referred to as having been ordered was a 50-inch plasma television valued at \$3,100. Are you familiar with that docket and fax?---Yes, that's the document that I supplied you with at the private hearing I believe.

Yes. And that document was provided by your solicitor and tabled in support of the, the revelation you made that Kings had provided a television to you- -?---Yes.  
40

- - -at that time. I tender that fax and sales order dated 15 January, 2008.

THE COMMISSIONER: Yes. The fax of 15 January, 2008 with the accompanying sales order constitutes Exhibit 196.

**#EXHIBIT 196- FAX WITH DUPLICATE SALES ORDER SENT ON  
15 JANUARY 2008**

MS LONERGAN: Now, the circumstances of that TV arriving or you being made aware that Kings were going to give you a TV, who contacted you from Kings?---Charlie Diekman.

10 And, and he, did he state to you the purpose of the provision of the television?---As I said earlier, he said that it was for help that I'd given them previously in securing work.

Did you marry the timing of this gift, that is according to the sales order, 8 January, 2008, to the successful award to Kings of the UWS tender in November 2007?---I didn't at the time, no.

Do you know?---Well, I'm here so obviously inference has been drawn that it's linked in some way.

20 Have you received any cash payments from anyone at Kings?---No.

When the television arrived it was made clear that it was a gift from Kings to you?---Yes.

There was no request that you would pay any money for it?---I don't believe so.

30 When you say you don't believe so - - -?---I can't recall the exact conversation but to my memory, no.

And at the time you receive it were you still working at UWS?---When was that, 2008?

January 2008?---Yes, I was.

And did you tell anyone at UWS that you had received the television?---No.

40 And did you - I withdraw that. During the - taking a step back. During the tender process it's correct isn't it that at one point you told David McMicking that two other tenderers had withdrawn from the tender, that is SMP and Signature?---I did.

And how did you find that information out?---Well from the best of my recollections it was told to me by another contractor that was involved in the tender process.

And why did you give that information to Mr McMicking?---Well I thought if; (1) another tenderer knew about it, it was common knowledge, I didn't

concede it to be breaking any confidentiality if it was already in the public realm.

But you specifically told Mr McMicking?---Yes.

THE COMMISSIONER: How was it in the public realm?---Well if another contractor knew about it I assume that somebody from within Capital Works must have told him about it and he was telling other people I considered - - -

10 And who was the contractor who knew?---Joe from Elite Alltrades I believe it was.

They were a bidder were they?---They were the incumbent supplier of security services prior to the tender and prior to Kings doing any work on the campus.

MS LONERGAN: Even though you thought the information was in the public domain , Mr Eschbank, you still took the trouble to tell Mr McMicking specifically that that was the circumstances?---Yeah, I, I told  
20 David about it, yes.

Yeah. And did you hope that Kings would win the access control tender? ---It didn't matter to me either way. I was of the opinion that they did good work and I still am of that opinion. Their tender price was obviously the best and they offered an extended warranty which I thought was in the University's best interests.

So correct me if I've - I just want to get the timing right in the circumstances. First of all you're the person that introduced Kings to  
30 University of Western Sydney initially?---I, I believe so, yes.

Yes. And then you assisted Mr Roche with answering some, some questions or, or may have assisted in terms of completing parts of the tender document, that's right isn't it?---Yes.

And it was a large access control tender worth about \$1 million?---I wasn't aware of that at that time.

40 But you knew it was a large access control tender didn't you?---Yes.

And you knew it would cover all the campuses that are entailed in University of western Sydney?---Yes.

Did you have any rough idea of what sort of value the contract would be?---No, I didn't because the University had procured a large amount of its own equipment.

So you're unsure of the timing - - -?---So I, I had no idea what, what it would be worth, I didn't have any day to day pricing for any previous works that went on so I had no idea what it would be worth.

And you're aware by November 2007 that Kings had won the tender?---I'm not sure when I became aware of that but if that's when it was announced, yes.

10 And you were aware by that stage weren't you that it was a tender of some value of \$1 million or thereabouts?---No.

When did you first - - -?---The first time I heard a figure mentioned was in my private hearing some two or three weeks ago.

So Dave McMicking never told you that it was worth \$1 million to his company?---No.

20 Okay. So is it the position - no, I withdraw that. Were you taken to any lunches or given any tickets to football games or similar social functions by Kings?---I may have had lunch with Dave on one occasion, I don't know whether that was during my tenure at UWS or not and I may have gone to one game of football. I know Dave and I went to a game of football on our own, I don't remember whether that was paid for by David or Kings or whether we just went to a game of football after work, I couldn't be sure.

All right. You didn't pay for the tickets yourself or the dinners yourself?---I don't recall, I may have. It was a game at Sydney Football Stadium on a Friday night I think.

30 With other people from Kings?---No, just with Dave and I so it may have just been a personal outing.

Is it the position that you deliberately didn't tell anyone at UWS that you'd been provided with a television from Kings because it would have shown a conflict of interests?---I didn't believe so at the time and I had emails, sorry, I had faxes sent to my work, the fax, the fax that my counsel supplied you with at the private hearing was sent to my work fax so it wasn't like I was trying to conceal it. If I had a fax at home I could have had it sent to home.

40 I understand that but did you actually declare the gift from Kings to your employer?---No.

Those are my questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Does anyone wish to question Mr Eschbank? Mr Stewart?

MR STEWART: No, Commissioner.

THE COMMISSIONER: Thank you, Mr Eschbank, that concludes your evidence and you are discharged from the summons?---I just have one question, sir.

Yes?---I'm just wondering if Mr McMicking's been discharged from his summons and am I, am I able to speak with him?

10 You're free to talk to him, yes?---Thank you. It'll be nice to have a beer with him.

**THE WITNESS EXCUSED** **[3.11pm]**

THE COMMISSIONER: The Commission will adjourn for five minutes.

20 **SHORT ADJOURNMENT** **[3.11pm]**

THE COMMISSIONER: Mr Andronos.

MR ANDRONOS: Mr Commissioner, I appear for Mr Grubisic.

THE COMMISSIONER: Yes.

MR ANDRONOS: I seek a declaration under section 38.

30 THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Grubisic 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 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR GRUBISIC 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: You've explained to Mr Grubisic what the consequences are, Mr Andronos?

MR ANDRONOS: Yes, I have, Mr Commissioner.

10 THE COMMISSIONER: Yes. So as has been explained to you, Mr Grubisic, the evidence you give, the effect of that order is that the evidence you give today cannot be used against you in any civil or criminal or disciplinary proceedings but it doesn't protect you against false evidence and witnesses who are found guilty of having given false evidence to the Commission at a public inquiry can be sentenced to a term of imprisonment of not more than five years. You understand that?

MR GRUBISIC: Yes.

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

20 MR GRUBISIC: Oath.

THE COMMISSIONER: Would you swear Mr Grubisic in please.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: If you could speak slowly and clearly, everything you say is being transcribed. What's your full name?---Anthony Grubisic.

And your occupation?---Security contractor.

10

And what company are you involved in?---ACG Fire and Security.

And what's your position in that company?---Owner and director.

And how long have you owned that company?---Roughly 10 years.

And that company is primarily involved in supplying and installing security equipment, is that correct?---That's correct.

20

I want to ask you about your knowledge and relationship with certain people that are the subject of this investigation and inquiry?---Yes.

First, Mr Daniel Paul, you know him?---Yes.

And you've known him for the 10 years you've been the owner of ACG?  
---Known him for 20 years.

And you were in fact were you co-directors of a company together?---For  
42 days.

30

Which company?---It's called now ARA Group, it used to be called AIC  
and then before that Stagg.

I missed the last word?---Stagg Security.

Stagg, I see?---That's it.

And when those 42 days - - -?---Yes.

40

- - - do you know what, do you know what year they were?---2002.

And after you were co-directors did you maintain a, a regular business  
relationship with him?---No.

Were you, were you friends with Mr Paul from 2002 on?---What do you  
mean by friends? Personal or professional?

You know what the word friends mean I assume?---Not really, that's why I - well, personally no, we didn't catch up after hours, during business-wise, yes, every now and again we caught up.

And did you - the security industry at the level your company operates on is a fairly small industry isn't it?---What do you mean fairly small? I don't understand your question.

You don't understand my question?---No.

10

There's not a large number of companies that do what ACG does?---Well, what we do, what, now, as in today?

No, back in say 2006 to 2010?---What, do you want a number?

I just want you to answer the question?---Can you ask the question again?

20

There's not a lot of companies during that time that do the kind of work that ACG did?---Look, certain things that we do only two companies in Australia can do it, other things 50 can do it so that's, I don't understand what you, that's what it, how I'm referring to your question.

Do you agree that in the security industry Daniel Paul was an influential figure?---Influential. I don't, I don't know if I understand your question influential.

30

You know what that word means don't you?---Well, he was definitely known in the security industry by most companies, I don't know what you mean by influential.

Well, you knew that he was a security consultant?---Yeah, definitely, he was a security consultant that consulted for many jobs, yeah, definitely.

And in the, in his position as a security consultant he was a person of influence.

THE COMMISSIONER: I think you better explain what you mean by that.

40

MR STRICKLAND: Well, Mr Paul had the capacity to influence or affect his clients as to who would win contracts?---As to who would win, did he have, we didn't quote for many jobs of his so I would know the exact answer but if he's a consultant and he's talking to the end user I'm assuming in some way he could influence them, yeah.

Okay. Did you – were there occasions when ACG and Kings Security bid on the same, for the same contract or bid for the same job?---Yeah, I'm only aware of two jobs.

Which jobs were they?---Art Gallery and one DOH job.

And you knew Charlie Diekman. Is that right?---That's correct, yeah.

Were you friends with him or just business related, business associates?

---Just business, business associates.

Okay. Let me ask you about the DOH job?---Yeah.

10 Could the witness please be shown Exhibit 1, tab 32. I want to refer you to the email at the bottom of page 112 from Charlie Diekman to Peter Roche, subject - Incentive and Review Update?---Sorry, subject to- - -

I'm just, I'm just reading the email?---Okay.

It's got subject – do you have the same email that I do? The bottom of the page at 112?---Yeah.

3 March, 5.14pm?---Yeah.

20

And the subject is Incentive and Review Update. Do you see that?

---Yeah.

And Mr Diekman writes to Mr Roche, "Let's discuss, there are other fees also that need to be applied to the job, e.g. \$15K cash to Tony Grubisic"? ---Yep.

"See below. Steven ended up getting for 20K what we quoted 60K for the labour for DOH"?---Yeah.

30

Do you – did you ever receive any cash from Mr Diekman?---No.

Or from anyone else in Kings?---No.

Do you have any understanding what that line that I've just read to you relates to?---No.

Did you have any discussions with Mr Diekman about the fact that you were both bidding for the, for DOH work?---When, in 2008?

40

Yeah, at the time of this email. I don't mean on the exact date but at any stage before or any stage after?---No.

Did you ever have any discussions with Mr Diekman that – well, I withdraw that question. Did you win any contracts for the DOH in relation – at this time?---No.

Did you ever have any discussions with Mr Diekman that you didn't get the job?---No.

Or did you have any discussions with Mr Diekman that Kings Security got the job?---No.

Did you ever have any discussions with him about whether ACG was intending to tender for other jobs at DOH?---No.

10 Did you ever express to Mr Diekman any disappointment you had about the fact that you didn't get any jobs at DOH?---No.

Did you know Mr La Greca?---Yes.

And what dealings did you have with him?---I've known Chris for about 20 years.

And how have you known Chris? Sorry, I withdraw that. Chris is Chris La Greca?---That's right, Mr La Greca.

20

Okay. You can call him Chris. And how did you know him?---What, how did I know him or where did I meet him or - - -

Yeah. Did you know – you knew him through the business, through the security industry did you?---Yeah, through the security industry.

Were you friends with him?---Not personal, just professional.

I see. And, and he was the business – I withdraw that. He worked for IPP  
30 at this stage. Is that correct?---What, at 2008?

That's right?---Yeah, I think so, yeah.

And did you know, what, what was your understanding of the role of IPP in the Department of Housing contracts?---What do you mean contracts or they write the specification for the job.

Well, what, what understanding do you have that IPP - I withdraw that. What role did you understand IPP had in relation to the tenders or the competitor process in relation to the Department of Housing jobs?---Can  
40 you repeat that question, sorry?

Did you have, did you have any understanding that IPP had any role in relation to the Department of Housing jobs?---No, I just - they wrote the specification that's my understanding.

So you did - you had - you understood that they, that IPP was involved, is that right?---They were a consultant to DOH and they wrote the specification for the job what was going in the job.

That's, that's what I - that's what I was asking?---Yeah, yeah.

Thank you. Did you have any discussions with Mr La Greca about the fact that you didn't get awarded the, the job or that ACG didn't get awarded the job?---No.

10

At IPP was there anyone that you dealt with at this time apart from Mr La Greca?---What on any jobs?

In relation to the DOH jobs?---DOH jobs, no.

I'm asking you just about this email?---Okay, okay, okay.

All these questions concern this email?---Okay, understand. No.

20 Okay. If you look at the next email that is the email at the top of page 112 - - -?---Yeah.

- - - there's an email from Mr Diekman to Mr Roche which is a response to the earlier email. Mr Diekman writes, "Yeah. 5K per site, they split it between the IPP cons and himself. I put 5K on each job and mark it up 65 per cent. This is the next sites, Tony gets and he pays us", and so on. Do you have any understanding what that email refers to?---No.

30 THE COMMISSIONER: Do you understand what it means?---What?

The email?---Do you want me to speculate what it means?

I'm just - well I'm not speculating I'm just reading in the ordinary English?---Yeah, well it says yeah, 5K per site, so they split it between IPP and himself.

Suggest - what he's saying is that per site \$5000 is split between the IPP consultant and yourself - - -?---Yeah.

40 - - - and he puts \$5000 on each job and he marks it up and the next three sites you get - - -?---Yeah.

- - - and you pay them and so on?---Yes.

That suggests a nice, cosy, comfortable friendly relationship?---Yes, that's what it suggests.

And what do you say about that?---That's definitely not the case.

There's nothing in it that's true?---Nothing.

So can you explain why - what, what would Charlie Diekman be doing writing an email like this to Peter Roche, was this just a product of his imagination?---I assume so, I don't know, I don't know, sir.

MR STRICKLAND: Did you receive any money from anyone at Kings to be given to Mr La Greca?---No.

10

Did you have any arrangement with Mr Diekman or any understanding or any discussion that after this email you at ACG would be awarded any particular sites or campuses at - I'm sorry, I beg your pardon, I withdraw that questions. Did you have any understanding or arrangement or discussion with Mr Diekman that you would get any sites in relation to the Department of Housing?---No.

I want to ask you some questions about the Art Gallery - - -?---Yes.

20

- - - segment. Could the witness please be shown Exhibit 2 tab 3. Now, this is an email from Mr Paul to a number of persons. Do you recall receiving this email?---No, I don't. I'm not saying that I didn't receive it but I don't recall receiving it.

Do you remember receiving a disc in relation to a tender for the Art Gallery in 2009?---No, I, definitely we, we ah, were on the tender but I don't recall receiving a disc. We could of, I don't recall.

30

Just generally speaking about this tender, ACG put in a significant amount of work for this tender, didn't you?---Sure.

And I think you were working with a gentleman called Mr Josh Collier. Is that correct?---That's correct, yeah.

And he was an employee of ACG?---Still is, yeah.

And is it correct to say that the two of you did all the work on the tender? ---Yeah, that's correct.

40

And you eventually were told that you were on a shortlist of three other integrators for the work. Is that right?---Yeah, there were three of us, yeah.

Right. Could the witness please be shown Exhibit 17, tab, could, could the witness just be given all of Exhibit 17. And before I take you to some of these tabs, what's your recollection when you - sorry, I withdraw that. Just going back a step, you in fact ultimately put in two bids in relation to this job, didn't you?---We put in one fully-complying bid- - ?

Yes---?- - -at the start.

Yep?---And then, I've tried to recall this outside of here, obviously what's going on, we put in another revised bid at the second interview, whenever that was.

Yeah?---And then on the day before the tender was awarded, I believe that was the last interview, we put in another revised bid. The second bid we were asked to, the third bid we did off our own bat.

10

Okay. I'll just, I'll just ask you about each of those bids?---Yeah.

The first bid, the fully-complying bid- - -?---Yeah.

- - -and by fully-complying you mean it fully complied with the specifications that you received as part of the tender bundle. Is that right?  
---Yeah, in my opinion complied to every clause.

20 Right. And that was in relation to the Lenel/Verint products. Correct?  
---That's correct.

The second bid – do you remember when you put the second bid in?  
---Look, I don't remember exactly but I think it was on the day of the second interview.

Okay?---Whenever that was.

30 THE COMMISSIONER: You mean at the interview you handed over the bid?---Yes, yes.

MR STRICKLAND: Excuse me for one moment, Commissioner. Commissioner, could I just, could I just have access to, to Exhibit 17, tab 10? Could I just have access to it first? I just want to make sure that I've got that here. Where's the, where's the ACG one? This one's only got one page. Okay. Thanks. I just want to show you - if you could just have a look at – I'm taking you to Exhibit 17, tab 10, page 54. Now, if you'll just accept, the evidence is that these are notes taken by one of the women who was in the Tender Evaluation Committee at the first interview which was on 27 February, 2009?---So the first interview was after we became shortlisted.  
40 Is that right?

That's correct?---Okay.

So in other words there was a shortlist- - -?---Yeah.

- - -of yourself and Kings and a third party?---SNP.

SNP?---Yeah.

And then as a result of that shortlist – I’ll just give you the chronology- - -?  
---Yep.

- - -there was an interview on 27 February?---Yep.

And then after this interview there was a – the three became two?  
---Preferred, yeah.

10 And the preferred- - -?---Dual preferred.

The joint preferred tenderers?---Yeah.

And then there was a second interview on 5 March?---So a third interview.

No, it was a second interview?---Oh, second one, okay.

And final interview. That’s, that’s the evidence about the chronology- - -?  
---Okay.

20

- - -just to assist you?---Okay. Thank you.

So this, these notes, and I’m not suggesting they’re your notes- - -?---Yeah.

- - -but they’re taken by one of the women at the Tender Evaluation  
Committee and I’m just giving them to you to, as a aide-mémoire for your  
memory?---Yeah.

30 Can you see the first line, first it’s got “Tony and Josh.” Do you see that?  
---Yeah, yeah.

Obviously that the two of you?---Yep.

And then it’s got, “Lenel integrated to”, I’m afraid I can’t read the next bit,  
it looks like Verint?---Yeah.

“High level to Watchman, low level to Honeywell and fire alarms, how  
level to bionics, people counting, et cetera”?---Yeah.

40 What I wanted to ask you is, it appears from those notes that at the time of  
this interview the bid that you were relying on was the complying bid. Is  
that correct?---Sorry, say that again? No, no, I just want to be clear here.

No, fair enough. I’ll- - -?---I, I, I get all this right. So when are you saying,  
I don’t, I don’t recall.

It’s okay?---I can’t remember what you’re saying on the date.

Mr Grubisic, I'm happy to rephrase the question- -?---Yeah.

- - -because unless you understand it, there's no point in it?---Yeah.

THE COMMISSIONER: Can I just, sorry to interrupt, but I'm looking at, I might be looking at the wrong thing, I'm looking at tab- - -

MR STRICKLAND: Tab 10.

10 THE COMMISSIONER: Tab 10.

MR STRICKLAND: Page 54.

THE COMMISSIONER: Yes. And that is an interview, my tab 10 page 54 is an interview with Kings.

MR STRICKLAND: I think it's to do with – this has bedevilled us throughout the whole thing. I think, I'm told, Ms Lonergan tells me that 51, it looks like 51. Perhaps you could be of assistance?

20

THE COMMISSIONER: Here's 51 and here's 51, I can see now 51 'cause the next page is 52. So I must go to page- - -

MR STRICKLAND: 54.

THE WITNESS: 54.

THE COMMISSIONER: 54. Thank you.

30 MR STRICKLAND: So the question is, having looked at these notes - - -?---Yeah.

- - -if it does refresh your memory, can you say that when you attended the first interview you were – the bid you were making was the complying bid on the Lenel/Verint product?

THE COMMISSIONER: At that stage?

40 MR STRICKLAND: At that stage?---Of course – there was no other bid.

Okay. That's all I wanted to ask. Okay. Now, could I then take you please to tab, excuse me, tab 12?---F, F12, yeah?

That's right F12. And you'll see that this is a - will you recognise that this as your document?---Yeah, for sure.

And it's got revision 2 Pelco option and it's dated 20 February 2009. Do you see that?---Yeah.

And then if you just, just familiarise yourself with that. Then the next page tender revision 2?---Yeah.

And then - that's 64. Then if you go up to 64. No, wait a second. I'm sorry. Dear oh dear. I'm sorry, Mr Commissioner, I've looked at the wrong document, I apologise. I just can't remember the, the - sorry. I'll come back to that document and I apologise?---No problem.

10 If you look at Exhibit 142, please.

UNIDENTIFIED MALE: What (not transcribable)

MR STRICKLAND: Exhibit 142.

Now what you should have before you is a letter from Q Video Systems Mr Theissen dated 26 February 2009 and attached to that is a proposal based upon Pelco Endura Version 2. Do you see that?---Yes.

20 Do you remember - and it's attention to you?---Yes.

Do you remember receiving that letter with the proposal attached?---I don't remember receiving it, I'm not saying I didn't receive it, I thought about this. You asked - I was asked this question before once and I thought about it since outside of this and I, and I can't recall receiving this. I'm not saying that I didn't receive it.

No, I understand that. The evidence from the author of this letter is Mr Theissen is that his general practice was to send letters out on the date that the letter bears?---Yeah.

30

Okay. What I wanted to ask you is did you ever request from Q Video Systems a proposal for Pelco Endura Version 2 before the first interview on 27 February?---I request that a Pelco price before the tender closed definitely.

Yes, I understand that?---Yeah.

40 But, but did the tender closed - do you know - when you say the tender closed you mean when the tender closed, sorry. When, when do you understand the tender close, these are the - - -?---I, I don't know the date, is the day we put it - where you put the tender in on the day it says to put it in whatever it says, it says tender is due whatever date it was, I can't recall that date.

But before the tender - you mean the closing of the tender before you attended the first interview, is that what you mean?---No, no. What, what - that they issue a tender, the Art Gallery issues a tender, you have to submit

your price by 10am on this date before that date, before we put down below whatever we - I wasn't there so I don't - - -

Okay. Well, the, the tender, the date of the closing of the tender was 23 February 2009?---Okay, yeah.

So you asked for a quote from Q Video about Pelco Endura 2 before the tender closed, is that right?---I'm not saying I would have asked for a Pelco price, I'm not differentiating between 2, 1.5, 1, anything, yeah.

10

THE COMMISSIONER: Why did you ask for a Pelco price before the tender closed?---Why did I ask, everyone, everyone who wanted to give a price, we got all the prices, Genetec, Dedicated Micros, dvtel and then we put them in a spreadsheet and we work it ourselves who, what, we decide who to, if we want to put in any optional bids.

But the tender, the evidence is that the tender, the preferred product according to the tender was Lenel/Verint?---Yeah, it was, in my understanding it was a benchmark product - - -

20

Yes?--- - - - and it says benchmark or equivalent, I presume that's what it says.

All right. So you then, you asked for all of the products to see which would be the best solution, is that right?---Well, generally what we do is we look, we try and understand the operation of the site and what we believe would be the best sort of it and then you've got to weigh up the, and then you try and calculate roughly what the prices are on all of them, if one's 100 grand cheaper than the other or something then you might put in an option. That's the way we - - -

30

So that's why you went to all the manufacturers?---Yeah, for sure. I mean, it's a large job so all the manufacturers would be keen to put a price in.

When you, when you put your first bid in though - - -?---Yeah.

- - - you only, you only made one bid didn't you?---Yes.

You didn't use the Pelco proposal or quotation did you?---No, not at all.

40

And why is that?---We decided, basically we looked at it and we decided the best game plan for us was go in with benchmark complying, we, whatever you want to call it, whatever it was nominated or whatever was written into the specification, we decided to only put one product in and go as cheap as we can and fully complying.

Now, at some stage - well, after the first interview - - -?---Yes.

- - - when you were told that there were, you were part of a preferred, you were one of the two preferred tenderers - - -?---Yes, after the first interview, yes.

- - - did you make a decision then at that stage as to whether you would still put in only one bid, being for the complying or a - I withdraw that. Did you then make a decision just to make the one complying bid again?---We didn't make any decisions, we only had one bid.

10 All right?---That's it.

But at some stage you changed your - - -?---I didn't change anything, the Art Gallery, Tony Morris rang me up and sent, I believe he sent me an email requesting that we put in a Pelco proposal.

And, and you were only given I think 27 hours to comply?---Whatever it was, yeah.

20 Well, I'm asking you that. You recall that don't you?---Yes, it was, I believe it was 29 hours.

29 hours?---I think I put that in an email somewhere.

All right. And, and did you think that that was an unfair thing to ask you to do?---Unfair?

30 Yes?---I thought basically we put in a, what I thought was we put in what I thought was a complying bid and now he's asking something different, I didn't think that was, I didn't think, basically what I thought is I didn't think that was allowed under tender, government tendering rules but I don't know the rules so I just assumed that was the case.

Did you say to Mr Morris at the time?---No.

Why not?---Because I'm trying to win a job, I'm not going to upset him, he's asking for something.

In your experience has that ever happened before?

40 THE COMMISSIONER: With a government job?---I haven't done many government jobs so, no large ones anyway.

But still, can you remember?---The jobs we've done is miniscule, under 100,000.

MR STRICKLAND: What about with a private job, has that ever happened before?---No, because we, we don't focus on, on tenders in our business.

We, we - most of the jobs we do are, have got, use products that are, that are locked in and they can't use anything else, they're large multi sites.

So you say Mr Morris communicated with you - - -?---Yeah.

- - - and told you to put in a revised bid based on Pelco?---That's correct, yeah.

10 And was that, did he specify a particular type of Pelco product, version 1 or version 2 or did he leave it open?---It was in a phone call, I don't recall exactly but I know he said Pelco, I don't recall if he said 1 or 2 or whatever, I don't really recall if he said that or not.

20 You then spent quite a bit of time then putting in a revised bid, is that correct?---Yeah, we knew the Pelco product intimately as well so from the time I was filling out all the, basically he said to me you don't have to go into a lot of effort, you can just put in the tender schedules but we decided to redo the whole folder and the drawings and the design and whatever so, I mean everything that we did in the other one as best as we could.

THE COMMISSIONER: Do you remember when you - before the tender closed and you were asked for Pelco, you investigated the Pelco situation - - -?---Yeah.

30 - - - do you know whether you, whether the solution that you considered at that first stage was based on Pelco Endura 1 or 1.5 or 2?---I didn't give that a lot of thought specifically because the tender called for like 360 degree cameras and stuff like that and, and, and they, they couldn't integrate to Pelco.

Even Endura 2?---Look, I know now, or not now, from a year or so ago we physically tried to do it but I don't, I don't recall that we at that time exactly what we did with the 360 degree camera.

Have you got page 142 there?

MR STRICKLAND: Is that Exhibit 142?

40 THE COMMISSIONER: Yes, Exhibit 142. Have you got it? I think you've got it in front of you haven't you?---Yeah, 142, yeah.

And just look at the letter that you were written?---That was written to me? Yes?---Yeah.

It says, "The following is the Pelco Endura option for the Art Gallery. The following proposal is based upon Pelco Endura version 2"?---Yeah.

Can you remember whether you asked Q Video for that or whether that's something they simply offered of their own accord?---I don't remember, sir.

But in any event you used this to put in a revised quote?---I would have used this and data that we had as well.

Yes?---Yeah.

10 MR STRICKLAND: Before you put in your revised quote did you have any discussions with Mr Daniel Paul about the fact that you were having to complete redo your proposal?---Possibly, I don't recall if I, if I - - -

Possibly, is that right?---Possibly, yeah, I don't recall if I phoned him.

Okay, I understand. I just want to show you - I tender a summary of calls from Daniel Paul's mobile to Tony Grubisic's mobile from 1 February, 2009 to 6 March, 2009 and I would see a suppression order on the mobile phone numbers. I seem to remember that Mr Paul's number may no longer be operational.

20

THE COMMISSIONER: Well, I'll make the suppression order. Exhibit 197 is a summary of calls from Mr Paul's mobile number to Mr Grubisic's mobile number and there's a suppression order on the mobile numbers, of both mobile numbers.

**#EXHIBIT 197 - SUMMARY OF CALLS FROM MR PAUL'S MOBILE TO MR GRUBISIC'S MOBILE**

30

MR STRICKLAND: If I could just take you please to- - -

THE COMMISSIONER: There will be a suppression order on the addresses as well.

**THERE WILL BE A SUPPRESSION ORDER ON THE MOBILE PHONE NUMBERS AND ADDRESSES CONTAINED IN EXHIBIT 197**

40

MR STRICKLAND: Thank you, Commissioner. Can I ask you, at this time, the 26/27 February, 2009, did you have any other business dealings with Mr Daniel Paul?---Not that I'm aware of.

So we'll just take you to page 2 of the document. On 26 February, 2009, you had a number of calls, 11.28 in the morning- - -?---Yeah.

- - -11.40 in the morning and 2.30 in the afternoon- - -?---So that's on page 3 as well, yeah?

On page 3, that's right. Now, that's the day before your interview with Mr Paul?---Yeah.

Does that, do you have any recollection at all of speaking to Mr Paul about the Art Gallery tender the day before your first interview?---I don't have any recollection. I'm not saying that we didn't speak.

10

And if you just also go to page 2, there was a, there's an SMS at 1.18 in the morning, that's the second-last- - -?---From him to me?

That's, that's right?---Yeah.

Was that his usual practice, to send you messages- - -?---It is for Daniel. He works day and night.

Right. Now, if you go to page 3, the evening after your first interview there's another phone call from Daniel to you at 6.25pm for 2.55 seconds. Do you have any recollection of talking to Mr Paul after the first interview? ---No, I don't.

20

All right. And then before the second interview- - -?---When, when was that, sorry?

That's 5 March?---Yeah.

There are a number of fairly moderately lengthy calls on 2 March, 3.47 seconds, 3 March, 3.81, again another one for 1.80 seconds on 3 March and then on 4 March, two, one for 6.50 seconds and 3.02 seconds?---Yeah.

30

Do you have any recollection of speaking to Mr Paul at any, at any stage after the first interview but before the contract was awarded?---Say that again?

40

Do you have any recollection – I'll rephrase the question. Do you recall having any conversation with Mr Paul between the first interview on 27 March, 27 February and the second one on 5 March?---When was the last interview?

5 March?---So before 5 March?

Between the first and the second interview?---No, I don't. Like, obviously going by this I spoke to him but I don't recall what, what we talked about.

Do you remember him ever – do you remember talking to him at all about

that him advising you or suggesting to you that ACG should put in a revised bid based upon Pelco Endura 2?---Sorry, can you repeat that?

Do you ever remember speaking to Mr Paul where he advised you or suggested to you that ACG should put in a bid based upon Pelco Endura version 2?---No. I spoke to Tony Morris and he asked for a Pelco bid and Pelco 2 was the only one that could sort of meet the specification so you would assume that it would be that I suppose.

10 But you don't recall speaking to Mr Paul about that subject?---No.

Okay. Did you make any inquiries yourself about when Pelco - when the Endura 2 product - sorry, I withdraw that. Did you make any inquiries yourself or did you ask anyone to make inquiries as to whether the Pelco Version - Endura Version 2 was actually available?---When?

20 Before you put in your revised bid?---We were working with Pelco product and we knew - at that stage and we knew that it was coming out. I think in our second proposal we wrote that it's not yet available. I don't know I think we wrote the date when we thought it was going to be available. I think - - -

THE COMMISSIONER: Do you remember the date?---I think it's April I think.

Yes.

MR STRICKLAND: Well that's the document I was - - -

30 THE COMMISSIONER: You've written a letter?---Yeah.

There is some correspondence which - - -

MR STRICKLAND: Yeah, there is.

THE WITNESS: Yeah.

MR STRICKLAND: I'll take him, I'll take him to it in just a moment.

40 But before I take you to that what I wanted to ask you is before you made such a bid - - -?---Yeah.

- - - a revised bid based on Endura Version 2 - - -?---Yeah.

- - - you would need to have known when it was actually going to become available on the market wouldn't you?---Well if they were saying April, right.

But that's not my question?---All right. What is the question?

I'm just - you wouldn't make, you wouldn't make a bid for a product if it wasn't going to be available within the time frame that the client required would you?---No. If, if we knew that the product - I think this is what, what the question you're asking me, if we knew that product wasn't available so we can complete the job of course we wouldn't put it in.

10 So - - -?---Let me, let me, let me rephrase that. If we would put in a bid and then prior to signing of the contract we would highlight it all to the client and we would make sure that the supplier can supply and the clients are aware of it we'll make it all transparent.

20 Okay. I understand that. So in order to do that you would have had to have made some inquiry, you or Josh Collier or someone about when that product, that's Endura 2 would be available?---We, we had been working six months prior with Pelco on their Endura product and we bought product Endura 1 and we were testing it and we knew all about the product and we knew the road map that it was coming out soon. Generally from my experience with them they give you a date and somewhere there and they try and release it, it's one month more or usually than, than what they say. But I think my understanding was it was available around April.

Okay. If you go to the document I was going to show you before which is Exhibit 27 tab 12.

MR LLOYD: You mean Exhibit 17.

30 MR STRICKLAND: Sorry, I don't know what's happening with - Exhibit 17.

MR LLOYD: Tab 12.

MR STRICKLAND: Tab 12. Thank you.

MR LLOYD: (not transcribable)

MR STRICKLAND: Thank you. Thank you, Mr Lloyd.

40 Exhibit 17 tab 12 and a letter from Josh Collier on ACG letterhead to Mr Morris. Do you have that? For page 64?---Tab 12?

That's right?---No, I haven't got that.

I think you may have been given - it may be my - I'm sure it's my mistake. Exhibit 17.

THE COMMISSIONER: It's Exhibit 17 tab 12.

THE WITNESS: Exhibit 17 tab 12.

MR STRICKLAND: 17?---Well this is what I got at tab 12.

Yeah. That's it, that's it. Just go to page 64?---64, yeah.

And that's a letter from Josh, Joshua Collier to Mr Morris?---Yeah.

10 And the second last paragraph I think refers to what you've been saying.  
That we have - ACG (not transcribable) question provides certification  
applicable to the Pelco Solution and then you, you answer there or the  
answer here in bold print is, "The product we're proposing is Endura 2  
20 accreditation for Endura 2 is not yet available until April 2009"?---Yeah.

Okay. And is it your experience that these products such as this American  
product are normally, they become available after their release at a, at the  
international trade fair or the International Security Conference in April, is  
that your understanding?---It's not a - usually they do stuff like that, yeah,  
20 but it's not a general rule.

Okay?---They do it 'cause it's a big show and people are releasing products  
and they, so they can do some news items and stuff like that.

THE COMMISSIONER: So it's a general rule but it doesn't always happen  
that way?---That's correct, yeah.

MR STRICKLAND: Sorry, Commissioner. Did you yourself speak to Mr  
30 Yallouris from Pelco?---I would of, yeah.

And did you ask him about the, is it likely or probably that you would have  
asked him about the release date?---I may have. I can't recall if I did.

THE COMMISSIONER: Are you at all able to say when you learned when  
Endura 2 was going to be available in April?---No, I can't say exactly.  
There wasn't nothing- - -

40 All right. I understand that. I'm not surprised. Had you known that for a  
long time or is that something that you recently learned when you were told  
that you had to provide a Pelco solution?---No, well, prior to that with other  
clients we'd been working on that product and we knew basically a year  
before their roadmap that they're releasing certain cameras, analytics,  
different encoders, I believe we even got a few samples maybe six months  
prior, nothing to do with this job.

I understand that. But- - -?---But I, I, I- - -

Are you, are you saying that you knew for a long time or you knew for a time before you were told to get a - that you needed a – that you should get a new – you should do a new tender based on Pelco that the availability date was April? Have I made that clear or? - -Yeah, yeah, yeah.

10 You see what I'm trying to do is to find out whether you know – whether you knew about the, the availability date of Endura 2 before you were told to do a tender on the Pelco solution or whether you only discovered that when you were doing the work necessary to produce the revised bid based on the Pelco solution?---What I knew it that you couldn't purchase it in March and the only thing - I didn't delve into that or go into detail of what the exact release date is, I did know from history with dealing with them that usually their release dates are a bit rubbery, it's either usually one month or two months more. It all – basically the way it works is, they've got their release dates roughly a year, they've got a roadmap of two years, one year, and they're working to meet a date. Now, if they have complications, that date slips. That's my understanding.

20 So when you say that you knew the roadmap for a year in advance- - -?  
---Yeah.

- - -would that roadmap deal with Endura 2?---Yes.

And would the availability date, the availability date generally might change as the period comes closer to the time?---That's right, that's right.

Do you know whether that happened with Endura 2?---I don't know exactly but you could find that out by asking Pelco.

30 Yes. Well, I wanted to ask you?---Yeah, well, that wasn't really important to us to- - -

No, I understand that?---Yeah.

40 Well, it was important to you to know when the availability date was, wasn't it, because you just explained to Mr Strickland that you would have to know the availability date so you could tell the client in case there was problem?---For sure. Basically the way we would go about it is if we were successful we would go to the manufacturers say, I want a drop dead date, when can we get the date, prior to us signing any contracts and the manufacturer will say, this is the delivery date and if that date is rubbery we would go to the client and say, the date's not firm, it might slip.

So that's why I'm asking you whether - - -?---Yeah, but I - we didn't give it that much thought of, of the - - -

I understand that?---of the exact and the delivery.

It's the letter you see, the letter at 64?---Yeah.

It's where that second last paragraph?---Yeah, but they're asking - - -

Yes, I know?---That they were asking us are we Endura 2 certified, all right so we said the product's not - we, we would have gone back to or Josh would have gone back to Pelco and said when's the release date, when can we get training.

10 Well you don't know what actually happened?---Yeah, I don't know exactly, yeah. I'm just assuming.

Yeah.

MR STRICKLAND: When you spoke to Mr - you said you probably spoke to Mr Yallouris - - -?---Yes.

- - - during this period? And by this period I mean before at some stage during your interviews for the Art Gallery?---Yeah.

20

Did you ever discuss the price of Endura 2 with him?---I don't recall, I don't recall.

Did you ever try and negotiate the price with him?---If - no, no, I didn't. Sorry, I was going to say something else but no, yeah.

What were you going to - - -?---I was, I was going to go into detail and but I'm just answering your question.

30 THE COMMISSIONER: No. Your answer is appropriate?---Yeah.

Your answer is no?---Yeah.

MR STRICKLAND: So you attended the second interview, correct? ---That's correct.

And shortly after that you were advised that you had not won the contract, is that right?---No. We, we made dual preferred whatever that meant.

40 I'm sorry, I mean afterwards you attended the second interview?---Yeah.

Do remember that?---Yeah.

And shortly after the second interview you understand you were dual preferred, is that right?---That's right.

I think you - when you went into the second interview it was at that stage you were dual preferred, is that, is that - in other words there were only two

interviews?---I can't remember exactly. Yeah, I, I thought there was three interviews. There was one more interview.

The evidence before this Commission is that there are only two, one on 27 and one on 5?---Yeah,. I, I thought there were three for some reason but you might be right.

Okay. See there was a tender briefing in early February - - -?---Yeah.

10 - - - then there was - is that what you're thinking about, there were three separate occasions when you actually went?---I know, I know what I'm saying I just, I thought there were three interviews for some reason but I could be wrong.

Okay. In any, in any event you - when the contract was awarded to Kings you were advised by Mr Morris that you had not won the contract, is that right?---That's correct.

20 Did you speak to Mr Paul about that?---When?

After you had been advised that you had not won the contract?---No.

You didn't ring him up?---No.

Did you make any complaint to Mr Paul?---No. We're talking about after.

At any stage?---The night before I did I phoned him.

30 Right. And what did you say?---All right. Let me explain the whole thing. The final interview they asked for six of us, they asked for whoever was going from our company work on the job to, to come and meet the Tender Panel, so we did that and, and then they said yeah, after this meeting we're going to decide who's won the job between you and Kings, I'm just paraphrasing, right and, and hold on let me just get my train of thought, yeah and then after that we - they met all our guys and whatever the questions they asked they asked, I don't recall what they were and then yeah, I rang Daniel Paul that night and asked did we win the job because they said they were going to decide after meeting with us and they met with Kings prior to us and he said Kings won the job and that's it.

40 And, and what did you then say to Daniel?---I don't recall the exact conversation 'cause it was a bit of a big night, I took the guys out after, straight after we had beers, dinner, wine, port whatever and so or whatever I said it wasn't nice, so I can't recall. I don't know the exact - I don't recall.

But your complaint to Mr Paul wasn't it or your sentiment that you expressed to Mr Paul - - -?---Yeah.

- - - was that he had favoured his mate Kings, isn't that right?---I don't recall what I said to him to be honest.

THE COMMISSIONER: That's what you thought didn't you?---I beg your pardon?

That's what you thought?---It didn't bother me that we didn't win the job so much what bothered me was that we put in fully complying bid on the Government tender and then they asked us to put in a Pelco bid that's what  
10 bothered me, that's pretty much.

And did you blame someone for that?---Blame someone?

Yes?---Not really, no. I don't really, that's not my style.

What did Mr Paul say to you after he told you that you hadn't won and then you said some things that weren't nice. What did he say to you?---Look, I don't recall the exact conversation, it wasn't that it was - - -

20 Just the gist - - -?---We were out somewhere and I don't really recall what I said to him or what he said to me.

But just the gist, I don't mean word for word but the gist of it. After, after you left off some steam - - -?---Yeah.

- - - towards him what did he say to you?---I really don't recall, he would have said most probably something nice, I don't know. I really don't recall the conversation.

30 But you've obviously spoken to him since that phone call?---Yeah, I've spoken to him since but we never talked about the Art Gallery.

What, you've never, ever talked about that, the Art Gallery?---I would have, in, in, later on, I don't know how long I possibly would have asked him how did you go at the Art Gallery, how did the Pelco go, stuff like that but I wouldn't have asked him why we didn't win it or anything like that.

Did he ever explain to you why Kings won the job, not you?---No.

40 Did you ever ask him to explain that?---No.

If you just have a look at Exhibit, I think it's 118?---Yeah. Is that one of these or a new one?

I think it's a new one. Do you remember writing this email to Mr Tony Morris?---Yes.

And if you go to page 330, at the bottom of page 229 - 329, 330, I'm sorry, I beg your pardon. Did you ever have a follow up from this email on 31 March with Mr Morris?---From him?

Yes?---I don't know, I can't recall.

Did you ever have an understanding that if you and Kings were bidding for a job that you would take turns as to who would win the job?---No.

- 10 Did Mr Paul ever say to you after he had told that you had not won that job that he would make it up to you in any way?---Not at all.

Excuse me just for one moment, Commissioner. They're my questions, thank you.

THE COMMISSIONER: Yes, thank you. Well, Mr Lloyd, I'm sure you would like to ask some questions?

MR LLOYD: No.

20

THE COMMISSIONER: Well, you enjoy surprising me, Mr Lloyd (not transcribable) no questions. Does anyone else want to ask Mr Grubisic any questions? Mr Andronos, would you like to?

MR ANDRONOS: Just, just one matter, Commissioner.

Mr Grubisic, you were asked some questions about the extent, the nature of your relationship with Mr Paul from 2002 onwards?---Yeah.

- 30 Firstly, you were asked some questions about being co-directors with Mr Paul in a company for 42 days in 2002?---Yes.

In what circumstances did you come to be a director of the same company as Mr Paul?---I sold 50 per cent of my company to ARA Group and then I decided after six months that wasn't for me and then they had to purchase the rest of the 50 per cent. Daniel worked there, it was Daniel and Ed Fetterman and Richard Wilson, they all became directors and as soon as they became directors and were able to do their job I resigned.

- 40 You and Counsel Assisting had a brief debate about what constitutes a friend. Did you – did you ever have – have you ever had Mr Paul around to your house for dinner?---No.

Have you ever been to his house for dinner?---No.

Do you socialise – have you ever socialised with him outside of industry functions?---No.

No. Have you ever taken him to the football or a concert or some other kind of entertainment?---No.

Have you ever met him for a drink after work?---During the day we've met up but not after work

Yes, thank you, Commissioner. Those are my questions.

10 THE COMMISSIONER: Yes, thank you Mr Grubisic, you are excused and you may leave the witness box?---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[4.32pm]**

MR STRICKLAND: Commissioner, they're the witnesses we have for today.

20 THE COMMISSIONER: The Commission will now adjourn.

**AT 4.32pm THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.32pm]**