

TILGAPUB01945
16/08/2012

TILGA
pp 01945-02014

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 16 AUGUST, 2012

AT 2.07PM

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

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

THE COMMISSIONER: Yes, Mr Strickland.

MS LONERGAN: Commissioner, I call Stephen Young.

THE COMMISSIONER: Yes.

MS LONERGAN: Mr Young is not legally represented.

10 THE COMMISSIONER: Yes, if you'd sit there, Mr Young, please. Is this the first time you've been in the hearing room?

MR YOUNG: Yes, it is.

20 THE COMMISSIONER: As a witness appearing before the Commission you are required to answer all relevant questions and produce any documents which you are required to produce and you must do this even though your answer or production may incriminate you or tend to incriminate you. But if you object to answering any question or producing any document your answer or the document cannot be used against you in any criminal or civil proceedings or disciplinary proceedings. Now, if you want me to give you that protection the easiest way of doing it is for me to make a declaration that all answers which you give and any document which you produce will be regarded as having been given or produced on objection and if you do this there's no need for you to object to each question or any particular question or answer or document. Do you understand that?

MR YOUNG: Yes, I do.

30 THE COMMISSIONER: Do you want me to make such a declaration?

MR YOUNG: Yes please.

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

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

10 THE COMMISSIONER: Now, Mr Young, that does protect you to the extent that I have explained but I should also explain that it does not protect you against any false evidence and any witness who gives false evidence in a public inquiry can be prosecuted and if convicted can face imprisonment of up to five years and the evidence you give here can be used against you for that purpose, that is to prove that you have given false evidence. Do you understand that?

MR YOUNG: Yes, I do.

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

MR YOUNG: Sorry, I missed the last part?

20 THE COMMISSIONER: Affirm the truth.

MR YOUNG: I'll affirm the truth.

THE COMMISSIONER: Ms Lonergan.

MS LONERGAN: Thank you, Commissioner.

Mr Young, could you state your full name for the record, please?---Stephen Young.

10

And Mr Young, you're the managing director of Boss Safes & Security Pty Limited?---Correct.

And Mr Young, you prepared a statement with ICAC investigators in May this year?---Correct.

That statement is Exhibit 147, Commissioner. Could the witness be shown a copy of his statement and, Mr Young, Mr Naylor, who is a barrister who acts for Mr Diekman, has some questions for you?---Sure.

20

MR NAYLOR: Mr Young, my name's Naylor, I appear for Mr Diekman? ---Yeah.

I want to ask you some questions if I may - - -?---Sure.

- - - just in relation to a small aspect of your statement that you've made in these proceedings. And you have a copy of that statement with you?---Yes, I do.

30

Okay. And you'll see at the back, at the very back of the statement is attached a copy of a quote - - -?---Yeah.

- - - dated 1 December, 2005, that starts at page 280, there's a page number on the top right-hand corner?---Yes.

And as I understand from having read your statement that's a quote that you prepared at Mr Huskic's request - - -?---Correct.

40

- - - in order to do remedial works for the purpose of fixing an alarm system that had been damaged by a lightning strike?---Correct.

And the particular aspect of your statement, Mr Young, that I want to take you to is the conversation that you had with Mr Diekman which you've recorded at paragraph 34 which is page 264, it's on the right-hand corner? ---Yeah.

And as I understand the sequence of events you say that you, you received a call from Mr Diekman quite out of the blue a short time before you

submitted this quotation that I've just referred you to?---I couldn't tell you how long exactly before the quotation but it may have been a couple of months before it but yes, I received a call out of the blue.

And you've set out there at 34, at paragraph 34, your recollection of what was said by Mr Diekman and what was said by you?---I don't work that way.

10 THE COMMISSIONER: I beg your pardon?---Pardon?

I didn't hear what you said?---I said I, are you asking me what was my reply to Charlie's phone call?

MR NAYLOR: No, I'm, I'm just asking you about paragraph 34?---Yeah.

And asking you to confirm that paragraph 34 sets out what your recollection is - - -?---Correct.

20 - - - of, as I understand this is what you're saying - - -?---Yes, correct.

- - - you received a telephone call from Mr Diekman?---Correct.

It was quite out of the blue?---Correct.

And you've recorded here in this statement - - -?---Correct.

- - - what he said to you - - -?---Correct.

30 - - - and what you replied?---Correct.

And you've gone on over the page at paragraph 38, the very last paragraph - - -?---Correct.

- - - to describe essentially what was said to you by Mr Diekman and you've described, you've described it as an invitation essentially to engage in a p
\rice fixing arrangement.

THE COMMISSIONER: Did you say that was paragraph 38?

40 MR NAYLOR: Paragraph 38, what you've - - -

THE COMMISSIONER: It says, "I have provided to Investigator Hillier".

MR NAYLOR: Yes, the, the last part of that paragraph, Commissioner.

MR STRICKLAND: I think it's 34.

THE COMMISSIONER: I beg your pardon?

MR NAYLOR: The last part, the last part of paragraph 38 says,
Commissioner - - -

THE COMMISSIONER: Says what?

MR NAYLOR: - - - "The date of quotation is 1 December, 2005. It was
shortly before this time that Charlie rang me - - -

10 THE COMMISSIONER: Yes.

MR NAYLOR: - - - suggesting that we price fix quotations - - -

THE COMMISSIONER: Yes.

MR NAYLOR: - - - for the (not transcribable)

THE COMMISSIONER: What is your question, Mr Naylor?

20 MR NAYLOR: I just am reminding you, sir, getting you to confirm if I
may that your description, that's your description - - -

THE COMMISSIONER: What's your description?

MR NAYLOR: The word price fix is your description of essentially what
was said by Mr Diekman to you, that he was inviting you to engage in a
price fixing arrangement?---This is incorrect.

30 In what way is it incorrect?---The Dalwood, at the time of the Dalwood
lightning strike, the discussion I only had was between Rob Huskic and
myself.

Yes?---And it was an emergency works because it was late or early
December I should say.

Yes?---And the school was going to close. And they needed the urgent
works done to get the site back up and running prior to school holidays.

40 All right. I'm sorry, I'm a little bit confused now.

THE COMMISSIONER: Yes, so am I. I really don't think you're
answering – I think you better start again or perhaps I can assist. Mr Young,
you've been to paragraph 34?---Yes.

And you've been asked whether you – whether that accurately sets out your
evidence about the telephone call that you received from Charlie Diekman?
---No, it doesn't. No it doesn't.

This is the statement you've made?---Yeah.

But you've been asked that – you were asked that by Mr Naylor three minutes ago and you said yes, it does reflect your - - -?---No, to the other, to the other paragraph.

I beg your pardon?---To paragraph 34 I think it was.

10 MR NAYLOR: Yes. Is paragraph 34 a correct account - - -?---Yes.
- - - of the conversation that you had with Charlie Diekman?---Paragraph 34 is, yes.

Right?---Yes.

20 THE COMMISSIONER: Well what's wrong with paragraph 38? That's what you're being asked?---Yes, paragraph 38, I never had a call about Dalwood in regards to pricing on Dalwood from Charlie Diekman. I never had a price.

It doesn't say that you did?---To fix the price.

Read it, just read the paragraph it doesn't say that you had a – this paragraph doesn't talk about another conversation you had. Just read the paragraph, you'll see what it means. It just tries to fix the time that you had the conversation in paragraph 34. It's only talking about that?---All right.

30 And it doesn't – what Mr Naylor is asking is – and I'm sure Mr Naylor will correct me if I've got this wrong, is he's asking you whether the term price fix, do you see the words price fix?---Yes, I do.

Do you see the context in which it's written?---Yes, I do, yes.

Now he is asking you whether the term price fix are your words describing the conversation that you had which is set out in paragraph 34?---Correct, well that's correct.

Yes.

40 MR NAYLOR: All right. Thank you. And going back to paragraph 34, the reply that you had made to Mr Diekman in that telephone call that you received from him you say was, "I don't work like that"?---Correct.

So you as it were refused his invitation - - -?---Correct.

- - - to engage in a price fixing arrangement?---Correct.

That's as I understand - - -?---Correct.

- - - the position that you take so far as this statement is concerned?

---Correct.

And it was after that conversation – we're not sure exactly how long, it was after that conversation that you submitted your quotation to Mr Huskic?---1 December I submitted my quotation, yes.

10 Yes, all right. And you were subsequently told by Mr Huskic to go ahead with the work?---Correct.

And then looking at paragraph 37 of your statement, my understanding is of what you say, two to three days after being informed by Mr Huskic to go ahead with the work you received another telephone call from Mr Diekman?---Correct.

And Mr Diekman had asked you for data to be uploaded into the system?---Correct.

20 And at that particular point in time, this was two or three days after you had the go ahead from Mr Huskic?---I don't know exact timing after Rob gave - the quote was dated 1 December and it had to go to the insurance company for approval, so I don't know the timing on that.

Well when you say within two or three days at the beginning of paragraph 37 is that correct or not?---Yes.

30 All right. And at that particular point in time you had the go ahead but you hadn't done any work?---Correct.

Hadn't done the job?---Yes.

You, you were arranging for the work to be done?---Correct.

But, Mr Diekman, in that - prior to that telephone call had done the work?---Ah hmm.

40 - - - that's - and I correct?---I asked Rob Huskic 'cause the hospitals always owed a lot of money they were always outstanding in what they were paying and I asked Rob Huskic if I could get a payment from the hospitals so we could continue to do the work.

Right. But is it your understanding that Mr Diekman or Kings had already done the work in relation to that particular job?---Only when I got a phone call from Charlie asking us if we could download the, the, the data into the panel.

THE COMMISSIONER: You found out that he had done the work?---Yes.

At that stage?---Yes.

MR NAYLOR: Now this first call that you got from Mr Diekman the one that you related in paragraph 34 you've said at paragraph 35 totally out of the (not transcribable) First line, paragraph 35?---Yes.

You've never met Mr Diekman before?---No.

10 Never had a telephone conversation with him?---No.

Never spoken to him at all?---No, I wouldn't know him if I fell over (not transcribable)

Well how did you know it was Mr Diekman when he, when - - -?---He, he identified himself as Charlie from Kings Security.

Right. Just Charlie from Kings Security - - -?---From Kings Security.

20 And you seem to have set out in some detail here in paragraph 34 what was said - - -?---Yes.

- - - do you know what you were doing at the time that you received the call?---I actually think it was at Manly Hospital waiting to go and have a look at a job.

Right. Did you keep a note of what was - - -?---No.

- - - said? 'Cause this statement is made 9 May 2012 - - -?---Yeah.

30

- - - some six and a half years later and your memory is so good that you can remember exactly what Mr Diekman said - - -?---I can remember it because it was very unusual - - -

THE COMMISSIONER: Just - - -

MR NAYLOR: - - - six and a half years before?---'Cause it was a very unusual phone call to have.

40 So how long was the phone call?---It was a brief phone call, one or two minutes maximum.

So and I'm correct in thinking that this statement is prepared from your memory in relation to a very short telephone conversation of about one to two minutes - - -?---Yes, it is.

- - - about six and a half years after the event?---Yes.

And its in relation to a call from someone you'd never met before and you've never spoken to?---Correct.

But you're able nevertheless to remember the detail of what was said?
---Well he identified himself as Charlie from Kings Security and - - -

Can I suggest to that call never took place?---No, that call did take place.

10 That you never had such a conversation?---That conversation took place.

And at no time did Mr Diekman ever invite you to engage in any (not transcribable)?---That, that did happen.

And you make the allegation now in relation to this price fixing arrangement because you were angry were you not?---About what?

You were angry with the fact that Kings had obtained the contracts for the alarm monitoring?---No. That hadn't happened at that stage.

20 See the first time that Mr Diekman called you was that second call was it not?---No.

The first time that he called you was when he phoned you to say can I please have the data to upload to the system - - -?---That's not correct.

- - - after the system had been fixed following the lightening (not transcribable)?---That's not correct.

30 And what was your reply to Mr Diekman's request for the data to be uploaded?---It was Charlie's job, Charlie should program it.

But you had control over the system had you not?---We had installed the system and we, we were providing it through the monitoring of the system but then once - the (not transcribable) system was being replaced, we had no control over anything then.

40 Did you have data in your possession that could have been uploaded to the system?---The monitoring centre would have been able to download some of the data.

Did you say to Mr Diekman in response to his request, "I can make appropriate arrangements through the monitoring centre for you - - -?---No, I didn't.

- - - for the data to be uploaded?---No, I didn't.

Why not?---Because again Kings had won the job and think it was Kings that should program it all back up.

Is it the case is it not, Mr Young, that you point blank refused to provide the data or to assist in any way to provide the data because you were angry at the fact that you lost the work?---I wasn't angry that - obviously nobody likes losing a job, I wasn't angry about not getting the job but Kings had won the job it was up to them to program the panel back up, it was a very expensive alarm system.

It was a case of sour grapes though was it not?---No, it wasn't sour grapes at all.

10

Mr Diekman in fact offered to pay you for the data did he not?---That's incorrect.

And you still refused, you said no?---That's incorrect.

Yes, thank you, Commissioner.

THE COMMISSIONER: Yes. Any other questions for Mr Young? Thank you Mr Young. You may be excused.

20

MS LONERGAN: Commissioner, I just have one short question in re-examination.

THE COMMISSIONER: Sorry, sorry.

MS LONERGAN: Mr Young, the conversation that you set out in paragraph 34 of your statement that you had with Mr Diekman, did that conversation stick in your memory?---Yes, it does.

30

And why did it stick in your memory?---Because it was an unusual phone call to receive.

And had you had any calls from other people who work in your industry suggesting that if you need the work I'll go up and if I need the work you go high?---No, never.

Never?---No.

And since this time has anyone ever made that suggestion to you - - -?---No.

40

- - - other than Mr Diekman?---No.

Those are my questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Thank you Mr Young. You're excused and the summons is discharged. So you may leave the witness box?---Okay. Thank you.

THE WITNESS EXCUSED

[2.26pm]

MR STRICKLAND: I call Adam Byrne.

THE COMMISSIONER: Mr Byrne, are you legally represented?

MR BYRNE: No, Commissioner.

10 THE COMMISSIONER: You were in the hearing room when I explained to Mr Young that I could make an order that gives you protection – that gave him protection against the evidence he was to give being used against him in any civil, criminal or disciplinary proceedings?

MR BYRNE: Yes, Commissioner, I heard that.

THE COMMISSIONER: You understood what I said to him?

MR BYRNE: I did, sir.

20

THE COMMISSIONER: Would you like me to make such a declaration?

MR BYRNE: No, sir.

THE COMMISSIONER: No. Very well. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR BYRNE: Oath, thank you, sir.

30 THE COMMISSIONER: Yes, would you administer the oath, please.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Commissioner, I tender a statement of Adam Byrne dated 8 May, 2012.

10 THE COMMISSIONER: Can you just give me the date again?

MR STRICKLAND: 8 May, 2012.

THE COMMISSIONER: Exhibit 198 is the statement of Adam Byrne of 8 May, 2012.

#EXHIBIT 198 - STATEMENT OF MR BYRNE DATED 8 MAY 2012

20 MR STRICKLAND: It was 198, Commissioner?

THE COMMISSIONER: 198.

MR STRICKLAND: Thank you. I'll just ask you to speak up and speak clearly, every word you say is being transcribed?---Certainly.

You have made a statement to this Commission on 8 May, 2012?---I have.

30 Have you read through it recently?---I have.

And you're satisfied that of it's accuracy and its truth?---That's correct.

Before the – I want to ask you about the contract for the UWS tender?---Ah
hmm.

Which was won by Kings Security. Before that contract was awarded to Kings Security, did you ever speak to Charlie Diekman?---No.

40 Did you ever advise anyone at Kings Security about when particular meetings of the Tender Evaluation Panel occurred?---No.

I want to ask you about your – one aspect of your statement. Could the witness please be shown Exhibit 198. I'll ask you to go to page 8, please.

THE COMMISSIONER: Are you talking about the page at the bottom?

MR STRICKLAND: That's correct.

THE COMMISSIONER: The page numbering at the bottom of the statement.

MR STRICKLAND: That's correct. Page 8 of 20. I just want to refer you to the part of your statement that deals with the poor workmanship of Kings Security and what was said to you by Daniel Paul about that matter?---Yes.

10 If you go to paragraph 25 over the page on page 9 of 20, you describe a conversation which Mr Paul had with you which was the flat floor teaching spaces was a difficult job and Kings Security were not familiar with that equipment, et cetera?---Mmm.

You're referring there to the earlier smaller contract that Kings were awarded before the larger Concept 4000 contract for all the campuses was awarded, is that right?---That's correct.

Do you have any technical experience about security products as at that date?---Zero.

20 Did you rely upon the advice of Mr Paul in relation to technical aspects of security products?---For this contract, completely.

After the contract was awarded to Kings was there a steering committee or a committee however, however described set up to implement the commissioning of the security installation?---Yes, there was.

Was it described as a steering committee?---Words to that effect, yes.

30 And who was on it?---It was a mix of UWS and Kings staff plus Daniel Paul as the consultant.

And who on UWS was on the steering committee?---Myself as the University security manager and Peter Guilfoyle. Peter is a, was the contracts administrator and not having the, any probity or procurement experience in government prior to coming to the University I asked that Peter actually come on board to provide guidance and advice.

40 Well, to your knowledge did he have that experience that you lacked?---Oh, absolutely, yes.

In relation to procurements of contracts and probity matters?---Absolutely.

Now, could I ask the witness to be shown exhibit 43. Now I want to turn, there are numbers on the right-hand, right, top right-hand corner, I want to refer to those numbers. This is a, these are minutes of meetings at the UWS Parramatta campus attended by the people referred to at page 707, do you see that?---Yes, I do.

And do you recall, if you just go to item 8, do you recall that there was a request for Kings to work with UWS to review documents and drawings to install as a variation to the existing contract 20 new security or access control in relation to 20 new rooms at Bankstown?---That's correct, that's the flat floor teaching spaces we spoke of a moment ago.

Are you sure about that?---I believe so.

10 Let me just understand this. There was a - Kings was involved in two contracts, isn't that right?---Yes.

Two separate contracts?---Yes.

One was in relation to flat floor teaching rooms at Bankstown and Blacktown, correct?---Yes.

And that was before the award of the, I'll describe it as the large contract in relation to - - -?---Yes, that is correct.

20 - - - all UWS campuses?---That is correct.

And that contract, that is the large UWS contract, was awarded, do you remember when that was awarded?---Yeah, it was separate to and prior to I believe.

I beg your pardon?---It was separate to, I don't recall the exact dates that it was awarded but it was certainly separate to I believe.

30 THE COMMISSIONER: Did you say prior to?---I believe so
Commissioner, yes.

MR STRICKLAND: What I want to suggest to you is that the smaller flat floor contract was awarded in July 2007 and the larger contract in relation to all campuses was awarded in November, 2007?---Yes, that would accord with my recollection.

40 Okay. And then after that, after the award of the larger contract you had a meeting which is minuted on 19 November, 2007. Do you see that?---Yes, I do.

And that relates to a variation of what I've described as the large contract?---Yes, now I understand, yes.

So was your earlier answer correct or incorrect?---Incorrect. What was being suggested now is correct.

Now if you go to item 35, does that also reflect your understanding that Kings were instructed to ensure that all correspondence was copied, was

copied to Daniel Paul and also that all correspondence generated by Mr Paul would be copied to yourself and Mr Guilfoyle and the other members on the panel that were meeting?---That's correct.

And what was the purpose of that?---It was to keep everyone in the loop so that we were all familiar at what stage the project was at.

10 Could the witness please be shown Exhibit 45? I want to first take you to page 727 and whether you recall sending an email to Mr Paul on 13 December and the contents of which are on page 728?---Yes, that is correct. That was, that was my email.

Now if you could then look please at the email at page 725 from Mr Paul to Mr Roche. When was the first time you became aware of the existence of that email?---During the course of this investigation I was showed it by the senior investigator.

20 And what was your reaction when you were shown that email?---I was quite surprised and I didn't understand why it had been done in that manner or why the email had been sent.

Why were you quite surprised?---I couldn't understand – there was no instruction that I was aware of – certainly nothing coming from me to increase the price.

Well there was a – was it your understanding there was some kind of benchmarking exercise for Mr Paul to be engaged in relation to getting prices?---Absolutely. Yes, that's correct.

30 And what did that involve to your understanding?---That involved – my understanding was a reference back to the wholesale price, what was to be considered a reasonable retail price and then what would be considered a reasonable price by Kings given an accepted mark-up of some percentage from, from them actually purchasing from wholesalers.

Did you ever instruct Mr Paul to tell Kings or to negotiate with Kings to increase their prices?---No.

40 THE COMMISSIONER: The evidence you've given about your understanding of the benchmark price was that an understanding shared with others?---That was my understanding of what the benchmark was, was undertaken to achieve. So it was - - -

How did you get that understanding?---Because we had in the meetings that we had, we had spoken about the need to ensure fair and reasonable pricing. And the object of the exercise for benchmarking was to ensure that the prices that were given to us by Kings were both fair and reasonable.

So was the benchmark agreed by all at the meetings?---Well, the difficulty with it is myself not having any technical experienced, Peter Guilfoyle not having any technical experience, we weren't, we didn't have a set quantum that we thought was reasonable.

No, I understand that. I'm sorry, I haven't put my question with clarity. What I'm asking you is whether – not whether any particular amounts were agreed but the method of determining the benchmark price was that agreed?---Yes, that was my understanding, yes.

10

At, at the meeting?---At the meeting, yes.

By, by whom?---By those present which would be myself, Mr Guilfoyle, Daniel Paul and that was - that would have been it, I think.

Yes, thank you.

MR STRICKLAND: Well did you hear anyone at such a meeting either a formal meeting or an informal meeting instruct Daniel Paul or advise Daniel Paul that he should speak to Kings or negotiate with Kings to increase a price of the various products?---No.

20

THE COMMISSIONER: Would there be any point in saying that to him?--Any point in increasing the price?

Yes?---Not to my knowledge, no. I, I couldn't think of a reason as to why we would want to. I mean the way that we had set this, the Government structure up, Commissioner, was that if we had needed a variation, a variation would have been issued.

30

MR STRICKLAND: All right. Mr Paul has given evidence of this inquiry, this is at page 1021, he was asked this question, "What possible reason could your client have, as in UWS, have to ask Kings to increase their price if they price that they pay more", his answer was, "Most likely to bring it under a warranty or some sort of - I don't recall the detail of that, I don't recall the specific details but it was related to some sort of warranties or were using product from us as in from UWS, I class as, as in our stock. I don't recall the detail of that." Do you recall having any discussion of the need to increase the price to ensure that there was a warranty or some extra warranty in relation to the products you were purchasing?---No.

40

If that were so - I withdraw that. Mr Paul also gave some evidence, this is at 1032. Sorry 1031. He said in relation again to this an explanation - he's asked for an explanation as to why Kings - why UWS would have instructed him to tell Kings to increase the price. He said, "If we're having an off the record conversation with the client with a group of people within the client and the and the client says to me you need to, you need to assist the contractor to massage those numbers to accommodate the needs of our

documentation of our requirements for the tone of the project as in built - as inbuilt drawings et cetera. They're not going to, they're not going to put that in writing to me, they're not going to say Dan tell them to put up their prices. It's going to be an off the record conversation." Do you have any recollection of a discussion that he should - that Mr Paul should speak to Kings about increasing the price to include any as built so if there's any technical drawings or schematics?---No, no.

10 Was there any instruction conveyed either expressly or implicitly to try and hide the purchase of any items and to reflect that in any increase in the price?---I've gone through my own meeting minutes, any correspondence that I have that relates to that time period whether that includes this period of - this, these, these meetings or not and I can find absolutely no reference to any discussion that I've had. I certainly haven't had one on one and there's certainly no reference to it where as a group we gave that instruction.

So is the answer to that question no. You - - -?---Sorry, yes, yes.

20 - - - you recall no conversation of that kind?---I, I recall no conversation of that kind.

Can you see any reason now why UWS either yourself or anyone from UWS might have instructed Mr Paul to negotiate with Kings to increase the price?---No. Warranties were covered, well ought to have been covered as per well standard warranty, much like buying a television as built.

30 What, sorry. What do you understand by as built?---As built are really the, the electronic schematics of an electronic security system that shows where wiring is, what wiring could - what - where the relays are, all those sorts of things. So they're basically they're technical drawings to give instruction to future reference as to how its system is designed and what the electronic circuitry is and, and what yeah, what it hooks into.

So you were saying, you were saying in relation to as built, what were you about to say about that?---Look, they're necessary, absolutely.

40 No, my question is what was you, you were going to say about as built in relation to discussions you had with Mr, or instructions to Mr Paul about an increase in the price?---Okay. I don't have any recollection about increasing the cost to supply as built, to include the supply of as built.

As-built is two separate words, as new word built is that right?---Yes, yes, it's a, I guess it's a term that's used, is a techo type phrase.

Do you now have a greater technical knowledge than you had back in 2007? ---Substantially.

Could the witness please be shown Exhibit 49. Just go please to page 730, this is a minutes of a meeting on 17 December, '07 and you can see in item 7 there's a, a minute of what occurred in the meeting which is that UWS reviewed the equipment and scheduled prices from Kings and advise as follows. Was it your understanding that the prices and the items listed in that item were the prices submitted to UWS for review by UWS and the committee?---That's correct.

10 You had no knowledge - I withdraw that. You had no knowledge, did you have any knowledge at that time of any correspondence between Kings and Mr Paul about the prices which you had not seen?---No.

Thank you. Could the witness please be shown Exhibit 50. And just perhaps to save time perhaps at the same time Exhibit 50, 52 and 53, just all at once. If you can just keep Exhibit 45 if you, just, just keep it with you. If I can just first take you to Exhibit 50, the email from Daniel Paul to yourself, copied to Mr Guilfoyle. You refer to I believe Kings are low in some areas and slightly high in others. Did you take that email at face value as to what prices were low and what prices were high?---We, we had no
20 reason to take it any other way so - - -

Did you know at that stage that there'd been negotiation with, by Mr Paul with Kings to negotiate or increase the price?---No.

Go to Exhibit 52, at page 734 there's an email from Mr Paul to you on 18 December suggesting that Kings be used for security work or to install security work in relation to other matters, do you see that?---Yeah.

30 THE COMMISSIONER: Where is that, Mr Strickland?

MR STRICKLAND: That's on page 734.

THE COMMISSIONER: Yes, what part, what paragraph?

MR STRICKLAND: The second full paragraph, "By using Kings for the security works and Elite for network and electrical we have no" - I should just, sorry, I'll make one thing clear. Whose writing was the bold print? Does yours have different types of print, bold and non-bold?---Yeah. It's, it's, it's, it's certainly not mine.
40

"By using Kings for the security works and Elite for the network and electrical we have no grey area, it is all tidy." And then it says, "Tasks to be carried out, to pre programme two Concept 4000 panels. This should be done by Kings as a variation to their works." Do you see that?---Yes.

Did you understand that to be a recommendation by Mr Paul that there was further work to be carried out and in relation to that item it should be done by Kings?---Yes.

The third star point to install new two-door reader modules and card readers should be performed by Kings. This is still on page 734. Do you see that?--
-Yes.

To supply and install an indicator, sorry an isolator, power mini expander, et cetera again by Kings under their contract. And I won't read it all but if you go through 735 there are more items that are specified recommending that Kings do certain work or supply certain items. Is that correct?---Yes.

10

At that stage I take it from the email that no decision was made to award Kings any further variations under that contract. Is that correct?---Yes, that's my recollection, absolutely.

Now if you go to page 738 you should have some metadata in relation to the same email on 18 December, 9.41pm. And if you go to page 739 you can see that that email was blind copied to Mr Roche?---That's correct.

20 Were you ever advised by Mr Paul that he would be sending on his email to you to Mr Roche or to anyone at Kings?---I don't believe we ever had any such conversation.

And - - -?---The work hadn't been allocated at that point.

So when you became aware of this email which had been blind copied to Mr Roche what was your reaction?---I was somewhat surprised because as I mentioned a moment ago the work hadn't been allocated to either Kings or Elite at that stage.

30 Can I just take you – do you still have Exhibit 45?---No, I don't.

Sorry, I beg your pardon.

THE COMMISSIONER: Do you want him to have it Mr Strickland?

40 MR STRICKLAND: Yes please, I beg your pardon. If you just – I forgot to ask you at the bottom of page 725 there's an, the email continues at the bottom of the page, "Daniel, in response to the questions sought by UWS we respond as follows", and then the evidence is that the, you see how there's different coloured marking, different coloured print or different style of marking?---Yep. The font is heavier, yes.

The bold coloured print is Mr Paul's. So for example under the heading Additional Doors at Bankstown, the writing unless otherwise instructed et cetera, is Mr Paul's additions. Do you see that?---Sure. I accept that.

Are you surprised that Mr Paul would include – would add those items to an email?---Well the agreement in terms of communication was always that all communication goes through all parties, so yes.

THE COMMISSIONER: You mean you're surprised because it didn't come to you?---Absolutely Commissioner, sorry, that's what I meant yes.

MR STRICKLAND: If I could take you to Exhibit 53, please which is an email from Steve Kuryj to Mr Paul. Do you have that?---Yes, I do.

10

Attaching a financial payment claim schedule. And then if you go please to page 752 of that exhibit there's an email from Mr Paul to Mr Kuryj saying, "looks okay, but why aren't you making any progress claims for installation works only monthly? I'd be inclined to claim differently". Did you ever instruct Mr Paul to have any communications with Kings about the structure or the manner in which they would make progress claims for the installation works?---No, I recall no such discussion both individually or as a group.

20

And again were you first, you first were made aware of that email during the investigation of this matter by ICAC, is that correct?---Yeah, that's correct. Your senior investigator showed me.

What was your reaction when you learnt of this email?---Again I was somewhat surprised, I just - I don't know why it was, it was, it was sent. The University pays, we're, we're good payers, I don't understand why we would involve ourselves in, in, in readjusting a payment schedule.

30

When you say we do you mean Mr Paul?---Yeah. Well including Mr Paul, yes. Yes. Acting on our behalf. I don't - I'm at a loss.

Now could those, could those exhibits be returned, please. And could the witness please be shown Exhibit 55. I apologise for that. Exhibit 54. Now did you receive an invitation from Mr Paul to attend a security exhibition in Las Vegas in March 2008?---Yes.

And did you receive this, this document Exhibit 54?---Yes.

Did you also receive any phone call from Mr Paul about the matter?---Yes.

40

And what did he say when he rang you?---That he had emailed or sent a letter inviting me to a conference in Las Vegas called ICS West and that it was a all expenses paid trip should I be inclined to accept it.

And did you accept the invitation?---No.

And why, why not?---The University's Gifts and Benefits Policy, simply that it doesn't allow the acceptance of a - the acceptance of a gift as generous as this.

Did you - were you friends with Mr Paul at this stage?---Look I think we had a, what I considered a reasonable working relationship, absolutely.

All right. But did you socialise with him?---No.

Or did he invite you out for social occasions?---Not really. I had a, I had an invite to - I had an email once inviting me to his daughter's christening which I just politely said thanks but no thanks but that was pretty much it.
10 We didn't, I mean we didn't see each other socially, we weren't friends outside, we didn't share the sort of the, sort of common experiences.

In relation to the invitation to attend the ISC conference when he rang you about it did he, did he give you any explanation or reason why you should attend?---Yeah ,absolutely. Sold it as probably the best opportunity internationally to look at new products, what was coming up in the market both from I guess what's happening in Australia as well, what's happening all around the world as well as opportunity to network with other security managers.
20

That could be returned. If Mr Byrne could be given Exhibits 57 to 60. If I could take you first to Exhibit 57 page - if I could take you to 813. I beg your pardon. 812. The bottom of that page is an email from Daniel Paul to Gary Meyers of CSD copied to Paul Riordan, Charlie Diekman and yourself?---Ah hmm.

The subject being quotation for the purchase stock for UWS. Do you see that?---Mmm.

30 And Mr Paul states in that email, "As the consultant for UWS I have been asked to source the purchase price for the additional stock required to complete the project." Do you recall asking Mr Paul to obtain additional stock required to complete the project or do you recall him being asked by someone to do - - -?---Yes, that is correct. I remember him being asked to look at what that cost would be.

And had, had, was the stock required to complete the project depleted at that stage?---It was on its way to being completed and we'd been advised by Kings that further equipment was needed in order to complete the project.
40

So what were his instructions in relation to obtaining stock to replenish the depleted stock?---We were looking for the most cost effective way to the University of obtaining more stock. Now, whether that was buying direct from the manufacturer thereby cutting out the potential mark up from Kings or buying direct from Kings.

Now if you just go over the page to 812 you will see, "I will be pleased if you could provide me with a price for each of the listed items in the same

email and a total purchase price please, such that the University may choose to buy directly from CSD"?---That's correct.

And that reflected his instructions, is that correct, from UWS?---That's is correct, yes.

To be more precise it reflected Daniel Paul's instructions from UWS, is that right?---That's correct.

10 So did you instruct Mr Paul that he should advise CSD to speak to Charlie Diekman before obtaining any prices from Kings?---No.

So if you go to page, still on Exhibit 57, still on page 812, you can see that a minute after he sent this email to Gary Meyers copy to you, he sends another email to Gary Meyers under the subject "Please read" and it says, "Please speak with Charlie prior to responding". Do you see that?---Yes, I do.

20 And I take it you weren't aware that that was what he was, what Mr Paul was going to do?---No, I wasn't included in that email trail.

I understand that but my question is I, is it correct to say that you did not know he was going to do that?---That's correct.

And were you, were you surprised when you first learnt of that particular email?---Absolutely.

30 Why is that?---Because there would have been no reason to have a conversation with Kings at that point.

Now, if you go please to Exhibit 59 there is an email from Gary, sorry, on page 820 there is an email from Gary Meyers to Mark Cunnington which appears to be a draft email to be, to be sent to Daniel Paul and that that draft email was then sent on to Charlie Diekman, do you see that?---I do.

And what do you have to say, was that pursuant to any instructions from UWS?---No, again, I don't know why Kings were involved in, in the pricing.

40 And do you have a, do you, do you know why Kings were sent a draft email from CSD to write back to Mr Paul?---There was, there was no instruction from the steering committee in relation to those discussions, no.

And then if you go to page 819 an email from Gary Meyers to, to Charlie Diekman, subject, "How about this." Email, "Sorry, Charlie, cut paste issue, how about" and then setting out some descriptions of items together with their retail price and the total cost, do you see that?---I do.

Again, were you surprised when you first learnt of this email?---Yes, again, I don't understand why Kings would be involved in the, in the pricing.

And that was not pursuant to any instructions that you had either (not transcribable) by yourself or as a group, is that correct?---Certainly nothing that I had individually and nothing that I recall as a group, no.

10 Okay. Thank you. Yes, I've finished with those exhibits, thank you. Did you know during this period, that is at any time before the contract was awarded to Mr, to Kings or during the period we've been talking about that Mr Daniel and Mr Diekman were friends?---No.

Did you know that they had a gambling relationship where they gambled and Mr Diekman paid money to - - -?---Absolutely not.

Would that have concerned you had you learnt that?---I think so yeah, absolutely.

20 Why do you say that?---Because I guess what it does is it dilutes the independence of the consultant.

Would you excuse me, Commissioner. Yes, they're my questions, thank you.

THE COMMISSIONER: Yes. Mr Lloyd.

MR LLOYD: Mr Byrne, I'm going to be asking - - -

30 THE COMMISSIONER: Mr Lloyd represents Mr Paul?---Oh thank you, Commissioner.

MR LLOYD: Have you got your witness statement there?---Yes sir, I do.

And I'm going to take you to parts of it?---Certainly.

I see that from 1991 to 2003 you were a police officer?---That's correct.

40 And I understand as part of your training at the police training school you were taught the importance of keeping contemporaneous notes of important conversations?---Yes, absolutely.

And do you have any notes of any of these conversations that you say you had with Dan Paul?---No.

And these conversations you've been referring to today took place at as I understand it in the second half of 2007?---That is correct, yes.

And when were you first asked by anybody to remember these conversations?---When I was first presented with a series of (not transcribable) a request by the Commission to submit documentation.

When was that?---Last year.

2011?---Yes, sir.

So at least four years after these conversations took place?---Yes.

10

And you've not been able to refer to any notes of these conversations to refresh your memory other than the documents we've referred you to?---No. I have no aid memoirs, no nothing.

So it would be fair to concede that your memory of these conversations may be imperfect?---Some of them yes but some of them were so unique that I have, I'm reasonably clear of what I can recollect. But I would concede half of that is possible, yes.

20

Because it would be humanly impossible to remember all the conversations wouldn't it?---I don't disagree with you, sir.

And of those conversations you do remember you wouldn't be saying as I understand it that they're word perfect in your memory?---Word perfect?

Yes?---No, sir.

30

Now as I understand it, generally speaking, prior to this tender being awarded for a contract around \$1 million between UWS and Kings there was an existing contract between Kings and a company called ISIS for Kings to supply access controls at the Bankstown campus of the University?---That's correct.

This is the smaller contract we're referring to?---Sure, I understand.

And this was a contract between Kings and ISIS wasn't it?---That's correct.

UWS was not a party to that contract?---No, sir.

40

And as I understand it the contract that needed to be entered into between the successful large tenderer, I'm talking about the main job now and UWS was to provide various things which were set out in the specifications? ---That's correct.

And those specifications were not prepared by Dan Paul were they?---That's correct.

As I understand it they were prepared by another consultant?---That's correct.

And who was that?---Chris La Greca.

Which company?---Operating with a company IPP Consulting.

10 And in relation to that large contract amongst other things that needed to be included and I can take you to the documents. I don't think it's been tendered yet but I was given this morning a large bundle of documents including the tender specifications which out in the invitation to tender and I'd ask that you'd be shown that. And this is at page 365 of the bundle I was given today.

MR STRICKLAND: That should be in the - sorry, it should be in the statement of Mr Byrne Exhibit 198.

20 THE WITNESS: 36, 365, yes. Thank you. Sorry, sir, I'll just - I won't be a moment.

MR LLOYD: As I understand it, it commences at 365. I imagine it's going to be tendered at some stage by counsel assisting so it might be - - -

THE COMMISSIONER: It's tendered.

MR LLOYD: It's tendered?

30 THE COMMISSIONER: Yes. It's part of Exhibit 196. Exhibit 196 is Mr Byrne's statement.

MR LLOYD: And annexures.

Then you can see that the general project requirements that are listed on page 366 and onwards, they're numbered in the top right-hand corner? ---Yes, that's correct.

I want to take you over to page 368 to section 5?---Yes.

40 Testing and commissioning?---Yes.

And specified in part of the contract price with a various items listed there, correct?---Yes.

They include those various documents at part 5.2 which include amongst other things operating manuals, installation manuals, maintenance manuals, manual presentation, correct?---Yes.

And all those items cost money don't they?---Yes.

And they can be of reasonable expense?---Yes.

Did you ever see the contract between Kings and ISIS for the access controls that Kings was to supply at Bankstown?---No, sir, I don't believe I was privy to that contract.

10 And I want to suggest to you that you'd know that these sorts of items were not required under that contract to be supplied?---In the absence of being able to see the contract I can't assist you.

You can't say can you?---No, no, sir, I can't.

In any event Kings were to carry out their contract with ISIS and as I understand it is broadly related to the 21 extra doors that are being referred in the minutes, correct?---That's correct.

20 And you are looking at these specifications were satisfied that this was a state of the art access control system, correct?---As best as I was advised, absolutely.

And as I understand it broadly when Daniel Paul took over as the consultant on this tender committee this was to integrate the access control systems campus (not transcribable) correct?---It was to upgrade existing equipment and add additional equipment based on the growing needs of the University.

30 Indeed and you wanted a state of the art system?---We wanted the technology that best available at the time. We weren't looking for Rolls Royce, we were happy for a Ford but we wanted it to work.

Okay. And as I understand it you wanted extra work done on that area the subject of the contract between Kings and ISIS?---We wanted extra work done.

40 You wanted extras provided by Kings that weren't a matter of their contract with ISIS?---Without - the ISIS project was managed by a project manager as part of Capital Works without being privy to how that contract was managed that would be very difficult for me to, to make comment on in terms of the discourse between Kings and ISIS.

Indeed. Because you weren't a party to the contract?---No, I wasn't.

But you wanted the same quality from that job as you were getting on this large tender?---We had a specification that I guess detailed the standard of workmanship and it was our expectation that this standard of workmanship on the main project was the same as any other small project that was being undertaken whether it be by Kings or any other systems integrator that the University was using. So to answer your question, yes.

Thank you. And I think it's fair to say in relation to Daniel Paul that he was keen for Kings in their job with ISIS to ensure that the quality of their work there was to the same specifications as you were requiring under the head contract?---We required that of Kings, yes.

10 And I think it reflected in the minutes and I can take you to them that there was some dispute between Kings and UWS as to what extras they could do on that area that was a subject of the contract between themselves and ISIS?---I don't recall that discussion but if it's minuted - - -

Well let me, let me take you to the minutes. And I don't know whether we have them all but the ones that have been provided to me I'll take you through. It's picking it up at the, the very beginning. Exhibit 43 if you could be shown that. This is an email of 21 November. The first page of the exhibit, 705. Are you with me?---Yes, sir.

20 It appears to attach the minutes of the meeting of 19 November '07?---I have those minutes, yes.

And I see the attendees at these meetings were not only yourself and Peter Guilfoyle and Daniel Paul but included Peter Roche and Steven - - -?---Kuryj?

Kuryj?---That's correct.

Of Kings?---That's correct.

30 And various items obviously were discussed at the meeting?---Ah hmm.

And looking from the covering email dated 21 November, that's at page 705 it would appear in the third paragraph those meetings were to be fortnightly?---That's correct.

Just going to the note. The scheduled meeting nominated for 3, that is 3 December?---Ah hmm.

Is that fair?---Yes, sir.

40 "Is in addition to the need to get together prior we're expecting to receive the program, I'm happy to sit with Kings to offer guidance or answer questions if required." Are you with me?---Yes.

And that was to be Daniel Paul sitting with Kings and answering their queries and giving them guidance?---Yes.

Because as I understand it you were relying on his expertise?---Absolutely.

You knew nothing about the technicality of these areas did you?---That was why Daniel Paul was brought on?---Was he.

And you weren't being requested to sit at these meetings with Kings when Dan gave them guidance were you?---No.

Well you didn't stop here did you at this stage and say Dan, if you're having any meetings with Kings I want to be present?---No.

10 He had many meetings with Kings staff to your knowledge where you weren't present?---Right.

But I'm just asking you - - -?---No, I don't know, I don't know.

Well - - -?---Some of them.

Well certainly he's telling you here he's going to have me - - -?--- Absolutely, no, I, I agree with it.

20 You didn't pull him up and say if you're meeting with them include me? ---Sure. I didn't get it, no-one of us did, neither Peter Guilfoyle or I did.

And you were aware that he was going to be in communications with Kings frequently in his supervision of them undertaking the job?---I would have, part of his role would have been to have that communication with him, sir, with them, sir.

Indeed?---Yes.

30 And it doesn't surprise you that not every email contact he had with them wasn't sent on to you?---It doesn't surprise me that every email contact wasn't sent on to me. It does surprise me the financials were discussed with them thought.

Okay, I'll come to that. But just taking it step by step you weren't surprised that not every email was sent to you?---No, I concede that.

Well, technically that's a breach of the agreement isn't it?---(No Audible Reply)

40

Technically?---Technically.

But it didn't worry you. The bottom line was by the sounds of it you wanted to be included on important communications, correct?---That's correct.

But again, that's a matter of degree and judgment isn't it?---Sure.

Thank you. Well, let's go to the first minutes that are annexed here. They go back to 19 November, this is at page 707?---Ah hmm.

Let's go to item 8 and it would appear from this that both Peter Roche and Steven Kuryj are present at this meeting?---They are listed as attendees.

And as I understand it Daniel Paul was the one that kept these minutes?
---That's correct.

10 And he circulated them afterwards for anybody to correct?---That's correct.

And they of course were discussed at the, at the next meeting?---Ah hmm.

So going to item 8 requests for Kings to work with UWS to review associated documentation drawings to install as an extra variation to the contract and install access control box including newly nominated rooms at Bankstown?---Ah hmm.

20 As I understand it this is a reference to the contract between Kings and ISIS for the, the extra rooms, correct?---Yes, I believe so.

Thank you. And when it says "request for Kings" this as I understand it was to be a request by Daniel Paul to Kings to work with UWS. He was to be the interface between Kings and UWS?---That's correct.

And that's the same throughout?---Yes.

30 He was always to be the interface between the contractor, yourself and the other members of this meeting?---Sure.

"Review associated documentation and drawings to install an extra variation to the contract." Now, I want to suggest to you that it was discussed with you in one or more meetings that in relation to the Bankstown campus installation of these doors Kings had not been required under their contract with ISIS to supply the types of items that I've taken you to in part 5.2 of the main tender.

40 THE COMMISSIONER: Mr Lloyd, I don't understand the question. I'm sure it's my fault.

MR LLOYD: No, I'm sure it's my fault, Commissioner.

THE COMMISSIONER: It's a rather long question.

MR LLOYD: You've got the big bundle in front of you, I'll take you to page 368 of that.

THE COMMISSIONER: Sorry, the big bundle. Are you talking about - - -

MR LLOYD: His annexures to his statement.

THE COMMISSIONER: Yes, it has an exhibit number, 198.

MR LLOYD: 198.

THE COMMISSIONER: So are you going to page 353 did you say?

10 MR LLOYD: I'm going to 368.

THE COMMISSIONER: 368. Yes.

MR LLOYD: And I'm suggesting to you that there was discussion between those at the meeting include Peter Roche and Steven Kuryj that UWS, quite rightly, wanted the same standard of documents as are listed here on page 368 at 5.2 in relation to the ISIS/Kings contract.

20 THE COMMISSIONER: Sorry, Peter - Peter you say - you're putting that there was a discussion at some time.

MR LLOYD: In these meetings.

THE COMMISSIONER: In this meetings about, about a contract involving Kings and ISIS but not the, that Kings, ISIS and the University, is that, is that what you're putting?

30 MR LLOYD: The witness has already accepted if I've understood his evidence correctly, Commissioner, that item 8 on these minutes of 19 November, that is part of Exhibit 43, relates to the contract between Kings and ISIS. Those 20 or 21 doors as they became were the subject - - -

THE COMMISSIONER: This says 20 rooms, I'm sorry. I'm not familiar with the contract, I'm just looking at the, at the item, it doesn't say doors, it says rooms.

MR LLOYD: Well, you've got to get into a room and you get into a room - - -

40 THE COMMISSIONER: Well, you said those doors, I don't know what those doors - - -

MR LLOYD: Well, you get into a room through a door as I understand it. Is that right?

THE COMMISSIONER: Well, Mr Lloyd, you don't have to do that. Really, let's try and get to the point.

MR LLOYD: I'll get to the point. Mr Byrne, as I understand it the access control was effectively a security device to stop people getting through a door into a room?---At, at its most basic level it, it allows you to confirm or deny access to a, to a room or to a series of rooms.

That's right?---Absolutely.

But as we see getting on this door into this room?---No, no different to any of the rooms here.

10

Okay.

THE COMMISSIONER: So what, are you saying that the initial access control to the 20 newly nominated rooms at Bankstown was to be done under a contract with who, between who.

MR LLOYD: Kings and Isis?---That's correct.

Yeah. Indeed. That wasn't part of this major tender?---No.

20

And I'm suggesting to you that under that contract between Kings and Isis over which you had no control you'd been informed by Daniel that the same documentation required under the large tender to the degree of specificity had not been included in that contract but he thought it was needed to bring it up to the same standard?---I wasn't, not being privy to the ISIS contract I can't, I guess I can't say yes to that.

But you're being asked about whether you were party to a discussion about that?---No, I, I don't recall having a discussion with regards to bringing the ISIS project up to the standard as the major access control project if that answers your question.

30

Okay. But it may have occurred and you've forgotten?---I, I can't answer a hypothetical unfortunately, sir, I just - all I can say is I have no recollection.

You have not record of it but you're not saying it never occurred?

---Looking at the types of documentation, we're talking about an add on to an existing infrastructure so operating manuals wouldn't be required, installation manuals wouldn't be required, maintenance manuals wouldn't be required, as built would be required.

40

As built, as built would be required - - -?---Yes.

- - - as installed drawings would be required?---The same thing, sir.

THE COMMISSIONER: I'm not, I am afraid I don't actually understand this because if it's technical and I don't have a technical know-how, can you

just explain to me please why you mentioned all those drawings? They're not part of what?---Commissioner, in section 5, page 368 - - -

Yes, there is a list of documents that are a part of the main contract - - -? ---There's the rest of the documentation. My, my comment to, to Mr Lloyd was that those documents wouldn't have been required.

Sorry, your comment was that the documents in 5.2?---Would not have been required - - -

10

By?--- - - - as part of the ISIS project because they were already be captured by the larger project.

And why is that - I don't understand why that's a reply to the question. I don't know what, what question is that a reply to? I don't, I'm not following this.

MR LLOYD: I'll try and clarify it.

20

Under the head contract there was no obligation on Kings, this is the specification you're looking at, you won't find anywhere in here will you in this document which is lengthy, some, I don't know, 53 pages long?---Sure.

Nowhere in there does it specify that Kings in relation to the 21 doors at the Bankstown campus - - -

THE COMMISSIONER: 20 doors.

30

MR LLOYD: 20 doors, it later became 21 I think, is that fair or you don't recall?---Yeah, I can't recall, I'm sorry.

Okay, we'll stick to 20. Nowhere in this contract are Kings required to do anything in relation to those 20 doors are they?---That's correct.

But I'm suggesting to you to make those 20 doors access control work effectively you'd need things such as the as installed drawings, fair? ---It would be nice to have, it won't affect the ability of the, of the rooms to operate as required though.

40

On a base grade contract? Why do you say they would be nice to have?--- Because it would be good to know how the circuitry is installed.

In case something went wrong?---Absolutely.

So if something went wrong in order to fix it and fix it economically you'd like to have the as installed drawings wouldn't you?---That's correct.

And one would assume that's why they were put into the specifications for the head contract?---That's correct.

THE COMMISSIONER: But the head contract has got nothing to do with the door so why is it – I don't understand why it would - - -

MR LLOYD: Exactly.

10 THE COMMISSIONER: - - - be nice to put them into the head contract when the head contract doesn't deal with the doors. I just don't understand.

MR STRICKLAND: Mr Commissioner, can I just also raise a matter. I think there is some confusion of terminology. The minutes refer – it's a reference to the notion of new contracts. The minutes of the meeting that had been referred to is November 2007 meeting referred to this new scope of works as a variation to the contract. The reference to ISIS – I'm just trying to assist - - -

20 THE COMMISSIONER: Well what – sorry - - -

MR LLOYD: That's not right.

THE COMMISSIONER: - - - I am lost in this. I don't know what - - -

MR LLOYD: I'll ask the witness. He was there, we weren't, Commissioner.

30 MR STRICKLAND: No but I'm just, I'm referring to a document that's already in evidence.

MR LLOYD: Yes, I'll take him to it. You've got the minutes in front of you. Correct?---I do.

The contract that's being referred to there in item 8.

THE COMMISSIONER: Where? Where?

MR LLOYD: I think you've already - - -

40 THE COMMISSIONER: In what item?

MR LLOYD: Item 8 on page 707.

THE COMMISSIONER: Yes. The contract that's being referred to, what contract is being referred to in item 8?

MR LLOYD: I'm about to ask him. That contract is the contract between Kings and ISIS.

THE COMMISSIONER: I'm sorry, you say it refers to that contract in 8. I read 8 it doesn't refer to a contract.

MR LLOYD: Extra variation to the contract, right in the middle of items.

THE COMMISSIONER: I beg your pardon. So well can you just draw attention to that word and ask what is your question in relation to the contract referred to in item 8? What question are you asking?

10

MR LLOYD: Well first of all let's work out what contract it is.

THE COMMISSIONER: Yes.

MR LLOYD: As I understand it that's the contract between Kings and ISIS?---If that was the case then it wouldn't be a variation though, sir.

It wouldn't be a variation if they'd already agreed to include these things.

20

MR STRICKLAND: I'm sorry Commissioner, I do object because in my submission – I'm happy to do this in the absence of the witness, there is a – that's why I stood on my feet the first time. There's a conceptual confusion.

THE COMMISSIONER: All right. Do you mind, do you mind just leaving the witness box and going outside?---Yeah, sure.

And you'll be recalled.

30

THE WITNESS STOOD DOWN

[3.32pm]

40

MR STRICKLAND: Mr Commissioner, this is my understanding and it may be incorrect. This is my understanding. There is what we have described all along as the larger contract, which is the contract to install security equipment across all campuses. After that, that was the November 2007 contract. After the contract was awarded there is a meeting of what is now referred to as a steering committee on 19 November 2007, it's at page, the minutes of those meetings at page 707. The relevant item at page 8 requests Kings to, Kings to work with UWS, that's an important phrase, to review associated documentation and drawings to install as an "extra variation" to the contract. In my submission that refers to the large, what we refer to as the large contract, these extra 20 rooms.

THE COMMISSIONER: Well the contract about which these minutes were concerned.

MR STRICKLAND: Exactly.

THE COMMISSIONER: Yes.

MR STRICKLAND: Now there is – if you go to page, if you go to Exhibit 51.

THE COMMISSIONER: Yes.

MR STRICKLAND: Do you have that Commissioner?

10 THE COMMISSIONER: Yes.

MR STRICKLAND: There's a reference – this is an email from Mr Paul to Mr Roche, there's a reference to an order from ISIS at paragraph 1. Do you see that?

THE COMMISSIONER: Yes.

MR STRICKLAND: And then if you go to page 743 there is a, there is a letter from ISIS to Kings which refers to an intention to enter into a
20 subcontract with Kings to carry out the security services scope of works. In other words that is there is a subcontract, this is a document - - -

THE COMMISSIONER: This is 7 December.

MR STRICKLAND: That's so.

THE COMMISSIONER: This is after the main contract has been entered into.

30 MR STRICKLAND: That's so, but what I'm saying is that – I'm just referring to that is a subcontract with ISIS. But - - -

THE COMMISSIONER: Yes. And therefore?

MR STRICKLAND: Well I'm just saying that's – item 8 in my, my understanding, and I say I could be wrong, does not refer to an additional separate new contract between Kings and ISIS. Rather it is a variation or what is described as an extra variation to the existing large contract. That's
40 my understanding.

THE COMMISSIONER: Well that's what I – I mean I don't know anything about the ISIS side, but the ordinary meaning of paragraph – of item 8 is that, Mr Lloyd, is that the variation is a variation to the main contract.

MR LLOYD: No. My instructions are that's wrong.

THE COMMISSIONER: Well I'm sorry if it's your instructions or not but I'm not going to allow questions of the witness until that point is established.

MR LLOYD: Well I can only establish it through the witness.

THE COMMISSIONER: But you can't put to him that this was in another contract when there is no evidence to that effect.

10 MR LLOYD: Commissioner, he was, he was at the meeting.

THE COMMISSIONER: You can ask him – and I don't have to explain this to you but I will. You can ask him if – to what contract is his understanding item 8 referring to. The value of his answer to me will be very small because I will need to know from documents precisely what the situation is. Applying the best evidence rule, and I know that doesn't apply, you would never allow that question. I will allow the question, but I'm explaining to you that without evidence of the actual documentation and what was going on at the time I attach little value to what this witness says
20 in reply because I'm not satisfied that he really understands what the contractual relationship between the parties was. And at this stage to actually understand to what contract Mr Paul was referring when he wrote the minutes is a very difficult task. So the real need is to establish what the extra – to what contract was this extra variation.

MR LLOYD: I understand. That was what I was trying to get to.

THE COMMISSIONER: Yes, but - - -

30 MR LLOYD: I thought he had said it was the contract between Kings and ISIS. He said that in his evidence.

MR STRICKLAND: I think he also said that he didn't really understand that contract. That's the point.

THE COMMISSIONER: Well I found the, I found the whole interchange very confusing and I didn't understand what was happening because I didn't understand to which, I didn't understand the relationship of the different contracts to each other and how this item dealt with them. But surely we
40 can establish by other evidence that cannot be challenged what the extra variation was.

MR LLOYD: Commissioner - - -

THE COMMISSIONER: By documentary evidence.

MR LLOYD: - - - I'm sure, I'm sure ICAC has seized all this material somewhere in the, somebody mentioned at the outset there were 200,000 documents. I'm sure this contract is probably one of them.

MR STRICKLAND: Yes, that's right.

THE COMMISSIONER: Well let me ask Mr Strickland. Mr Strickland, do you have the evidence of this?

10 MR STRICKLAND: I don't have evidence of a – the only evidence of a subcontract involving ISIS is the one that I've taken you to. I don't have any evidence of a separate contract involving ISIS and UWS. I don't have any evidence to support the suggestion - - -

THE COMMISSIONER: But there seems to have been a contract between UWS and ISIS before this main contract was entered into.

MR STRICKLAND: I've sought instructions and I don't have at this stage that contract. I don't have it. And I've sought instructions as to whether we
20 have that and I'm told that we don't.

THE COMMISSIONER: Well Mr Lloyd, the witness is not here, you better explain to me the purpose of this cross-examination and what you're saying about this because I don't understand it at the moment.

MR LLOYD: Yes, I'll explain it, Commissioner, because it was what Mr Paul said, perhaps obliquely, in his evidence when shown the, the two columns of figures which he asked to be upped.

30 THE COMMISSIONER: The two what?

MR LLOYD: The two columns, your Honour, he was taken - this is Exhibit 45. Your Honour has Exhibit 45.

THE COMMISSIONER: Yes.

MR LLOYD: Where there is about a \$17,000 increase in figures proposed by Kings through Peter Roche and then after by my client Daniel Paul.

40 THE COMMISSIONER: Yes.

MR LLOYD: And he said that increase - he did the increase and he said the increase was to cover, I'll just try and find the note because Mr Strickland put it through this witness most recently. Extra warranties, technical drawings, schematics and that was what Mr Paul said in his evidence.

THE COMMISSIONER: Drawings for the ISIS contract?

MR LLOYD: Yes. For the ISIS/Kings contract.

THE COMMISSIONER: So this - - -

MR LLOYD: The contract that's being referred in paragraph 8.

THE COMMISSIONER: So you are saying that according to Mr Paul the increase in the amounts in Exhibit 45 are increases in the work done under the contract between UWS and ISIS.

10

MR LLOYD: Because they relate to that work.

THE COMMISSIONER: But what have Kings got to do with that contract?

MR LLOYD: It was their contract, it was their contract with ISIS, they were doing the work.

THE COMMISSIONER: But the - is that - is it apparent from Exhibit 45 that all the material - all the figures there involve the ISIS contract?

20

MR LLOYD: Well you just have to go over the page.

THE COMMISSIONER: Well I just want to know. I don't know - - -

MR LLOYD: Yes. Their schedules with rates and if you go over the page at 726 the top item, "Additional doors 21 at Bankstown", this is where I get the figure 21 from, in the actual minute it says 20, let's not argue about a door here and there and it goes on and talks about Kings priced this work directly to a number of builders and were successful with the ISIS project, managing the works, they supplied Kings with a purchase order for these works and it goes on. This is referencing to the Kings/ISIS contract, not the head contract.

30

THE COMMISSIONER: So why, why do you want to go to item 8?

MR LLOYD: Because this obliquely is a reference to the other contract.

THE COMMISSIONER: But I mean if you write and I certainly see your argument, if Exhibit 45 relates only to the ISIS contract then it puts Mr Strickland's, it answers Mr Strickland's proposition. Is that, is that correct?

40

MR LLOYD: It adds just a proposition that it refers to the ISIS contract, yes.

THE COMMISSIONER: No. It answers the proposition that there's been an authorised increase of the main contract. Because it relates to another contract.

MR LLOYD: I think that's probably right.

THE COMMISSIONER: Well he - well is it right or not?

MR LLOYD: Well my - - -

THE COMMISSIONER: I mean I thought that's the point you're making.

10 MR LLOYD: The point I'm making is that this item is referable to another contract not the head contract so to speak.

THE COMMISSIONER: Yes. And your - the strongest case that you have on that is Exhibit 45 I assume.

MR LLOYD: Indeed, indeed.

THE COMMISSIONER: Why don't you put that to him?

20 MR LLOYD: I'm just working through the exhibits, Commissioner.

THE COMMISSIONER: But I - this is so difficult. Item, I mean item 8 is so obscure and so ambiguous that it's not helpful. I draw anything out of item 8.

MR LLOYD: I'll move on then, Commissioner, and try and - - -

THE COMMISSIONER: I would imagine Exhibit 45 speaks for itself.

MR LLOYD: I'll take him to it.

30 THE COMMISSIONER: I mean my look at it, it seems, unless Mr Strickland says something else indicates to me that what you say is right. If that is right why don't you just put that to him.

MR LLOYD: I'll put it to him.

THE COMMISSIONER: And if he says - - -

MR LLOYD: I'll take your suggestion.

40 THE COMMISSIONER: And if he agrees then it's the end of a point.

MR LLOYD: True.

THE COMMISSIONER: And we can move on.

MR LLOYD: Indeed.

THE COMMISSIONER: Right. Please call back the witness.

THE COMMISSIONER: Mr Byrne, we had what is called a legal discussion. It has no bearing on, on the evidence that you have given but it may have a bearing on the evidence you might give in the future?---Sure.

Right. Yes, Mr Lloyd.

10 MR LLOYD: It may shorten the proceedings, that's the most of it. Mr Byrne, I want to take you to Exhibit 45?---Thank you. Yes.

This is where and it's not in dispute, at page 728 of this Exhibit you were seeking from Kings updated cost schedules et cetera?---Sure, yes.

Are you with me?---Yes.

And you sent that email to Dan because Dan was the go-between between yourselves and Kings?---Correct.

20

And that was what you usually did, you went through Dan?---Correct.

And he has passed it on, this is at page 727, those queries?---Yes.

And then he's received back it would appear from Peter Roche an email which is picked up at the bottom of the first page of these series 725. Are you with me?---I am.

30 "Dan, in response to the question sought by UWS", and it goes over. And at the top of page 726 it's in relation to the 21 doors at Bankstown, correct?---Yes, I see that.

And that was the work that was the subject of the contract between Kings and ISIS?---That is my understanding of it, yes.

40 Yeah. And yet your understanding is confirmed is it not in the next paragraph. "Kings priced this work directly to a number of builders and was successful when ISIS projects project managing the works. They supplied Kings with a purchase order for these work this week. See attached." Are you with me?---Yes.

That was another contract, that's not this contract, correct?

THE COMMISSIONER: It's just - it was the ISIS contract not the main contract. We would avoid words such as this and that.

THE WITNESS: That's correct, Commissioner, yes.

MR LLOYD: Thank you. Okay. Now as I understand it what we're trying to do was to transition into the head contract the contract between ISIS and Kings.

THE COMMISSIONER: Sorry, is transition a verb?

MR LLOYD: You were trying to perhaps massage together.

10 THE COMMISSIONER: Can I, can I - I don't want to destroy your cross-examination but I want to get to the point.

MR LLOYD: I'm sure you can, you can add to it, Commissioner.

THE COMMISSIONER: Look,. Mr Byrne, this document which you've got in front of you, 725 and 726?---Yes, Commissioner.

When you look at the top paragraph which is one you've - on page 726? ---I'm on that page, thank you.

20 Yes. Paragraph 1 seems to me, please correct me if I'm wrong, to be dealing only with the contract involving ISIS for the 21 doors?---That is correct.

Then if you go to paragraph 2 it's not entirely clear to me but can you say whether paragraph 2 concerns what's deemed dealing with in paragraph 1 or is it dealing with something entirely different?---(No audible reply)

30 Or can't you say?---To the best of my recollection it deals with the same project.

As the ISIS project?---As the ISIS project.

Okay. Thank you. Now let's come to three. I'll ask you the same question in relation to three as I asked you in relation to two. Does this paragraph 3 relates to the ISIS contract or does it relate to the main contract?---The ISIS Project.

40 Therefore, Mr Byrne, what appears at page 728 which is an increase in the price relates to the ISIS contract doesn't it?---Yes.

Not the main contract?---No, sir.

Can we move to the next point.

MR LLOYD: I'll move to the next point. Could you be shown Exhibit 49.

Because these are the minutes of meeting of 17 December. Right?---Yes.

That's what they're headed at page 730 in this series. And present at this meeting are those who are listed at the top of page 730, the attendees including Peter Roche from Kings. Now go to item 5, which talks about, Kings asked if the ISIS order stands for the extra readers at Bankstown or if UWS wishes to engage Kings directly, instruction was issued to Kings to undertake the works under the ISIS order and subsequently work with UWS and SCI to ensure the commissioning is undertaken to UWS requirements with SCI?---Ah hmm.

10

That's the ISIS/Kings contract?---Yes.

Kings presented a schedule of pricing for peripheral equipment not previously included in the tender docs. UWS reviewed the equipment and schedule prices from Kings and advise as follows, and only have the prices?---Ah hmm.

UWS reviewing mean Dan Paul reviewing it. Correct?---That's correct.

20 Because you delegated that task to him?---Yes.

And it goes over and we see the prices at 8 on page 731 - - ?---Ah hmm.

- - - there's a cost for audio visual et cetera. At 9 there's a schedule rate provision of a multi path IPU, whatever that is?---Ah hmm.

And 10, UWS will issue a formal advice, well you know, sic, it should a-d-v-i-c-e, in respect to the above prices and acceptance of the same following SCI's benchmarking exercise referencing the costs against trade prices and anticipated reasonable mark-ups. Correct?---Yes.

30

Now you didn't know what was a reasonable mark-up did you?---Generally speaking it would be somewhere between 12 to 17 per cent. That's what we worked on.

And you were leaving this in the hands of Dan Paul. Correct?---Absolutely.

And he appears to have done a mark-up on receiving their invoice which is Exhibit 45 at the beginning, the first page. Though he hasn't told you because it didn't go to you, but that's what he's done isn't it?---He has recommended a price which is some \$19,000 higher.

40

THE COMMISSIONER: No, look I don't understand this again. Because Exhibit 45 we've established relates to the ISIS contract.

MR LLOYD: Yes, so does this.

THE COMMISSIONER: No well you haven't established that yet.

MR LLOYD: Well - - -

THE COMMISSIONER: I mean can we establish that first.

MR LLOYD: Okay. Let's go back to item 7 on these minutes, this is Exhibit 49 for the record. Now you with me?---Yes.

10 I'm at page 730 on Exhibit 49?---Ah hmm.

Put in your hand also Exhibit 45 at page 725?---Yes.

Okay. We're at, we're at 7 on the minutes?---Ah hmm.

The first price mentioned there about two-thirds of the way down is 292?
---Yep.

Which is the first figure over on the top right hand of Exhibit 45?---Sure.

20 THE COMMISSIONER: So this clearly appears to be in respect of the ISIS contract, item 7?---The equipment is the same for both contracts but there was a shortfall in equipment and there was some equipment traded. And I remember, I recall a discussion occurring during these meetings in relation to what – if we are short of certain equipment what needed to be purchased as part of the main contract - - -

30 MR LLOYD: That comes later. They're minutes in January. This is in December. I can take you to them. I mean Mr Byrne, I don't want to trick you, but is it fair to say that your memory of these meetings, other than these minutes is pretty sketchy?---I don't know if it's sketchy. I mean I certainly do not recollect requesting your client to increase the pricing by \$19,000.

Well the actual figure is \$17,700 between, the difference between 266 and 284. Are you with me?---Sure. Okay. 17,000, yes.

Okay?---Yes.

40 What's the percentage increase?---I have no idea.

THE COMMISSIONER: Well can we - - -?---I wouldn't know.

We'll be here til the end of the year if we start going into arithmetic.

MR LLOYD: Well in any event you have given him the discretion as evidenced in these minutes, it's shown in here, in black and white - - -?
---Sure.

- - - for anticipated reasonable mark-ups. This is on page 731?---Yes.

Okay?---Yes.

And it appears to be that's what he's done?---It appears to be what who's done?

Well he's marked them up hasn't he?---He's certainly marked them up.

10 I suppose we can debate all day whether it was reasonable or not?---Well he's certainly marked them up. There's no argument there.

Well he was the expert in the area wasn't he?---Yes, absolutely.

Did you know the trade prices?---No, absolutely not, sir.

Can you give us the trade prices today?---No.

20 MR STRICKLAND: I'm sorry I object because in my submission this is misleading. I'm not saying – inadvertently misleading because of the reference to mark-up. Again I can elaborate on that, I don't know if you want to do it with this witness or not, it may be this witness doesn't know that the left hand column already includes a mark-up. The notion that there is - - -

THE COMMISSIONER: The left hand - - -

MR STRICKLAND: The left hand column - - -

30 THE COMMISSIONER: What's the left hand column?

MR STRICKLAND: Of Exhibit 45. I'm being oblique because – I can do it in the witness's absence or in the witness's presence. It's a matter for you, Commissioner.

THE COMMISSIONER: This is as clear as mud to me, I must say. This is good exercise, Mr Byrne. Do you mind?---Yes, thank you, Commissioner.

40 **THE WITNESS STOOD DOWN** **[3.57am]**

THE COMMISSIONER: Yes, Mr Strickland, your - - -

MR STRICKLAND: Because the - - -

THE COMMISSIONER: Before you say anything can I just try and find out from Mr Lloyd what the aim of this, this cross-examination is, please.

MR LLOYD: The aim of the cross-examination to this, he was authorised to do what he did albeit he didn't send the correspondence to this witness. And this witness has already commented on that.

That is so simple. I'm so relieved to hear it, but it's quite disguised in everything that's happening.

MR LLOYD: It's disguised in my cross-examination?

10 THE COMMISSIONER: Yes, it's disguised from me. I'm obviously very stupid. But I really can't find it in there.

MR LLOYD: I'll take that on board because I'm here to persuade you Commissioner, not the jury.

THE COMMISSIONER: No I know, that's what I was always told.

MR LLOYD: At least we can agree on that. I've only got one or two more questions on this area to go and I'll put them to him.

20

THE COMMISSIONER: I'm mean your point is, and can you just show to me so that I, so that I can understand it. Where – are we looking at 730 aren't we?

MR LLOYD: 730, we are.

THE COMMISSIONER: Now where is it in – where do you say he was authorised – where do you say he was authorised to increase the price?

30 MR LLOYD: It's over the page, 731, item 10.

THE COMMISSIONER: 731, item 10. Yes.

MR LLOYD: And at 12 and 13.

THE COMMISSIONER: All right. Well - - -

MR LLOYD: I'll put those to him.

40 THE COMMISSIONER: Yes. I understand now the point you are making which I'm sure is a great relief to you, but it's a much greater relief to me.

MR LLOYD: It's certainly a relief to me, Commissioner.

THE COMMISSIONER: But I can, I can, I understand that what you're saying is that Mr Paul – that this – that Mr Paul was authorised at this meeting to increase the price by anticipated reasonable mark-ups. And that's all that he did. That's what you're saying. And you're saying that there is nothing to say that it was too high.

MR LLOYD: That's right.

THE COMMISSIONER: All right. It does not – and this is a matter for argument, but it says nothing about not sending this to Mr Byrne.

MR LLOYD: No, and I've got to take that on the chin. I mean, I could cross-examine this witness all day - - -

10 THE COMMISSIONER: All right.

MR LLOYD: - - - and he'll say I didn't get it and I should have. He's already said that.

THE COMMISSIONER: Yes. All right. I really think it's, it will speed things on if you and I have a discussion first before you talk to the witness.

MR LLOYD: Commissioner, I'm happy to talk to you all day.

20 THE COMMISSIONER: All right. Can we call Mr Byrne back again, please. I mean, I really think he will agree with everything you say. Can I do it?

MR LLOYD: Certainly.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Mr Byrne. Mr Byrne, if you look at item 10 on page 731 it's apparent that the meeting agreed that UWS would issue a formal advice about prices but first what would have to occur is that Kings would have to undertake a benchmarking exercise and establish prices?
---That's correct, Commissioner, I understand that.

10 Now it was Mr Paul's task to liaise with, with Kings to establish the benchmark prices?---That's correct.

And it appears from the, well, it's arguable at least from the email which is at, I think it's 45 isn't it?

MR LLOYD: 45.

THE COMMISSIONER: 45, that what he was doing in 45 was that you may disagree about the prices but that's what he was doing?---He was
20 marking up?

Yes?---Correct.

But you are not now as you sit there as I understand, I imagine, presently in a position to say whether the prices he marked up were in accordance with the benchmark or not?---No, no, I'm in no position to say that, Commissioner.

Right. Well, do you want any more, Mr - - -

30 MR LLOYD: No.

THE COMMISSIONER: No.

MR LLOYD: That's why you're there and I'm here.

THE COMMISSIONER: I think we should adjourn for - - -

MR STRICKLAND: Commissioner, can I just say that from my point apart from the submissions, I know you've said that you accept everything Mr
40 Paul says but can I just alert Mr Lloyd that in any submissions I may make I may not.

THE COMMISSIONER: About what?

MR STRICKLAND: Well, about, about these matters. That's why I stood up to object. I'm just, I'm just - I understand because the matter I think is more complicated that has been - - -

THE COMMISSIONER: Well, I haven't got the evidence.

MR STRICKLAND: Well, I'm just letting you know that there is, this isn't the last witness on the subject, that's all.

THE COMMISSIONER: Well, if there is other, if there is other evidence on the issue will deal with that with his usual aplomb.

MR STRICKLAND: Yes.

10

THE COMMISSIONER: Yes, Mr Lloyd.

MR LLOYD: Thank you, Commissioner. Moving back to the process, Mr Byrne - - -

THE COMMISSIONER: The point is not, I think what Mr Strickland says is the point, this has not ended.

MR LLOYD: I heard that loud and clear.

20

THE COMMISSIONER: Good.

MR STRICKLAND: I'm sorry for interrupting, I beg your pardon, just, there's a witness waiting, Mr Nguyen, Mr Commissioner, I might just, because there's two other UWS witnesses I might just advise, he's, I might just advise that he not be required.

THE COMMISSIONER: Well, are you going to be all afternoon with Mr Byrne?

30

MR LLOYD: I certainly will be half an hour I would have thought.

THE COMMISSIONER: All right.

MR STRICKLAND: Thank you.

THE COMMISSIONER: We better, we'll adjourn for 10 minutes.

40

THE WITNESS STOOD DOWN

[4.04pm]

SHORT ADJOURNMENT

[4.04pm]

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: Commissioner, there's a witness who's here from interstate, Mr Leo Fincher-Johnson and we seek to interpose him.

THE COMMISSIONER: Yes.

MS LONERGAN: I call Leo Fincher-Johnson.

10 THE COMMISSIONER: Mr Fincher-Johnson, I'm sorry you've been kept
waiting since 10 o'clock, I'm afraid it's one of the difficulties of being
involved in any form of litigation but I do apologise. Before you give your
evidence there's something I need to explain to you. As a witness appearing
before the Commission you are required to answer all relevant questions and
produce any document which you are required to produce and you must do
this even though your answer or the production may incriminate you or tend
to incriminate you. But if you object to answering any question or
producing any document your answer or the document produced cannot be
20 used against you in any civil or criminal proceedings or in any disciplinary
proceeding. The best way of obtaining that kind of protection is for me to
make a declaration that all answers you give and all documents you produce
will be regarded as having been given or produced on objection and if you
do this there's no need for you to take objection in respect of each particular
answer or document. Not everybody asks for this kind of protection but it's
a matter entirely for you and if I, if you ask me for an order to that effect I
will make that order and no inference can be drawn against you for taking
advantage of it, it's a statutory benefit that you have. Do you want me to
make such an order?

30 MR FINCHER-JOHNSON: No, sir, I do not.

THE COMMISSIONER: You do not. Very well. Do you wish to give
your evidence under oath or do you wish to affirm the truth of your
evidence?

MR FINCHER-JOHNSON: Under oath.

THE COMMISSIONER: Would you swear Mr Fincher-Johnson in please.

MS LONERGAN: What is your full name?---Leo Carl Fincher-Johnson.

And Mr Fincher-Johnson, you prepared a statement in May this year with ICAC investigators. I tender a copy of the statement dated 16 May, 2012.

THE COMMISSIONER: 16?

10

MS LONERGAN: 16, 1-6. Could a copy of that statement be shown to the witness.

THE COMMISSIONER: The statement Mr Fincher-Johnson of 16 May, 2010 is Exhibit 199.

**#EXHIBIT 199 - STATEMENT OF MR FINCHER-JOHNSON
DATED 16 MAY 2010**

20

THE COMMISSIONER: Yes.

MS LONERGAN: And Mr Johnson, have you read that statement recently?
---I have.

And are you satisfied regarding its accuracy and the truth of its contents?
---Yes, I am.

30 You were the chair of the access control tender panel in late 2007. Is that correct?---That's correct.

And did you advise anybody, did you advise anybody from Kings who were one of the tenderers regarding the dates that the tender evaluation committee would be meeting?---No, I did not.

40 Could the witness be shown Exhibit 1, tab 24 please and also tab 25 of Exhibit 1. I'm going to first take you to Exhibit 1 tab 24 which is the larger document, the Tender Evaluation Report. Thank you, Mr Johnson, if you could turn to page 587, that's the numbering in the top right corner?---Yes.

And you see the second paragraph under the heading "Evaluation" notes the dates that tender evaluation panel met, do you see that?---Yes.

14 and 23 August, 2007?---Yes.

And if you could turn to page 631 of the document and that is an attachment which is various handwritten attachment technical evaluation sheets and the

one on page 631 is the Kings technical evaluation schedule which I understand was completed by you, is that correct?---That's correct.

And you'll see the third last box on that page commencing "Key personnel", do you see that?---Yes.

And there's a score two boxes along and a handwritten comment by you, is that correct?---That's correct.

10 And could you read out you handwritten comment in that last box?
---Comprehensive and extensive lists, a number of Concept accredited.

All right. Now, a number of Concept accredited, is that a reference to accreditation with the Concept 4000 system?---Yes, it is.

And prior to completing that technical evaluation sheet are you able to say whether you discussed with other members of the tender evaluation panel the significance or otherwise of that key personnel criteria?---Certainly prior to finalising that sheet I did, yes.

20 Yes. And what was the content of that conversation and who was present at the time?---There was the tender evaluation meeting and we, we discussed the accreditation of personnel, we discussed the relative number of accredited personnel for each of the tenderers.

And was Mr Paul present at that discussion?---Yes, he was.

30 And did you have an opinion about the importance of those personnel being employees as opposed to subcontractors?---When you're looking at a tenderer of this type then employee is some, is someone that the contractor can put up and can control, the subcontractor may or may not be there, the importance of the employees is substantially higher than the importance of a subcontractor when its related to the main portion of the works and this is related to the main portion of the works.

Thank you. And if you could turn to page 616 of that document and that's a handwritten technical evaluation relating to a firm called SECOM?---That's correct.

40 And that's your evaluation of that particular tenderer?---Yes, it is.

And again, looking at the key personnel indicator box, that person, that, I'm sorry, that firm has been scored a 4?---Yes.

You see that, and in the far column you've written a comment, could you read that out please?---"Very small team."

And what are you referring to there?---That's the, the team of personnel that would be providing the services that would be required under the contract.

And the services required under the contract in relation to that comment was that a reference to those personnel that were accredited to perform work pursuant to the Concept 4000 system?---That's correct.

10 And if you could turn to page 621 and that, that's a handwritten notation on the technical evaluation form by you related to a firm called Elite Alltrades?
---Yes.

You see that. And they've scored an 8?---Yes.

For, for the key personnel factor and in the far column your handwritten comment, if you wouldn't mind reading that out, please?---"Have experience with UWS and with these two campuses."

20 Thank you. And finally, page 626, it's your evaluation of a firm called Ste-Way and next to key personnel you've written a score 4 and then something in handwriting in a circle next to that, could you read out what you've recorded there?---One registered tech as advanced.

Right. And on the far, in the far column what have you written there?
---"One registered advanced tech, five people non, one PM, two techs, one apprentice tech."

And then down the bottom?---"Very small team for contract but doable."

30 And I'm sorry, finally at page 626, that's your evaluation of SNP, key personnel you scored them at 2?---Yes.

And in the far right column again, if you wouldn't mind reading out your notation there"?---"Not registered, ability to deliver questionable, no certified personnel, 100 per cent subcontractors."

And if you could close that exhibit and have a look at Exhibit 1, tab 25 which is the smaller document that was provided to you?---Yes.

40 And I understand that's a letter by you forwarded to Kings confirming acceptance of their tender, is that correct?---This actually advises them as preferred supplier and, and provides a condition that they need to ensure the quality of work performed as required.

Is that a qualified - - -?---To a, it is a qualifier.

A qualified offer?---It is a qualifier.

Yes. And what was the basis of the qualification?---Well, it was qualified on the basis that there was work done at the Bankstown Campus or, or Bankstown and Blacktown campuses that was not satisfactory - - -

Yes?--- - - - and there were discussions in that regard and that work was done by Kings.

And, Mr Johnson, is it correct to say with the sending of that letter your involvement in relation to the access control rollout ceased?---Yes.

10

I show, could the witness be shown Exhibit 45 please?---Thank you.

Now, Mr Johnson, have you seen that document before today?---No.

And were you aware that Mr Paul was - I withdraw that. When Mr Paul gave evidence on 31 July, 2012 at this hearing, page 1021 of the transcript, Commissioner, Mr Paul said the following in relation to you and other UWS personnel, he was asked a question about that particular document and also whether resolutions had been made that UWS people should be copied into correspondence with Kings employees and if you could listen to this answer, "As a consultant sometimes my client will instruct me to do things outside of that rule, to do whatever it is we need to do to make a project flow smoothly and for whatever reason I would have been acting under someone's instruction here." This is a reference to Exhibit 45?---Ah hmm.

20

"I don't recall who but I wouldn't have taken this on myself without some sort of instruction or some sort of discussion with Leo, Adam, Peter Guilfoyle, the whole lot of them, right, and gone and done this on my own." Now, first of all, were you part of the group or the steering committee that supervised the rollout of the contract?---No, I was not.

30

Did Mr Paul ever have a discussion with, with you, I'm sorry, I withdraw that. Did you ever instruct Mr Paul to negotiate or liaise with Kings regarding price along the lines of Exhibit 45?---No, I did not.

Were you present at any discussions between Mr Paul and anyone else from UWS where Mr Paul was instructed to negotiate price with Kings along the lines of Exhibit 45?---No, I was not.

40 Excuse me, Commissioner.

Do you have an understanding as to the practice at UWS in terms of contract roll outs where there is a variation in the contract?---Yes, I do.

And what, what is the usual procedure?---Is a procedure for a variation is that the work would be specified fully, the contractor would then provide a price, that price would then be independently checked and then if the price was satisfactory it would be accepted, if it's not satisfactory negotiations

would be, wouldn't be commenced until the price was satisfied or the work was not instructed.

Now in terms of - you still have Exhibit 45 with you?---I do.

10 Yes. Now in terms of benchmarking required in contracts of this nature what's your understanding is how the consultants should go about that in terms of transparency and process?---A benchmark is an independent check against price, it wouldn't involve the contractor the contractor would provide a price, the - in this case independent consultant would ascertain the wholesale price, provide a reasonable mark up, compare that against the price and report back to the, the principal.

Mr Johnson, were you aware that Mr Paul was friends with Charlie Diekman for some period prior to the tender process?---No.

20 And were you aware that Mr Paul and Mr Diekman had a relationship where they gambled together and owed each large sums of money over periods of time since 2007?---No, I was not.

Mr Johnson, if you'd been aware that Mr Paul was a friend one of the directors of Kings, a personal friend would that have affected the way the tender was evaluated?---It would have affected whether or not Mr Paul was involved in the tender evaluation at all.

30 Whether Mr Paul was involved in the tender evaluation at all?---At all. It would be something that I would have taken up with the probity advisor, we would have reviewed his relationship with one of the tenderers, Mr Paul would have been asked for an explanation, I would expect that it would have been provided in the, in the advice that - provided by Mr Paul where, where he's asked to provide advice on probity and, and conflicts of interest and that, that issue would have then been brought to the committee and the committee would have needed to make a decision about whether or not Paul, Mr Paul should have been involved in the contract at all.

40 Your statement, Mr Byrne, if you wouldn't mind turning to - Mr Johnson, if you wouldn't mind turning to paragraph 43 in your statement and you've made an observation that you were shown a series of emails between Kings Security and Inner Range and Mr Johnson, you'll see those are annexed to the back of the statement you have. One is a series of emails from Peter Roche to Vin Lopes dated 9 August 2007 and after that there is a single page document headed 'Concept Accreditation Charlie Diekman to Peter Roche' dated 1 August 2007. Do you have those?---I do.

And you make the comment that in our opinion these documents suggest that Kings manipulated Inner Range accreditation records to show that they had significantly more Inner Range certified technicians in their employment than they actually did. If you had known that piece of

information at the time you took part in the tender reviews and evaluation would that have altered your decision as to whether Kings should be the successful tenderer?---It would have altered the - certainly the score on the key personnel as we discussed previously and it may have altered the result.

10 THE COMMISSIONER: Can you - are you in a position today to express an opinion as to the range of value you would have put on the experience - I can't remember the exact heading of the issue?---In evidence that I've already provided I - you can see where I provided a score of 10 against the key personnel for the - for a large number of - - -

That's what I mean?---And I put a score of two against an area where there were none, so.

So if you would have known the true position?---The score would have been substantially less. That would be, that would be my - - -

20 What are you - substantially less - are you able to put a figure on it? I'm not asking you to put a precise figure on it, a range.

MS LONERGAN: Can I assist, Commissioner, perhaps with the documents. Mr Johnson, if you could turn to page 631 and that's the King's evaluation sheet and you'll see the weightings might - may provide some assistance. The weighting of the key personnel is 35 per cent. Does look at that assist you in answering the Commissioner's question?

30 THE COMMISSIONER: No. The first question is, is, is as from a range of two to 10 approximately where would your value had been?---I would, I would need to know exactly how many of the people that were claiming to be Kings employees were not and - - -

And you can't tell that from the emails?---If there were none, if there were none then the score if you refer it back to STEs then it would have been two. If there were a number then, then it would be between the range of two to 10.

Yes, thank you.

40 The emails don't disclose the exactly number do they?---I'm sorry. We need to - - -

Perhaps Ms Lonergan can assist there.

MS LONERGAN: Commissioner, I'm just seeing if the documents assist in making that distinction. Commissioner, we don't believe that they are that specific.

THE COMMISSIONER: All right. Well don't, don't bother then, Mr Johnson, apparently the documents aren't that specific.

MS LONERGAN: Those are my questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Lloyd.

MR LLOYD: Mr Johnson, I appear for Mr Paul and we'll ask you some questions on his behalf. Do you have a copy of your statement in front of
10 you?---I do.

MR LLOYD: I'll take you to page, sorry, paragraph 18 on page 7 of your 19 page witness statement?---Thank you.

You were the chair of the panel as stated here?---That's correct.

And you had the overall responsibility for the tender process?---That's correct.

20 And as I understand it you wrote the tender report?---That's - I don't recall who wrote the tender report.

Well let me take you to a page in a bundle I was given this morning. I'm not sure who's this is annexed to now. It's page 170 - - -

MS LONERGAN: Adam Byrne's statement.

MR LLOYD: Adam Byrne. Which was 198.

30 THE WITNESS: 100 and?

THE COMMISSIONER: What page?

MR LLOYD: 198. Sorry (not transcribable) 198 the page is 171 top right-hand corner. Are you with me?---Yes.

Look at item 9 there, there's a check list of review of tenders, line assessment report prepared and submitted to the tender board by Leo Johnson?---That's correct.
40

That's you?---That's what it says, yes.

Does that refresh your memory that you were the one that prepared the report?---Mmm.

Fair?---I signed it off, yes. That's correct.

Well you've not signed off, you wrote it?---Yes.

THE COMMISSIONER: Or did you write it?---My recollection isn't good enough to say whether or not I wrote it . It does say that I wrote it, yes.

It doesn't say that you wrote it, it says that you, it says that you prepared it?
---Prepared it.

- - - and submitted it, yes?---Yes.

10 MR LLOYD I want to suggest to you that Mr Paul did not write the report?---I don't recall who wrote the report.

The best indicator of who wrote it would appear to be this page. Correct?---
There are times where reports are written by others, finalised and submitted the chair of the panel. I don't recall whether I actually wrote this report or not.

20 Well what did you mean here by assessment report prepared and submitted to the tender board by you?---This is a standard form. Preparation of the report is the finalisation including these documents. The actual writing of the report itself may or may not have been done by myself.

I suggest you wrote it. What do you say?---I don't recall who wrote it.

30 Taking you to paragraph 22 of your witness statement. You talk there in (iii) of Peter Shepherd as the independent member on the panel recommended by Daniel Paul on the basis he had current relevant experience in the procurement of security systems as he had just done at SPC?---That's correct.

You met with him on several occasions didn't you, that is Shepherd?---The panel met on a number of occasions, yes.

Did you ask him what that current relevant experience in security systems was?---Not as I recall, no.

40 Did it not interest you?---We were provided advice that he had just implemented a major security installation at Ports and he was recommended to us as a member of the panel.

Did you not - - -?---He was from a public body.

Did you not have any interest in inquiring what that major security system was and who did it?---It retrospect I should have. I don't recall having that conversation with him, no.

Did you make any notes of any of these conversations?---Sorry, which conversations are we talking about?

Any conversations you had with Mr Shepherd, do you have any notes of them?---No, the meeting minutes are there.

Of the committee?---That's correct.

Are they the only notes you've been able to refer to to refresh your memory?---That's correct.

10 Nothing else?---Some emails that have been shown to me.

And the first time you were asked to recall these events of 2007 was when?
---Earlier this year.

Four years later, five years later?---Correct.

I suggest to you that Mr Shepherd and Mr Paul told you that Mr Shepherd had just finished working on a job with Kings on a security project for Sydney Ports?---If he had done that then when we had been doing the conflict of interest and probity it would have been listed.
20

Well let's go to that. Mr Shepherd signed a form didn't he? And I can take you to it, it's at page 95 of Exhibit 198. Look at his handwritten comments, I've been a member of the security industry for 18 years in various roles. During this time I have engaged with a range of security technology providers including a number of respondents to this tender and Mr Daniel Paul. Do you see that?---I do.

30 Did you ask him which of those tenderers he had been engaged with and in what way?---No. I asked him whether or not that would impact on his ability to impartially assess the tender in question.

And he said no?---And he said no.

And you took him at face value?---I took him at his, at his code of conduct – there was a sign off of that.

So if he told - - -?---He actually stated that and he signed it off.

40 So if he listed Kings here what would you have done?---Asked the question.

What question?---He listed a number of the providers and he also said that it wouldn't affect his ability to assess the tender.

Where does he list a number of providers?---In paragraph 1.

It does, he just said providers – there's a number of them?---Yeah.

And you didn't see fit to ask him which ones?---No.

So it wouldn't have made any difference if he'd said Kings?---I don't know, he didn't, so it didn't, it never arose.

Well your concern was that he thought he could do an independent and fair job. Correct?---That's exactly right.

10 So if he put Kings and you'd said well Kings are a tenderer, do you think you can sit fairly and he'd said yes, that would have been the end of the matter?---That's correct.

Thank you. Just going to the bid itself, in this document, Exhibit 198 and as I understand it, it's picked up, it commences at page 418. Are you with me?---I am.

And then at (not transcribable) exhibit tag and then it actually commences at 419?---Ah hmm.

20 And at page 426 there's an item relevant experience, it's item (b)(3.2). Are you with me?---Hang on a sec.

About halfway down page 426?---Yes, thank you.

And then the very last item on that page is (b) the tenderer should provide a relevant experience particularly in relation to the installation and maintenance of the Concept 4000 system. Are you with me?---Yes.

30 Over the page at 428 they give you or Kings gave you three jobs where they'd been working on the Concept 4000. Correct?---That's correct.

Did you ask for any confirmation of any of those?---I don't recall.

They didn't say they'd done work at RPAH Hospital did they?---No, they did not.

40 So you didn't take that into account when assessing the tender. You took into account as experience the items that appear here didn't you?---We took into account those things that responded to the schedule that we asked for.

They gave trade references in the second half of page 428 didn't they? ---They did.

And other references. Correct?---That's correct.

Dan Paul wasn't put as a referee was he?---No, he wasn't.

And you wouldn't have accepted him as a referee. Correct?---No.

Because he was on the tender panel?---It would have been inappropriate - - -

Sure?--- - - - for him to be a direct referee and independent assessor.

So you didn't check any of the references did you?---No. We relied on our independent expert.

10 It was your task to check references wasn't it?---It was my task to chair the panel and to make sure that the panel ran correctly.

Whose task was it to check references, sir?---It would have been whoever was advised by the panel.

Well who did you advise to do it?---I don't know because I don't recall.

Don't you have any notes?---I'm no longer at UWS or do I have access to those files.

20 Paragraph 28 of your witness statement, third line in, "the records show that in January 2007 Paul raised the idea of Kings Security trialling biometric security software at the SPC". Do you understand that to be a fingerprint reader or don't you know?---I know what biometric (not transcribable) fingerprint read, yes.

And you've seen documents as shown to you by ICAC here that showed that he suggested that Kings trial this with Sydney Ports. Correct?---That's correct.

30 You then go on further down, about four lines further down, "given Daniel made the introduction to Peter Shepherd and this was all occurring at the time of the tender", so the introduction was made according to you in this statement in January '07. Correct?---That's correct.

You show me one document to suggest that Daniel Paul had anything to do with that trial at the time this tender was occurring?

40 THE COMMISSIONER: That paragraph doesn't say that. The paragraph says that the records show that in January 2007 Paul raised the idea. That's what happened in January 2007 according to - - -

MR LLOYD: Commissioner, if it ends there I'm happy with it, that's all he did.

THE COMMISSIONER: Raised the idea of Kings trailing, yes.

MR LLOYD: In January.

THE COMMISSIONER: And then the records show that Kings Security proceeded with the biometric installation finalising the security works by December 2007.

MR LLOYD: Indeed. That didn't involve my client.

THE COMMISSIONER: Well - - -?---There appears to be an error in dates.

MR LLOYD: What's the error?

10

THE COMMISSIONER: What's the error?---I would need to see the original documentation.

The point being made by Mr Lloyd is simply that the phrase "and this was all occurring at the time of the tender", well I'm not actually – I think you better, it'll be better if you explain the point you're making.

20

MR LLOYD: I want to suggest to you sir, and I'm sure they can show you documents that the ICAC showed you at the time – I don't know what they showed you. I want to suggest to you whatever you were shown, all it said about my client was that he introduced Kings to Sydney Ports to – about the idea of trialling that software in January.

THE COMMISSIONER: But that's all that paragraph 28 says about your client. It doesn't say any more than that.

MR LLOYD: Well it says a bit more to me, Commissioner. But if that's the meaning you're taking from it, I'm happy with that.

30

THE COMMISSIONER: I don't see how. It says, "the record show that in January 2007 Paul raised the idea". That's one point. "Daniel intended to personally introduce Kings Security to Peter Shepherd", two points. Three, third point, "the records show Kings Security proceeded with the biometric installation and finalising in December 2007". The next point, "given that this was all occurring I would have expected both Daniel Paul and Peter Shepherd to make a declaration". So I don't see what it is that Mr Johnson has made a mistake about in this paragraph in the way that you suggest. I mean because it's not said that Mr Paul had anything to do with trialling the biometric, the actual trialling of the biometric security software.

40

MR LLOYD: You have the point Commissioner and I'm moving on. Let me take you paragraph 31. I think I've already established this point. You were shown some documents by ICAC investigators about an Inner Range website referring to the Concept system at the RPAH Hospital?---Ah hmm.

Are you with me?---Yes, I am.

And I think I've already established with you from taking you to Kings response to the tender that that experience didn't appear there and you

didn't take that into account when assessing which company to award the tender to?---That's correct.

Thank you. Now access control tender prior poor workmanship of Kings Security is picked up at 33, paragraph 33. This work as I understand it involved the installation of access control at rooms or on doors to rooms at Bankstown and Blacktown campuses. Fair?---That's my understanding, yes.

10 Thank you. We go over, you distinctly remember addressing this issue prior to - - -?---Yes.

- - - this is at 34, prior to sending out a letter of acceptance. This raised concerns. This went right to the heart of their ability to execute the contract. The last sentence in paragraph 34, "I raised the issue with the tender panel advising members of the issue and seeking technical advice from Daniel Paul." 35, "This incident happened a long time ago and I can't recall the exact conversation." Okay. You made no notes of the conversation did you?---No. There are references to the fact that the issue was raised though.

20

And whatever else was discussed amongst you all - - -?---Ah hmm.

- - - you were satisfied after the discussion that it was appropriate to award the tender to Kings. Fair?---At the end of the discussion and at the end of advice provided by Kings, yes.

Well Kings were involved in the discussion weren't they? They were effectively asked to please explain your poor workmanship?---Yes.

30 Fair enough?---Yes.

And involved in those discussions was Adam Byrne. Correct?---That's correct.

And the access control hardware and software that was being installed at the Bankstown campus was Concept 4000 wasn't it?---I don't know.

Well let me show you - - -?---I am now given to understand that it is, yes.

40 Well Adam Byrne would have known wouldn't he?---At that time?

Yes?---I don't know.

Well let's show you a document.

THE COMMISSIONER: Look he doesn't know Mr Lloyd. If you want to put a proposition to him on the basis that Mr Byrne knew something put it to him on that assumption.

MR LLOYD: I'd like you to assume that Adam Byrne knew at the time you had these meetings with Kings that the access control that had been installed was Concept 400. I want you to assume that?

THE COMMISSIONER: Just assume that?---Okay.

10 We know that you don't know, but the next, the next question that's coming is predicated on that assumption. The assumption will still have to be proved?---Right. Okay.

MR LLOYD: Now predicated upon that the conversations about poor workmanship would have related to Concept 4000?---If that were true, yes.

20 Thank you. You see I want to suggest to you that what was discussed was not a problem with the product it was a problem with the quality of the installation by the workers of the product?---If you're asking me to respond to that, my recollection of the conversation was that there were two issues, 1) it wasn't the same equipment and 2) that the quality of the workmanship was, was not appropriate.

I want to suggest to you there was only one issue and you'll obviously disagree with me?---I do disagree with you.

But you have no notes of the conversations?---No.

THE COMMISSIONER: You've established that Mr Lloyd.

30 MR LLOYD: Paragraph 38. "I reviewed the TER", that's the tender report. Right?---Yes.

"I note there's no reference to the poor workmanship and our decision to exclude it from the evaluation. I definitely remember meeting with Kings and grilling them over this. I can only assume that either Daniel excluded this from the report", and you go on?---Yes.

40 You wrote the report?---I don't believe it was excluded from the report. I don't believe the advice was provided until between the time that the tender, the Tender Committee made a recommendation and prior to the issue of the letter acceptance.

Well why do you say - - -?---I did go on to say that.

Well, why do you give one of the assumptions here that Daniel excluded this from the report?

MS LONERGAN: I object, Commissioner. The full sentence should be read to the witness. It's evident in the statement that he says, "I can only

assume either Daniel excluded this from the report on the basis that the TEC agreed to exclude it from the evaluation” not that Daniel decided to exclude it from the report.

THE COMMISSIONER: Well, Mr Fincher-Johnson is explaining what inferences he’s drawing, that’s all it is.

10 MR LLOYD: Well, what’s the problem Mr Johnson about it not being in the report? Is there any heinous inference we can draw from that?---No, if it was, if it was in the report then it would have been dealt with prior to the recommendation being made and dealt with by the Tender Evaluation Committee. If it’s not in there report then it was something that was raised subsequent to the Tender Evaluation Committee having finalised this report and the letter of acceptance being issued and at that point it would have needed to have been dealt with in order to protect the University.

20 In any event, there was no problem with it was there because you were entirely satisfied with the explanations given?---The University was satisfied, yes.

Thank you. Paragraph 39, the last two lines on this page, this is page 16, “I was definitely told by Kings Security and Daniel Paul that the two systems were not the same”?---We’ve already agreed to disagree on this point.

Thank you. I have nothing further, Commissioner.

THE COMMISSIONER: Yes, thank you. Yes.

30 MR NAYLOR: Mr Fincher-Johnson, my name is Naylor and I appear for Charlie Diekman, former director of Kings Security. There’s just one aspect of your statement that I want to clarify if I may. Can I take you to paragraph 43 and you were asked a couple of questions in relation to this paragraph by Counsel Assisting and you’ll see, you’ll see at paragraph 43 that reference is made at the bottom, at the bottom of the paragraph to some emails and do you have those emails as well as the statement?---Sorry, these ones?

40 THE COMMISSIONER: Sorry, paragraph 43, do you mind putting that again, Mr Naylor?

MR NAYLOR: Yes?---I’ve got paragraph 43.

You have paragraph - - -?---Yes.

- - - 43 of your statement. Do you also have the emails that are annexed to the statement?---Yes, I do.

And the first of those emails is an email headed UWS dated 9 August, 2007 from Mr Peter Roche to Mr Vin Lopes, it should be marked Exhibit 40, it is Exhibit 40?---Yes.

THE COMMISSIONER: What page is that?

MR NAYLOR: It's page 5, it's - - -?---34.

10 THE COMMISSIONER: But what page of, it's part of the statement so it'll have a page number on the top right-hand side?

MR NAYLOR: It's not, the, the pagination I have, Commissioner, is 534 which is the pagination for Exhibit 40. Now, I am informed by ICAC officers that there wasn't in fact an annexure which travelled with the statement and - - -

THE COMMISSIONER: I see.

20 MR NAYLOR: - - - that's the document that I'm referring to.

THE COMMISSIONER: So you're looking, you're referring to what is noted as Exhibit 40 and has the page number 534 on it?

MR NAYLOR: Correct.

THE COMMISSIONER: And do you have that in front of you, Mr Fincher-Johnson?---I do.

30 You do?---I do have it in front of me.

MR NAYLOR: Okay. And just going back, Mr Fincher-Johnson to paragraph 43 of your statement and you've referred to the emails that I've drawn your attention to. The emails, and the paragraph states, the emails show that Kings Security, that's Vincent Lopes, transferred the accreditation of four subcontractors and they are being named, to Kings Security and then you go on to express an opinion and the opinion is that this suggests that Kings Security manipulated the Inner Range accreditation records to show that they have significantly more Inner Range certified technicians than they actually did?---That's correct.

40

And as I understand from the answer that you've already given to Counsel Assisting, the basis for that opinion is that you're drawing a distinction between a person who is an employee as distinct from a contractor?---As distinct from a subcontractor, yes.

Was there a difference between a contractor and a subcontractor?
---Normally in reference terms the contractor would be working for UWS, the subcontractor would be working for the contractor.

THE COMMISSIONER: That's correct.

MR NAYLOR: And that information as, as I understand informs the opinion that you formulated when drawing up the technical evaluations and you were taken earlier to the technical evaluations in particular your score for key personnel?---That's correct.

10 THE COMMISSIONER: When you said that understanding you were referring to the understanding that there'd been the manipulation described in the statement.

MR NAYLOR: Yes, yes, Commissioner.

Just looking at the email which is annexed to your statement and you'll see halfway down the first page it is said, there's a paragraph that commences "Below are four ex-Kings employees", do you have that?---I do.

20 And that says "below are four ex-Kings employees that all still work 100 per cent for Kings as contractors that we have approached about transferring their accreditation back to Kings for one month whilst the review takes place" and then the employees are named, rather the contractors are named? ---That's correct.

And they, they are the same persons who you nominated in paragraph 43 of your statement?---Yes.

30 The question is would it have, had you known at the time would it have been of significance to you when scoring the tender evaluation, would it have been of significance to you if you had known that they had been contractors to Kings but had worked 100 per cent for Kings and had been ex-employees of Kings?---It would have been information that would have been considered by the panel but as, as previously stated an employee of a contractor is, is counted as substantively higher than a subcontractor to the, to that contractor.

40 So would it not be significant information to know that they were working 100 per cent, by which I mean full-time?---If they were working 100 per cent for Kings today that's, and they were a contractor, there is no information that could be provided that would say that they would be working 100 per cent tomorrow. An employee is a different thing.

All right. But my question is premised upon the assumption that had you know at the time that you were filling in the, the technical evaluation for this tender, had you known at the time that the contractors were working 100 per cent, that is full-time for Kings would that not have not been a relevant factor?

THE COMMISSIONER: He's explained that.

MR NAYLOR: Thank you.

THE COMMISSIONER: But you can ask him again. You can just repeat the answer you gave?---Okay. A subcontractor is considered differently to a contractor or to an employee of the contractor, right, whether they're working 100 per cent or 20 per cent.

10 MR NAYLOR: No further questions, Commissioner.

THE COMMISSIONER: Yes, thank you. Yes, Mr Stewart.

MR STEWART: Thank you, Commissioner.

Mr Fincher-Johnson, my name is Mr Stewart and I appear for Mr Eschbank?---Mr Stewart.

20 If you could just turn to paragraph 21 of your statement of 16 May. In that statement you're discussing the capital works and facilities drive on the UWS server?---Yes.

And in the last, at the end of that statement you say, "This drive is restricted to capital works personnel, however, as the facilities manager Mark Eschbank had access to this drive and the information contained therein"? ---That's correct.

30 Did you personally ever conduct an inquiry to see whether Mr Eschbank did access that drive?---I certainly did not.

You did not, thank you. That's the only question, I have, Commissioner. Commissioner, the only other thing is that I note on page - - -

THE COMMISSIONER: Are you drawing, sorry, Mr Stewart, you're drawing a distinction between having access and exercising that access, is that what you're doing?

40 MR STEWART: Yes, yes. Commissioner, just on the page before paragraph 20 as well, (ii) I'd seek a suppression order there in relation to - - -

THE COMMISSIONER: Yes, there'll be a suppression order as to the email address of Jo Lindsay in paragraph 20 (ii).

SUPPRESSION ORDER ON EMAIL ADDRESS OF JO LINDSAY

MR STEWART: Thank you, Commissioner. Yes, Mr - - -

MR MAHER: Your Honour, just one or two questions about - - -

THE COMMISSIONER: Yes.

10 MR MAHER: Mr Finch-Johnson, my name is Maher and I represent Mr Roche. I'll just ask you a couple of questions about the answers you gave to Mr Naylor on behalf of Mr Diekman. As I understand your evidence you say that you would have considered differently somebody who was considered a, to call a subcontractor as opposed to an employee?---That's correct.

Wouldn't you really have been concerned as to the true relationship between that person and Kings rather than what they were called?---That is, that is a relationship, an employee is a different relationship to a subcontractor.

20 Well I'd like to suggest it's not just in the name is it, it's the relationship between the parties that matters.

THE COMMISSIONER: That's a matter of law, Mr Maher.

MR MAHER: I accept that, Commissioner.

THE COMMISSIONER: Really it is. I mean how can you expect Mr Finch-Johnson to understand that. I think you'll find a difference of opinion in the court of appeal on that.

30 MR MAHER: Perhaps I won't go into that any further. Thank you, Commissioner. No, no further questions.

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: One question, Commissioner. Mr Finch-Johnson, in paragraph 40 of your statement you in the second sentence referred to Daniel providing a TEC with a list of certified technicians. Do you see that in paragraph 40 of your statement, the second sentence?---That's correct.

40 Yes. Could the witness have a look at, if you still have it in the witness box with you Exhibit 1, tab 24, that's the tender evaluation report.

THE COMMISSIONER: Sorry Ms Lonergan, do you mind just, I'm sorry, but could you just tell me again what exhibit it is, please.

MS LONERGAN: Yes. It's Exhibit 1, tab 24, Commissioner.

THE COMMISSIONER: Yes, thank you.

MS LONERGAN: And it's the tender evaluation report. And could you turn to the last 10 or so pages. There should be a document titled Appendix 1 - - -?---Yes.

- - - List of Accredited Concept 4000 Professionals?---Yes.

And is that the document you referred to as having been provided by Daniel to the TEC?---This is the appendix to the report?

10 Yes?---Yes, then it is, then it is the document that was provided, yes.

Thank you. That's the re-examination, Commissioner.

THE COMMISSIONER: Thank you Mr Finch-Johnson. You're excused from the summons. You're free to return to Melbourne?---Thank you very much.

Thank you for your evidence.

20

THE WITNESS EXCUSED

[5.13pm]

MR STRICKLAND: Commissioner, just before we adjourn, I have – I just want to put on the record that I have – although Mr Byrne is in cross-examination, Ms Lonergan has communicated with him to the effect that we are asking him to find any additional relevant documents. And the only document I have in relation to ISIS is the one I've referred to before which is the contract at Exhibit 51, page 743. If there's any additional documents I
30 intend with your leave to speak to Mr Byrne just about these additional documents. If there are any I'll show them to Mr Lloyd before we commence tomorrow.

THE COMMISSIONER: Yes, thank you. The Commission will adjourn until 10.00am.

AT 5.13 PM THE MATTER WAS ADJOURNED ACCORDINGLY

[5.13pm]