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HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 17 AUGUST, 2012

AT 10.08AM

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: Mr Strickland.

THE COMMISSIONER: Yes, I call Caroline Gent.

THE COMMISSIONER: Yes, I notice that Freehills has written another letter about non-publication orders.

MS LONERGAN: Yes Commissioner, they're with consent. They're appropriate.

10

THE COMMISSIONER: All right. There'll be non-publication orders in relation to those matters in respect of which Freehills by letter dated 17 August, 2012 have sought non-publication orders. This letter better be circulated to everybody because I'm not going to read it all, there are too many and I don't want to waste time.

**SUPPRESSION ORDER IN RELATION TO MATTERS IN  
RESPECT OF FREEHILLS LETTER DATED 17 AUGUST, 2012**

20

MS LONERGAN: Commissioner, I undertake to circulate it to the parties.

THE COMMISSIONER: That should be circulated to all parties and steps should be taken to have the material in question suppressed. Thank you.

MR HAVERFIELD: Your Honour, my name is Haverfield, I seek leave to appear for Caroline Gent, who is the first witness to be called this morning.

30 THE COMMISSIONER: Yes, sorry I didn't catch your name.

MR HAVERFIELD: Haverfield, H-a-v-e-r-f-i-e-l-d.

THE COMMISSIONER: Yes Mr Haverfield.

MR HAVERFIELD: Thank you.

THE COMMISSIONER: This is Mrs Gent is it?

40 MR STRICKLAND: I believe so.

THE COMMISSIONER: Now Mr Haverfield, do you want me to make a section 38 order?

MR HAVERFIELD: I do, your Honour, oh yes, Commissioner.

THE COMMISSIONER: And have you explained to Mrs Haverfield what that is about?

MR HAVERFIELD: Mrs Gent, I have.

THE COMMISSIONER: I beg your pardon, I'm sorry, it's been a long inquiry, yes, Mrs Gent.

MR HAVERFIELD: I have, I have explained section 38 to her.

10 THE COMMISSIONER: All right. Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mrs Gent and all documents produced by her during the course of her evidence at this compulsory examination are to be regarded as having been given or produced on objection and accordingly there is no need for her to make objection in respect of any particular answer given or document produced.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MRS GENT AND ALL DOCUMENTS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED.**

30 THE COMMISSIONER: Now Mrs Gent, that order as has been explained to you protects you to the extent the evidence you give today cannot be used against you in any civil or criminal or disciplinary proceedings. But it does not protect you against any false evidence. Should you give false evidence the evidence that you give today can be used against you to support a prosecution for giving false evidence to the Commission. And a person on prosecution and conviction of such an offence is liable to a penalty of imprisonment not exceeding five years. Do you understand that?

MRS GENT: Yes, I do.

40 THE COMMISSIONER: So this is a serious occasion and it's very important to tell the truth.

MRS GENT: I know that.

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

MRS GENT: Under oath, please.

THE COMMISSIONER: Swear Mrs Gent in, please.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Mrs Gent, if you could speak clearly and loudly. Everything you say is being recorded?---Yes.

What's your full name?---Caroline Anne Gent.

10

Could the witness please be shown Exhibit 61? And Mrs Gent, there should be two pages, there should be two pages of pages 22 and 23 in the top right hand corner?---I've got 22.

Do you have page 23?---No.

THE COMMISSIONER: I haven't got 23 either?---Oh I beg your pardon, yes I do.

20 MR STRICKLAND: You have page 22 and 23?---Yes, I do, sorry.

And do you, Commissioner?

THE COMMISSIONER: No.

MR STRICKLAND: You've only got page 22 do you?

THE COMMISSIONER: Yes.

30 MR STRICKLAND: I'll just make sure there's another copy.

THE COMMISSIONER: Thank you. Sorry, I might be looking at the wrong - - -

MR STRICKLAND: Exhibit 61.

THE COMMISSIONER: Yes, 61, 822.

40 MR STRICKLAND: I'll give you a copy. No, Exhibit 61 is – it should have 22 on the right, 22 and 23. I'll give you a copy, Commissioner.

THE COMMISSIONER: Well I just don't understand it. That's 61. Well I don't, I have a different document in my Exhibit 61.

MR STRICKLAND: I'll give you a copy.

THE COMMISSIONER: Yes, just a moment. I just want to check whether this is in fact Exhibit 61. Is Exhibit 61 is Commonwealth Bank records. Is that right?

MR STRICKLAND: That's correct. And it's got ICAC ref 22/23.

THE COMMISSIONER: All right. Well if someone could please at a later stage just substitute what I have as Exhibit 61.

MR STRICKLAND: Certainly. I'll now give you a copy of it.

10 THE COMMISSIONER: Thank you. I have another document entirely, this 61, I don't know what it is but anyway we'll proceed.

MR STRICKLAND: You've got, you should have before you a Commonwealth deposit slip, is that correct?---Yes, that's correct.

And is that your signature?---Yes, it is my signature.

And that's your account which ends in 4-6-0-7?---I presume so.

20 Now, if you just go over the page to 23, is that your handwriting on the deposit slip?---Yes it, is.

And also the same account number?---The account number has been inked out on the first page, on the second page I'm presuming that is my account number.

If you just go on the first page you can see there's an account identification number, can you see that, on, on the first, which is page 22?---Yes, and it's been inked out.

30 It's been what sorry?---You can't read it.

Oh, okay. I see, it's been suppressed I suspect.

THE COMMISSIONER: Yes, it has. Well, there is one here which is not, mine is not. I'll swap with Mrs Gent?---Sorry.

MR STRICKLAND: And if I can just go to the first page, its page 22?  
---Yes.

40 You see there's a stamp from the Londonderry Post Office?---That's correct.

Did you deposit that cheque at the Londonderry Post Office?---I presume I would have, I don't recall it but I presume I have.

And so the first cheque was deposited on 13 February - - -?---Yes.

- - - in the sum of 4,000 and the second cheque appears to have been deposited on 15 February in the sum of \$9,000?---Yes.

Do you recall how you came to deposit those two cheques again?---I don't recall the cheques at all.

Just, could the witness be given Exhibit 62 and that should be a Commonwealth Bank cash management call account statement?---That's correct.

10

Do you have that, Commissioner?

THE COMMISSIONER: Yes.

MR STRICKLAND: And if you go to the second page of that statement - - -?---Yes, yes.

- - - there's a credit entry on 13 February - - -?---That's right.

20

- - - for \$4,000 and another one on 18 February?---That's correct.

Do you have any recollection of that money being, those two sums of money being deposited into your account?---I don't recall them being put into the account, no.

Do you recall anything about the fact that \$13,000 was deposited into your account at around about that time?---No, I don't, I - - -

30

THE COMMISSIONER: Well, who would possibly have given you two cheques like that?---I am presuming because I've also seen that that's King Security Group that it probably would have been Daniel Paul.

Why would he have done that?---Lisa, my daughter, owes me a considerable sum of money for a house that she purchased, I assisted her with the deposit and I'm presuming that these amounts may have been to pay that back.

Have you got a record of the amounts owing to you by your daughter?---No, I don't.

40

How much does she owe you?---Just lately I've lent her about \$60,000 but back - - -

When is just lately?---Since probably November last year.

Yes, but this is February?---Yes, I know. Prior to that, your Honour, I lent her money to purchase a house in Richmond, I assisted her with the deposit.

And how much did you give her?---I think it was about 45,000 but I'm not sure.

And how much is that, does she still owe money on it?---Yes, of course.

How much?---45,000.

10 So this money couldn't have been a repayment of that, if you lent her 45 and she still owes 45 there's no repayment?---Yes, I know but on 25 February I deposited the 13,000 back into her account.

Yes, Mr Strickland.

MR STRICKLAND: Could the witness be given Exhibit 63?---Thank you.

And this is a St George account, statement of account of your daughter Lisa Paul. Is that correct?---I presume so.

20 And on 25 February it records a deposit into her account from your account and the description under it is loan. Do you see that?---Yes, I do.

And if you go back to Exhibit 62 you will see that on 25 February there's a withdrawal or a debit from your account. Do you see that? Exhibit 62 on the third page?---Yes, I do.

So you transferred – you received \$13,000 - - -?---Yes.

- - - by two deposits on the 13<sup>th</sup> and the 18<sup>th</sup>?---Yes.

30 And then on the 25<sup>th</sup> you transferred that money back. Is that right?---Yes.

And you describe the transfer back to Lisa Paul – I'll withdraw transfer back. You transferred the money from your account to Lisa Paul's account describing it as a loan. Is that right?---Yes, I did.

So can you explain how it was that you – if Daniel Paul gave you two cheques for \$13,000 - - -?---Yes.

40 - - - and you say that must have been in relation to the repayment of a loan? ---I presume so.

Then why have you paid that same amount back to Lisa Paul's account some couple of weeks later?---Mainly because Lisa might have had a cashflow problem at that stage and I presume I've put the money into her account.

THE COMMISSIONER: That's pure speculation isn't it?---Well I don't recall it you see.

So that is pure speculation?---All right, it's pure speculation.

You're trying to think of some kind of innocent explanation for this?---No.

Well what other explanation could there be apart from the one you're guessing about?---That Lisa had a cashflow problem. I'm frequently lending money to Lisa.

10 How did you know that there had been this 13,000 repayment back when you're sitting here to your daughter when you are sitting here in the witness box?---I'm sorry, I don't understand that question.

When I was asking you questions about the \$13,000 - - -?---Yes.

- - - the last answer you gave me was that some time later the money was paid back to your daughter?---Yes.

20 How do you know that? How did you know that then?---How did I know I paid it back to her?

No how did you know today that you had done, that you had paid her back then?---Because I've got loan written on the account.

When did you look at the account?---I looked at the accounts yesterday.

Why did you look at them?---Because I realised I was coming in here today and I should make myself aware of what had happened.

30 But how did you know what you were going to be asked?---Because I'd spoken to my barrister prior.

And how did he know what you were going to be asked?---I presume that he was given information.

By whom?---I really don't know. ICAC I presume.

40 Well I need to – this needs – I need to know this?---Well I'm sorry I don't know who gave him the information.

Where did you get this information from?

MR HAVERFIELD: I read the transcripts, your Honour. The transcripts are published on the ICAC website, I read the transcripts, I went through the transcripts and did a search for my client's name. I then went through the transcripts and worked out what questions were there, possibly could be there.

THE COMMISSIONER: All right.

MR HAVERFIELD: I was asked, I then asked Mr Vasan for the relevant exhibits. I was provided with Exhibit 61, 62, 63 and 64. I asked the banks, the bank, the cheques themselves and I was provided with the cheques.

THE COMMISSIONER: I understand. Yes, thank you.

MR HAVERFIELD: Thank you.

10

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: Is this the true situation Mrs Gent, that you don't recall how you got two cheques of \$13,000 into your account. Is that correct?---Obviously I've banked them there, but I don't recall the cheques.

THE COMMISSIONER: That's quite a lot of money isn't it?---No, not to me it's not.

20

\$13,000 is not a lot of money to you?---No. I deal in large quantities of money in my job everyday, 13,000 is not a lot of money to me.

What is your job?---I am part owner of a company.

What company?---It's Gem Hawke Services.

I beg your pardon?---Gem Hawke Services.

30

What does it do?---We deal in mining.

What does that mean?---We provide plant and machinery to mining companies and I'm used to payments coming in to our account in excess of \$500,000 per customer.

Do you have a, you run a company?---Yes, we do.

Do you have a company bank account?---Yes, I do.

40

The money that comes in comes into your bank account?---Yes.

The company bank account?---Yes.

\$13,000 into your personal account is a large sum of money is it not?---No.

Where in your personal account have you received that kind of money?---I haven't got my personal account with me, but - - -

How often do you receive cash amounts of \$13,000 to your personal bank account?---I don't receive, I don't receive cash amounts.

Well this is an unusual transaction then?---It could be an unusual transaction but I very rarely, I don't even remember the cheques.

It's an unusual transaction isn't it?---It could be, yes.

10 No, what do you mean it could be? You know whether it is or it isn't. It's your bank account and you deal with it, no one else?---I don't normally get cash into my bank account, no.

So it's an unusual transaction?---It probably would be.

Why are you so unwilling to admit that this is an unusual transaction?---All right, it's an unusual transaction, sir.

20 So why don't you remember it?---Because it was 2007, it's now, or 2008, it's now 2012.

And what was happening in 2007 which would, which would result in somebody putting \$12,000 or is it 14, nine and four - - -

MR STRICKLAND: It's 2008, Commissioner.

30 THE COMMISSIONER: 2008, yes. This amount of money in your bank account in cash?---I don't recall the transaction. I don't recall putting the money in. I am supposing that Daniel has given this money to me as a repayment of monies owed for the house.

That's a pure guess isn't it?---It's not a pure guess.

Well it is. You've said you don't remember it?---Well I don't remember the transaction, no.

And you don't remember him paying you?---I don't remember him paying me.

40 And it could equally be Mr Paul warehousing the money in your bank account?---I don't think so.

Why not?---Because Daniel doesn't do things like that.

I see. That's the only reason that you give is it?---I don't have any other reason.

Why did you pay it to your daughter?---Because I believe at the time Lisa would have been saying to me, mum I've got to pay the Amex card, I don't have money in my account.

So two weeks after her husband you say, you think gives you \$14,000 you pay it straight back to her in the exact same amount?---That's correct.

That sounds very suspicious?---I'm sorry, sir.

10 You haven't got a better explanation?---No, I don't.

Yes, Mr Strickland.

MR STRICKLAND: You have no – do you have any recollection of your daughter or Mr Paul asking you to transfer the \$13,000 back to Lisa Paul's account?---No, I don't. No, I don't.

20 Is this the – this is your evidence as I understand it. You have no actual recollection of the money going into your account. Correct?---No, I don't.

And you have no recollection of the money being transferred from your account to Lisa Paul's account. Is that right?---That's correct, until I've looked at the statement.

30 Well as of now you do not have an actual recollection, this is your evidence, of the circumstances in which you transferred the \$13,000 back into your daughters account. Is that right?---I don't have the recollection, but I'm presuming that that was the reason why because I have put loan on my account.

THE COMMISSIONER: But why would you pay her back money when her husband has two weeks before sent you the exact same money in cash? ---I'm presuming that that would have probably been Daniel with his gambling and Lisa would not have been aware of his gambling. And he's probably given the cheques, I don't know whether he gave the cheques to me or to my husband.

40 Why are you are aware of his gambling but your daughter isn't?---Because Daniel's a bit of a rogue.

So he tells you but not his wife?---Probably.

Is that true?---It could be, yes.

It could be. Is that another guess?---Daniel often - - -

Is it another guess?---It is, yes.

Yes, thank you?---I can't recall conversations back in 2007.

Well please don't guess.

MR STRICKLAND: So I want to suggest to you, I want to suggest to you Mrs Gent that there has been no previous transaction in your financial history of you being provided \$13,000 by either Mr Paul or his wife and then the same amount being transferred back to their account. Do you agree with that?---No.

10

You don't agree with that?---No.

Is there another occasion that you can remember being, being – having a particular sum deposited into your account and then the exact same sum being withdrawn and deposited back into one of their accounts?---I don't recall that, no.

20

I want to, I want to suggest to you that there is very little in the financial transactions between you and your daughter where she or Mr Paul have transferred money into your account and you've transferred money into her account, do you agree with that?---Sorry, could you repeat that again?

What I want to suggest is it's an unusual, this is an, this is an unusual transaction where or a round robin where money is transferred into your account and then transferred back into - I withdraw that question. It's an unusual round robin transaction where money is transferred from either Mr Paul or his daughter and then transferred back again into her account, do you agree with that?---Yes, I think I do agree with that.

30

And were you, were you aware of any specific cashflow problems that your daughter was having at that, at that exact time?---I don't recall it but I would say so.

Yes, but why would you say so? What, what - - -?---Because.

- - - what exact cashflow problems would she have at that time?---I don't recall at that particular time but I know frequently through the years Lisa has had cashflow problems and I've put money into her account.

40

You're aware aren't you of the allegation that this money, the \$13,000 is in effect laundered money, is that right?---I don't believe that's true.

No, I know, but you're aware of the allegation about that aren't you?---Yes.

And have you come here to give evidence to try and dampen that allegation down?---Yes.

Do you understand my question?---I'm not quite sure.

What I'm suggesting to you is you've come here to give evidence to try and rebut that allegation?---I don't believe its true.

Have you spoken to Daniel Paul about the evidence you are giving here today?---I don't recall, we do speak a lot, yeah, but no, I don't recall.

10 You don't recall?---I don't recall. I have spoken to Daniel a lot about this and, but I don't recall speaking to him lately about it. I could have but I - - -

Well, have you ever spoken to Daniel about these cheques?---I'm not sure, I can't answer that.

Are you sure you can't answer that?---Yes, I'm sure I can't answer that. I can't recall if I have or I haven't, I may have.

20 THE COMMISSIONER: So what have you spoken to him about in relation to this investigation?---The fact that my daughter is greatly upset but this and just generally talking about it.

Generally in what respect?---In what respect? We just talk about it, it's nothing, I read the transcripts and I ask Daniel about what happened today, nothing, I don't know.

30 MR STRICKLAND: Have you spoken to your daughter about these cheques, that is the deposit of the cheques and the withdrawal of the - - -? ---I probably would have because I didn't recall the cheques and she was the first person who said to me oh, they've brought it up in the, have you read the transcripts and I said no and she said oh, you've been referred to in the transcripts of having received cheques from Kings and I said no, I don't recall that.

Yes. I have no further questions.

THE COMMISSIONER: Any questions of Mrs Gent?

MR LLOYD: Nothing further.

40 THE COMMISSIONER: Yes, Mr Haverfield.

MR HAVERFIELD: How many children do you have, Mrs Gent?---Six.

And what's your philosophy in relation to assisting the children financially? ---I'm always assisting my children financially. I believe - - -

THE COMMISSIONER: I don't find this relevant.

MR HAVERFIELD: As the court pleases, I'm sorry, as the Commission pleases.

THE COMMISSIONER: Any other questions? You're excused, Mrs Gent? ---Thank you.

You may go.

10 **THE WITNESS EXCUSED**

**[10.34am]**

MR HAVERFIELD: If I may be excused?

THE COMMISSIONER: Yes, certainly.

MR STRICKLAND: I call Jonathon Nguyen.

20 THE COMMISSIONER: Ms Hughes.

MS HUGHES: Yes, I was previously, previously given leave to represent Mr Nguyen. I can indicate he will be a section 38 declaration.

THE COMMISSIONER: And you've explained it to him?

MS HUGHES: I have.

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

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

THE COMMISSIONER: Mr Nguyen, I've explained that before to you, that's correct?

MR NGUYEN: Yes, your Honour.

THE COMMISSIONER: And so you understand, and Ms Hughes has explained it to you so you understand exactly what it means.

MR NGUYEN: I've got a better understanding of it now, yes.

10

THE COMMISSIONER: Yes. It means that the evidence that you give today cannot be used against you in any criminal or civil or disciplinary proceedings but it doesn't protect you against false evidence. You understand that?

MR NGUYEN: I understand, your Honour.

20

THE COMMISSIONER: And you can be prosecuted for giving false evidence and the evidence can be used against you if you're prosecuted for giving false evidence.

MR NGUYEN: Yes, your Honour.

THE COMMISSIONER: And the penalty if you're, if one, if one is convicted for giving false evidence at a public inquiry can be a term of imprisonment of up to five years. You understand that?

MR NGUYEN: I do, your Honour.

30

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

MR NGUYEN: An oath.

THE COMMISSIONER: Would you swear Mr Nguyen in.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Mr Nguyen, if you could please speak up and speak clearly, every word you say is being transcribed. What's your full name?  
---Jonathon Nguyen.

10 And what's your occupation?---I'm the director of Orion Integration Pty Limited.

And just, perhaps you could just step back a little bit from the mic and did you say Orion, that's O-r-i-o-n and what's the rest of that name?  
---Integration.

And was that company known as Austek before?---I was a sole trader when I started the business and, and I was trading as Austek Security and at some stage we incorporated into a company and - - -

20

Keep your voice up?--- - - - and the company, so I moved from Austek Security as a sole trader to Orion Integration, the company.

And Austek is A-u-s-t-e-c is that right?---T-e-k.

T-e-k?---Yeah.

And you were the principal, you were the owner of Austek?---Yes, the sole proprietor.

30

And when did you start Austek?---Actually I started it when I was 18 years old.

What year?---I think 1997, '98, I don't recall the exact year, yeah.

Now, in 2006 what was the main business of Austek?---I would say at the time security installations.

And did you bid for government contracts?---When you say bid as in, as in tender and, and apply for, for work, yes.

40

Either a tender or in any other way?---Yeah, we were always trying to get into, into government work but I can't say I was very successful at that time.

Mr Nguyen I want you to listen to the question and only answer the question. I didn't ask if you were successful, just, do you understand?---Ah hmm, yeah.

I think I've spoken to you before. Just listen to the question and don't answer any other thing other than the question, okay?---Sure.

Now, were you aware of Kings Security in about 2006?---Yes, yes, I was.

And were there occasions when you and Kings were bidding for the same contracts or the same jobs?---Yes, yes.

10 And on how many occasions, and I'm not just confining to 2006, how many occasions did you and Kings bid for the same job, approximately?---I, I suppose its, it would be difficult to number exactly because when I started out my business - - -

No, I don't want an explanation, if you don't know just say you don't know?---I would say, are you saying in 2006?

No, I said I'm not confining it to 2006?---Oh, okay. I mean, we bid against each other - - -

20 Listen, I don't want an - I want a number, if you can't give me a number say I don't know?---I, I don't know the exact number.

THE COMMISSIONER: Do you have an approximate number?---I couldn't answer that without explaining more information.

MR STRICKLAND: Go ahead briefly?---Okay. I started out my business as a sole trader, I came across Kings Security at - through Direct Alarm Supplies and I did some, some sub contract work for, for Charlie and so, so you know just small alarm service calls from time to time. I would say  
30 there were probably four, four jobs I've, I've done for him as a subcontractor off the top of my head and then we as, as our business - as my business grew I found myself competing with him for work and I recall competing against him in shopping centre jobs and a few, a few - if you're referring to public jobs a few tenders like Taronga Zoo, Sydney Ports obviously, I've been reading the transcripts and we all know why we're here for and there are a couple of jobs where I would have liked to bid against him but I guess we weren't invited to Woollahra and, and the Art Gallery and, and, and those, those other jobs.

40 Thank you. So you were part of a competitive - do you agree there were occasions when you were part of a competitive process to get Government jobs with Kings?---Yeah, initially no, but yes as my business grew I became a competitor to Kings, yes.

So the answer is yes?---Then, yes, sir.

And do you agree that it is important in the competitive process to keep any bids you have confidential so that the other party that's bidding doesn't

know what price your bidding at and visa versa?---I, I think it would be prudent to keep your bid confidential but it's, it's not unknown thing in the industry to, to feed each other, you know incorrect information - - -

THE COMMISSIONER: You were asked whether it's important to keep - - -?---Yes, I - - -

- - - your bid confidential. The answer to that is either yes or no. Please don't make a speech?---Sorry.

10

Is the answer yes or no?---Yes, yes.

MR STRICKLAND: Have you ever received or provided information about the price of a bid - the price of a bid or a quotation for a Government job with Kings?---Well, you've obviously asked me this before so - - -

Don't, don't preface it by that just answer the question - - -?---Yeah, yeah.

THE COMMISSIONER: Just answer the question, Mr Nguyen?---Yes. Sorry, can I have that question again?

20

MR STRICKLAND: Mr Nguyen?---Yes.

We, we - we don't have a lot of time so you got to listen to the question and just answer the question. Have you - I'll break it down. Have you ever received any information from Kings about their price they are going to bid for in Government contracts?---I have received a pricing from them, it's not unusual in our industry to, to request pricing like component pricing especially when for larger jobs when there are aspects of the job that you can't do yourself.

30

THE COMMISSIONER: You haven't been asked about what the industry position is. You've been asked about Kings?---I have asked for and received sub contract pricing from Kings.

MR STRICKLAND: Have you ever colluded with Kings in relation to any bids or quotations or proposals for Government jobs?---Can, can you explain to me collusion, I mean the exact definition because in the industry everybody generally knows what the pricing structure and your competitors are, it's, it's our job to, to, to guess and to strategise on what their competitor would be, be pricing in at and - - -

40

THE COMMISSIONER: Colluding is deliberately working together with the other competitor so as to ensure that you or the competitor with whom you are speaking gets the job while the customer doesn't know that you are talking to each other. Do you understand that situation?---Okay. That's probably a better explanation than I would have - I mean it's my understanding of - - -

Do you understand that situation, do you understand what I've put to you?--  
-Yes, yes. I just have to be careful.

Now has that happened between you and Kings?---No. I have to be careful because you know you guys asked me in my compulsory examination about collusion and, and as I explained and you know I tried to explained it as truthfully as I could that you know we, we didn't sit down there and, and decide you're going to win the job I'm going to lose the job or, or anything like that it was, it was you know - if you're talking about collusion as in did  
10 me and Charlie sit down and say hey Charlie you're going to win this job I'm going to win the next job, no, the answer is no.

Well what did you do in this regard in relation - did you share your prices?--  
-We - if and I'm sure we're referring to the Sydney Ports tender there was a component in the job that we were clearly not capable of performing which were the civil works and you have to remember back in 2000 and - what year was this, this - - -

MR STRICKLAND: 2007.  
20

THE WITNESS: 2007. I had all of maybe three employees. It was a, it was a job that we - - -

THE COMMISSIONER: You are telling me what you did. Don't give me the reasons for doing it just tell us what you did, please?---Okay. We were asked to bid on a job, we - there was a, yeah, there was a component in the job that we were clearly not capable of doing at the time and we, we, we sought some pricing from Kings because having worked for Charlie in the past and knowing Charlie's business I knew that he had a, a gates business  
30 and, and he - I don't recall that he was the only person we, we got quotes from but - - -

You, you wanted to sub contract that out did you?---Yeah, a component of that. Well not necessarily, I mean had I won the job I wouldn't have, I wouldn't say that I would have necessarily gone to Charlie but, but it would - it gave me a good reference to - on what it would have cost to do it.

So you got information from him about prices of items that were in the tender - - -?---Yeah, components of it, yeah.  
40

- - - which you could actually buy from him or get him to do should you win the tender?---Yes. On the off chance that the client was willing to let a three man company do that much work.

Yes?---Yes.

But are you saying that you've never worked together with anybody from Kings to ensure that either you or Kings would get the tender by sharing with each other your tender prices?---Not on a public job, no.

Did you do it on other jobs?---They're, they're, there are times and keeping in mind I, I was a subcontractor to, to Kings where Charlie would ring me up and say hey, you know I need a second quote on, on this job. I don't recall that he actually - - -

10 So what would you do?---Yeah, I would - most of the times I'd be too busy but if I wasn't busy I'd, I'd, I'd say yes at their - - -

So, so what would you then do?---I would go out and, and price up the job.

But would you then put in a price higher Mr Diekman's price?---Not, not always. I mean we're talking about - I can recall maybe three occasions, three or four occasions where, where Charlie asked me to, to provide a second quote.

20 And did he tell you what he quoted?---I don't recall that he did and he - - -

So was this a genuine request by him to provide a genuine quote?---I, I - I'm assuming not, I mean you know.

Why do you assume not?---I mean by the time someone asks you to do a quote I think you know it's, it's obvious that that they're just either fishing or, or their client just needs a - like a, like a second, you know second opinion but - - -

30 But I mean you could come in with a lower price?---And I have in the past and I have actually won those jobs from time to time.

So I don't see why you should assume that there's something wrong with the situation. There's something that you're not telling us?---No, there's, there's, there's nothing wrong with the situation, it's normal industry practice. I mean most, most clients will ask for multiple quotes, it is very rare that a client will go to, to, to start a job or a budget for a job without having a provider in mind. We're not, we're not selling apples and oranges we're, we're talking about services and - - -

40 Mr Nguyen, you said that Charlie would phone you up and ask you to provide a second bid?---Yes, that's right.

And sometimes you did?---Yes, that's correct.

And I asked you whether there you did so knowing his price you said no?---Not necessarily. Sometimes I, I would have guessed, he didn't need to tell

me what his price was because everybody knows everybody else's rates and you know - - -

Is that from past experience?---I had worked for the guy so, so I knew.

So it would be easy for you to undercut him if you wanted to?---And I did from time to time. Sorry, I don't mean that in facetious way.

Well, I don't see, I mean, I don't see anything dishonest in this?  
10 ---Unfortunately it's a very small incestuous industry and we all know what everyone else is doing. You could, you could, you know, you take any tender, even tenders I don't, I wasn't even participating in, you hear about a job and - - -

Mr Nguyen, it's one thing to be able to assess a competitor's bid from past experience, it's another thing to have inside information about the amount of the other competitor's bid?---I have to say, yeah, I do admit that, you know, the majority of the time we, me and Charlie were chatting and, as I do with any of my competitors you're, you're trying to glean as much  
20 information as you can off them, that's, that's - - -

I didn't ask you that?---Sorry, I - - -

I'm wanting to know whether there was any dishonest conduct involved in communicating beforehand the prices of competitors so that you could work together to ensure that one or other of you would get the contract. Did that ever occur?---No, not, definitely not. I mean - - -

All right. That's all I want to know. Stop, thank you. Yes, Mr Strickland.  
30

MR STRICKLAND: I just want to show you - I'm sorry, I withdraw that. I tender, I'm going to tender them a single group, Commissioner. I tender a bundle of emails between 25 and 26 October, 2007 relating to Sydney Ports tender. And, Commissioner, just it should have, be pages - - -

THE COMMISSIONER: Is this a string of emails?

MR STRICKLAND: No, it's not a string but I just don't want to tender them individually. 25 - - -  
40

THE COMMISSIONER: The bundle, bundle of emails, is that - concerning the Sydney Ports tender marked from pages 25 to 28 is Exhibit 200.

MR STRICKLAND: I think it should be 25 to 29, Commissioner. You don't have 29?

THE COMMISSIONER: No.

MR STRICKLAND: No, you don't?

THE COMMISSIONER: No.

MR STRICKLAND: I'll get you a bundle which has 29 in it.

THE COMMISSIONER: Yes. Exhibit 200 is constituted by five pages involving emails concerning the Sydney Ports tender marked from 25 to 29.

10

**#EXHIBIT 200 - EMAILS SHOWN TO MR NGUYEN NUMBERED 25-29**

MR STRICKLAND: Exhibit 200, is that correct, Commissioner?

THE COMMISSIONER: Yes.

MR STRICKLAND: So your first email, Mr Nguyen, to a number of you  
20 Austek employees is advising them that there's a tender in relation to Sydney Ports due on Friday, is that correct, page 25?---I actually don't recall the specific email but, but - - -

I'm not asking you that, that, that is your email isn't it?---It looks so, yes.

If you just go please to page 29, the email I've just shown you is a reply from Mark Ashworth to you saying I can't see how we won't get it, got Charlie to put together costings for gates, bollards and civil works, all good. Do you see that?---Yes, that's so.

30

And did you, did you instruct Mr Ashworth to do that?---I can't recall that I specifically instructed him but it would have been the obvious place to go, you know, Charlie has a factory that builds gates and bollards.

Well, you're a, you're a hands on person in this organisation back in 2007, weren't you?---Yes.

Everything that, in relation to tenders that was of any relevance came across your desk for your approval, correct?---Yes, generally, in, in general I can, I  
40 can, say that not many things went, went out for submission without me at least knowing the general kind of target pricing or the, the ballpark.

THE COMMISSIONER: What Mr Ashworth had done here was with your approval?---Yes, I, I can see that he's - - -

Yes, thank you?---I, I don't see anything suspicious or wrong with these emails.

MR STRICKLAND: Well, I haven't - Mr Nguyen - - -

THE COMMISSIONER: No one asked you. Do you mind not commenting?---Sorry.

MR STRICKLAND: Could the witness please be shown Exhibit 1, tab 70?  
---Is that this one?

10 THE COMMISSIONER: This is an email from Mr Diekman to Mr Ashworth, do you see that?---Yes, I do.

And I want to suggest that you were, this email was forwarded to you or you received it?---I don't recall it specifically actually. The first time I, I recall receiving it was when you showed me this oh, sorry, the ICAC showed me this when, when I had my compulsory examination.

And you have in that compulsory examination - - -?---I may have received it.

20 But you have, I see. Isn't it the case, Mr Nguyen, that there was as automatic - the system in your office automatically generated copies of any emails sent to Mark Ashworth were sent to you as well?---Actually, I, I know that towards the end, because Mark was, Mark was quite ill towards his, the end of his service with us that I ended up getting emails forwarded automatically from, from his address but I, I don't recall specifically whether that was the case back here. I did supply the ICAC with my email archives so I guess if, if you tell me that there was an auto forward then, then I would have to agree but, but I don't specifically recall whether that was in place at the time.

30 I tender a statement of Bronwyn Barker who is an electronic evidence specialist at the Commission dated 13 June, 2012.

THE COMMISSIONER: The statement of Bronwyn Barker dated 13 June, 2012 is Exhibit 201.

**#EXHIBIT 201 - STATEMENT OF BRONWYN BARKER DATED 13 JUNE 2012 (ICAC REF: 276-376)**

40

MR STRICKLAND: Do you have a copy of that statement?---No. Thank you.

Just go to page 278 please. Excuse me for one moment. Excuse me, Commissioner. If you just go to page 278 at paragraph 9 you see that there's a review of that document?---Yes, I can see that, that the expert has

determined that it was carbon copied to me, it wouldn't surprise me but I don't specifically recall that.

So having looked at that do you accept that you received this email?---Yes, I won't argue with an expert, if the expert says I've received the email then I must have.

10 And when you received this email you understood didn't you that what Mr Diekman had provided to Austek was the entire detailed cost of his bid component by component?---I don't specifically recall but the way you've - - -

THE COMMISSIONER: Just look at it?--- - - - the way you've worded it, I mean if I, if I didn't do my research earlier I'd say you were railroading me into admitting that, that is, that Charlie had in fact - - -

20 Do you mind not going into this polemic, just answer the question?---I, I don't specifically recall receiving the email. However, if Charlie has sent to me, has sent Mark a quote with these schedules I can only take it on face value that he's replying to the question that Mark asked, which was if you look at the - - -

You're not answering the question. Please put the question again.

MR STRICKLAND: Mr Nguyen, I suggest you are deliberately being evasive aren't you?---No, I'm not.

30 All right. Well is it the case that you don't understand the questions and therefore are unable to answer them?---Okay. Sorry, I was - - -

Would you like me to repeat my question?---Yes please.

Having received this email on 29 October, 2007 you knew that Mr Diekman had provided Austek with the entire quote of Kings in relation to the Sydney Ports contract?---Are you asking me to recall or to reconstruct? Because I can only, I don't specifically recall, but I can - - -

40 THE COMMISSIONER: Look at the email. Is the email the Kings entire bid or not?---Not having seen Kings entire bid I couldn't tell you if it was.

If you look at it and you read the email, "this is what we are going in at" and you understand that that's what follows, does that indicate to you that according to Mr Diekman, this is his bid?---The first time I saw this email - - -

Does it indicate to you that this is his bid? Yes or no?---Reading it in detail - - -

Yes or no?---No.

Why not?---Now that I'm reading the entire email the email starts with costings for gates, bollards at Ports. The job was more than just gates and bollards, there was - - -

All right?--- - - - an electronic security component. I don't see - - -

10 Is it his entire bid for gates and bollards?---I would imagine so. That's what we've asked for.

But when you look at it is there anything left out that you can see?---The electronic component which was what we wanted to win.

20 The electronic component for gates and bollards?---Unfortunately Sydney Ports had wrapped up the, the entire project of civil works in electronic security, we're a security, at the time we were a security, electronic security provider not a gates and bollards manufacturer. And so if you can see the actual email that, that Mark requested and you've, you've, and thank you for these other emails because I didn't recall them but you can see there's an entire email trail, internal Austek email trail where we've, we've talked about the gates components - - -

No one has asked you to look at the other emails. We're only asking you about this email?---This email starts with costings for gates, bollards at Ports.

30 And is that what is – the email contains?---I believe the answer, the reply that Charlie gave was about costings, costings for gates and bollards at Ports. I know it sounds - - -

And it means they are his costings for gates, gates, bollards at Ports?---Once again I don't specifically - - -

Look at the email, “this is what we are going in at”?---That could well have been what he's going to subcontractors at.

40 I'm not asking you that. Can you stop arguing your case. You are being very defensive. Just try and answer the question and we will get on so much better and we will move ahead much more smoothly. In the light of the – I'll try again, in the light of the fact that the email commences, “this is what we're going in at”, does it not follow after you had a look at what follows in the email that Mr Diekman is giving you the details of his quote for gates and bollards at Ports?---As in his final bid or his subcontract bid because he was ambiguous.

What he was going in at, that is his tender?---But how do we know that he was talking about his tender? Because we, we started, we asked for a

subcontract price and his said this is what we're going in at. It could be this is what we're subcontracting to all the other providers if, if people were interested in using our services. It's, it's, Charlie often sends out there kind of emails and I mean if we were to sit and analyse every email that, every silly email - - -

Stop. You are not answering the question. You are making a lot of editorial comment that is wasting time?---Your Honour, I'm asking - - -

10 Be quiet. Mr Strickland.

MR STRICKLAND: What discussions did you have with Mr Diekman before he sent that email?---I don't specifically recall conversations but I was - - -

THE COMMISSIONER: Well you don't recall, then leave it.

MR STRICKLAND: I tender an email from Jonathon Nguyen to Mark Ashworth and others dated 30 October, 2007.

20

THE COMMISSIONER: The email from Mr Nguyen to Mark Ashworth and others on 30 October is Exhibit 202, and dated 30 October, 2007

**#EXHIBIT 202 - STATEMENT OF BRONWYN BARKER DATED 13 JUNE 2012 (ICAC REF: 36)**

30 MR STRICKLAND: In that email you have informed, you have given a number of attachments to your employees to assist them in preparing the tender for the Sydney Ports contract. Is that correct?---Yes, that's right.

And in your last sentence you've said, "BTW", that's by the way, "do not officially nominate Kings Security as a subcontractor. They are technically a competitor. Use their quote as a reference and guideline only"?---Yes.

What you've said in that email, the reference to their quote is a reference to Exhibit 1, tab 70 isn't it?---It must be, yes.

40 Yes. And you have referred – by referring to their quote, you are acknowledging that they have provided you, that is Kings have provided you with their quote for the contract. Correct?---No. I'm sorry to, to argue with you, but, but this, this would well be referring to, to their quote as a subcontract component. I think we're, we're automatically assuming that the schedule that Charlie sent was the actual schedule that he went, went to his final bid price at. It's – if Charlie was lazy and just cut and pasted the columns and, and entered the numbers, I can't control that. But you know we, we genuinely asked for a quote for a component and we thought we

received a component. I mean I don't see what's so suspicious about, about me saying that. And it's an internal email.

THE COMMISSIONER: Nobody said it's suspicious. You're carrying on again?---Mr Strickland – you know, this whole conversation is about - - -

MR STRICKLAND: No, it's not a conversation. I'm just asking you questions and you're answering them. In the first line of that last paragraph you say, "do not officially nominate Kings Security as a subcontractor".  
10 Why do you say that?---Because it puts us – and I don't specifically recall this email remember, this is 2007.

You don't deny you wrote it?---No, I don't deny I wrote it.

So what did you mean by that sentence?---In attempting to reconstruct it I would say that when you are tendering, you know we, if we had been successful in the job, in winning the job, it would not have been out of the ordinary for us to say, we price it at a level where, you know what let's find  
20 out how to make gates. We, we, you know, we use that as a reference, so often we'd get subcontract price from a, from a competitor or whatever and so say this is how much the gates are, we go oh okay, so that's how much the ballpark price of a, of a gate is. And as, as history will show we actually ended up creating our own manufacturing business on the back of the kind of information that we gleaned from our competitors in that way.

Can you just stop there, please. You are now carrying on again?---Sorry, your Honour. But I mean you're asking me to reconstruct.

You've answered the question.  
30

MR STRICKLAND: Mr Nguyen, isn't what you meant in that sentence and in the following sentence they are technically a competitor, is that - when you presented your bid to Sydney Ports you did not want to indicate to them that there was any arrangement between you and Kings that you may subcontract if you won the contract that you would subcontract a significant part of the work to Kings?---We're, we're - once again trying to reconstruct a tender which I don't personally recall.

THE COMMISSIONER: Just looking at the simple meaning of the words  
40 in the email, Mr Nguyen?---It would look - it would make us look bad if, if in our tender we, we, we showed that we weren't capable of doing the job and we had to refer to another company, you know someone else to, to do the majority of works.

MR STRICKLAND: So in other words you were prepared to deceive Sydney Ports weren't you? Because, because by doing so if you did not deceive them then it would make you look bad?---That, that could be one explanation. Another explanation could, could be that if you put - if you

nominate someone in, in a tender - if I go to tender and say we will use Kings Security for the gates component and we actually won the tender at the pricing that we did we would have had to engage Kings Security and, and once again like I said it's not beyond us technically to, to win a job and then say okay you know there's enough money in it for us to, to work out how to do ourselves. I've done - and my first elevator job was done exactly the same way. I, I priced it in such a way that you know when we actually won the job we looked at ourselves and said hey, how do you actually put an elevator system together and we, and but I, I don't see any - I think  
10 you're reading too much in, into quite an innocent internal email where I've said hey, this is, this is our tender and, and please don't, don't make us look like we're not capable of doing the job because we may well win the job and once again I'm only reconstructing I don't specifically recall this tender because it was 2007 and we've, you know it's a long time and we, we've bided on a lot of tenders since and I, to be honest I - - -

THE COMMISSIONER: Do you want to take more time to gabble on?  
---Sorry, your Honour.

20 MR STRICKLAND: You've previously given evidence at a private hearing that you had little to do with this tender process. Do you remember that evidence?---Yes.

And that was not true wasn't it?---That was to the best of my recollection and I still don't recall actually being involved in this tender but as, as the documents show I was, was obviously across it.

You were every relevant piece of paper for this tender came across your desk didn't it?---Generally my staff would carbon copy me on everything, yes.

30 Are you deliberately misleading the Commission when you gave evidence on the previous occasion that you had little to do with it?---No. I gave evidence to the best of my knowledge. If you look at this email even this, this tender - even this email has, has a Lend Lease document attached to it, you can see how many tenders I was across and I mean that's obviously I've sent that by mistake but that's, that's kind of - the kind of low that they're under right now - at that point in time, sorry. This, this is just one of many tenders that we, that we lose tenders all the time it's, it's part of bidding, you don't always get what, what you want.

40 I tender an email from Mr Nguyen to Jason Fitzmaurice dated 30 October 2007 headed 'Ports Tender'.

THE COMMISSIONER: An email from Mr Nguyen to Mr Fitzmaurice of 30 October 2007 is Exhibit 203.

**#EXHIBIT 203 - EMAIL FROM MR NGUYEN TO MR FITZMAURICE SENT AT 14:20 ON 30 OCTOBER 2007 (ICAC REF: 37)**

MR STRICKLAND: And I tender an email from Jason Fitzmaurice to Jonathon Nguyen titled 'Ports' dated 30 October 2007.

10 THE COMMISSIONER: Is this a bundle of emails or a stream?

MR STRICKLAND: No. I'd ask to them to be separate. So the - - -

THE COMMISSIONER: It's a bundle of emails, this latest document?

MR STRICKLAND: The latest, the latest document is a, is an email which annexes the draft Ports tender. It would be from pages 38 through to 70.

THE COMMISSIONER: Yes, thank you.

20 MR STRICKLAND: So have you got 203 and 204 - - -

THE COMMISSIONER: Just a moment, please.

MR STRICKLAND: I'm sorry, Commissioner.

THE COMMISSIONER: This will be Exhibit 204. That is email dated 30 October 2007 from Mr Fitzmaurice to Mr Nguyen.

30 **#EXHIBIT 204 - EMAIL FROM MR FITZMAURICE TO MR NGUYEN ATTACHING THE DRAFT PORT TENDER PRICING DOCUMENT SENT AT 14:41 ON 30 OCTOBER 2007 (ICAC REF: 38-70)**

40 MR STRICKLAND: So in Exhibit 203, that's at page 37, you asked your employee Jason Fitzmaurice to fill in what he can in a tender and then highlight the points you wanted - he wanted you to - sorry, highlight the points that Fitzmaurice needed you to answer and then him to email you and then you will fill up the rest, correct?---Yes, I guess.

And then next email he has sent you the draft Ports tender. Correct?---Yes, it appears so.

Well it is so, isn't it?

Yes. And you read it, correct?---To be honest I don't recall but I must have.

Well, you have asked him to send it so, so that you, so that you could fill in what he needed - what he couldn't fill in. Correct?---Yes, I do recall, I palmed this, this tender across to Jason and Mark at the time, and, and basically said look do what you can and if you need any help I'll, I'll, I'll fill in what, what you, what you can't. That's - I think that's what I can reconstruct from these email trails.

Now if you go to page 47 at Exhibit 204, and do you still have Exhibit 1 tab 20?---(No audible reply)

10

Sorry. Could the witness be shown Exhibit 1 tab 20 again. Tab 70, sorry.

THE COMMISSIONER: That's tab 70 of?

MR STRICKLAND: Exhibit 1.

I'll just ask you to go to page - I want you to compare the schedule of, of two different documents. You've got Exhibit 1 tab 70?---Sorry. I'm getting lost in the exhibits here. Okay, that's fine. Yes.

20

And you can - what I want you to do is compare the schedule of pricing from Mr Diekman's email to Mr Ashworth and the draft tender that was sent to you by Mr Fitzmaurice. Do you see that?---Yes.

THE COMMISSIONER: What page of the tender is it please?

MR STRICKLAND: It's page 47 of Exhibit 204 and page 168 of Exhibit 1, tab 70. And you can see that in relation - Sydney Ports had a number of different locations didn't they?---Yes.

30

And the structure of the quotes was to provide a separate price for each of the separate locations that comprised the total contract?---Yes.

And you'll notice that the price you've quoted, I'll take you through the, the different locations, for example 207 Kent Street, Sydney, the price in your draft quote is a little bit higher, some six or seven per cent higher than the Kings quote, do you agree with that?---Yes, I can see, yeah.

40

And the quote for the bulk liquids berth is some \$12,000 higher than the Kings quote, do you see that?---Yes.

The overseas passenger terminal quote is about \$500 less than the Kings quote, is that right?---Yes, I guess.

I'm not asking you to guess, I'm just asking you to look and compare. That's true isn't it when you do the maths?---Yes, it is.

And the Glebe Island seven and eight location your quote's about 21,000 higher than the Kings quote, correct?---Yes.

If you go to item 6, the Moore's Wharf, I withdraw that, the Port Botany pilot station and maintenance depot is a little bit less than the Kings quote, correct, by about \$1,000?---Yes.

The Moore's Wharf is about \$7,000 higher than the Kings quote, correct? ---Yes.

10

The Glebe Island emergency quote is about 26, sorry, \$36,000 higher than the Kings quote, correct?---Yes.

And the Port Services building is about 12,000 higher, correct?---Yes.

And in relation to the sugar mill, Sugar Australia Glebe Island silo, that's the option 1, the total is about 6,000 higher than the Kings quote, correct? ---Yes.

20

Do you see that?---Yes.

So did you deliberately, did Austek deliberately quote a little bit higher than Kings' quote?---I would have to reconstruct the scenario but I would have, I would have wanted to be higher than, than what Kings would have subcontracted to us if that was, if that's the question.

No, that's not the question. Did you deliberately quote our prices higher than the Kings prices?---The Kings final price of higher than the Kings subcontract price?

30

Well, I'm just asking, I'll take you to the final documents in a moment, I'm just taking you to this draft - - -?---Yeah.

- - - which you saw. My question, as at this date was it your decision to deliberately quote Austek's prices slightly higher than the Kings prices? ---I would have to reconstruct, I don't specifically recall this tender, that's, that's my problem, this is 2007.

40

THE COMMISSIONER: Well, that's the inference that I draw at the moment, it's a provisional inference. You're given the opportunity to explain to me that I'm wrong?---Yeah. I, I can recall in internal conversations where, where we often, when we got to, when we're about to bid on a tender we, we actually ask ourselves whether, whether we were going to go in sharp or we're going to go in average or, and in this, in this particular job it was a high risk job and we didn't - - -

You're being asked whether you deliberately, these prices were deliberately chosen so that they were higher than the Kings prices. Do you mind answering that yes or no?---I don't recall that I, that I did deliberately.

Well, I'm telling you now that I, that from these documents and the emails and the surrounding circumstances my provisional view is that this was deliberately done. You're given the opportunity now of giving any evidence which will show that my provisional view is incorrect?---Well, we would have had to be higher than the subcontract price if, if, if this a - - -

10

I'm not saying there's anything wrong with it, if there was a genuine subcontract there then it may be that you took a business decision to be higher. I'm just asking whether you it was a deliberate decision. I'm not asking you whether it was a subcontract price or that Kings was the main, I'm just asking you whether it was a deliberate decision for whatever reason it might be to go in at a higher price than Kings?---Your - - -

20

And I'm saying to you that from everything that's been tendered so far and the evidence that's been led, my provisional view is that it must have been a deliberate decision, that says nothing about the reason for doing it but if you want to dispute that it was a deliberate decision - - -?---Your Honour - - -

- - - there's your opportunity?---Your Honour, I'm being asked to recall some, recall something that I don't specifically - - -

All right. So you're saying I don't know?---Ah - - -

30

Is your answer I don't know, I can't remember?---I'm saying its not inconceivable that, that I've gone, we don't want this job, let's go higher but I don't specifically recall. It was a high risk job, I can recall it was a high risk job being that - - -

I'm asking you whether it was, are you able to again say that it was a deliberate decision?---I would, I would guess that it might have been a, a, a deliberate pricing strategy to be higher than, that - - -

Well, the fact is that you knew what Kings prices were?---I think, I don't think that's, that's agreed, your Honour.

40

Well, the email is sent to you, it says that?---But the email - - -

It says, tells you what Kings prices were?---But it originated as gates and bollards. See, this is the Kings price for gates and bollards and this is, this is the Austek price for gates, bollards and the electronic component which, which we had control over.

I'm not, I understand that but however, on page 47 are the gates and bollards prices that Kings gave you, aren't they? Isn't that the fact?---Ah - - -

You've got, you've got page 168 and you've got page 47 open, both relate - the items in the columns under location are the same?---The - - -

So you said that this is for gates and bollards so I'm accepting that and I'm saying to you - - -?---And I - - -

10

- - - excuse me, I'm saying to you accepting that these are gates and bollards you have in your information Kings price for gates and bollards but your price was more and I am saying to you here is your opportunity if you want it to explain why that happened and to explain that my provisional view that this was done deliberately is wrong. Here is your chance. If you, if you can't explain that I understand that, I just want to know what your answer is?---Your Honour, I think that, there, there may be some misunderstanding here because the Sydney Ports tender asked for a complete price for, and they didn't, I can, I can see here and I didn't, they haven't broken out the electronic security component on there so - - -

20

MR STRICKLAND: Who's they?

THE COMMISSIONER: I know that this does not - - -?---The client.

- - - include the electronic component because you've said that, that's correct isn't it?---But no, the, the clients final tender - - -

30

Page 47 and page 168 do not include the electronic component, is that correct?---I don't think that's correct, your Honour, I, I - - -

So show me where the electronic component is on these pages please?---I, I think - - -

On these pages?---I think page 47 is actually the, the gates plus the electronic component whereas page 168 which was from Kings was just the gates and bollards and once again, I'm only reconstructing here but I - - -

40

Would you please tell me from the words that are used on the page what makes you say that?---On page 47?

Yes?---Because there's an absence of a, a break out price for the electronic security.

And is there such an absence on page 168?---The, the prelude to 168 was a request for a specific component, your Honour.

Is there no reference to the break out price for electronics on page 168?

---The subject of the email implies that there is a, that that was the electronic security broken out.

MR STRICKLAND: I think I understand what your evidence is?---I, I'm, I'm - - -

Can I just - - -?---Yeah.

10 - - - ask you something if I could. I just want to take your draft quote at page 47?---Yes.

Have you got that?---Yes.

Let's just look at 207 Kent Street. You've priced that at 78,900 plus GST haven't you?---Yes. Yes.

Do you have the document in front of you?---Yes, I do.

20 All right. Now what – of that 78,900 what you're saying to Sydney Ports in this draft quote is that Austek can deliver the relevant security installation at that site for that price. Is that correct?---Yes, I guess.

All right. Now what is – what does the relevant security equipment involve? Just number them. Number 1) is gates. Is that right?---Yeah, gates and - - -

Hold on. Number 1) is gates. Correct?---Gates, yep.

30 Number 2) is bollards?---Yep.

Which are these poles. Correct?---Yeah.

What else?---Access control locks.

Hold on access control. Is that the next bit?---Yeah, yeah.

40 Because in other words to be able to operate – well what, in relation to this site what does access control actually involve?---I actually didn't do the site walk through.

I'm just asking you what does access control involve in this site?---I don't know. It was building, I actually didn't do the tender walk through. I believe it was Mark.

What else apart from access? There's gates, bollards, access control? ---Card readers, I think there's, there's mention of a lift, no that's, I don't know if there was a lift component or not, but - - -

I beg your pardon?--- I don't know if there was a lift component or not.

Okay. But you see the access – when you described the electronic component you're referring to access control principally aren't you?---Yes, yes.

Because access control is a critical part of the security product you deliver to a particular site isn't it?---Yes, yes, yeah.

10 Thank you. Commissioner, is this a convenient time?

THE COMMISSIONER: Yes. We'll adjourn for 10 minutes.

**SHORT ADJOURNMENT**

**[11.32am]**

MR STRICKLAND: Commissioner, I tender the Austek Security bid for the Sydney Ports Corporation.

20

THE COMMISSIONER: Exhibit 205 is the Austek bid for the access control and security upgrade at Sydney Port.

**#EXHIBIT 205 - AUSTEK BID FOR THE ACCESS SECURITY & UPGRADE AT SYDNEY PORTS CORPORATION (ICAC REF: 190-222)**

30 MR STRICKLAND: If you just go to page 196. You can see the price for the total – the estimated tender price referred to in that tender is 593, 920. Is that right?---Yes.

And you knew at that time didn't you that the price that Austek was tendering for the Sydney Ports job was going to be higher than the Kings tender price for the whole job?---I, I don't recall but I knew we wanted to, to not be the cheapest. And we knew that - - -

40 Why, why did you know that you did not want to be – why did you know that you did not want it to be the cheapest?---Because it was a high risk job for us.

You did not want the job?---We wanted the electronic security component of the job. But when, when the tender went out with a whole bunch of civil works we actually – I actually said to our guys, you know, we don't really want this job.

THE COMMISSIONER: So why did you tender?---Because by then we had already said we would tender.

10 What would be – what stopped you from not tendering?---Because if you – we were already doing work for Sydney Ports. And we felt if we didn't tender that, that it would be rude or it would be an affront to the client or the consultant. And it may cause them to, to not invite us to tender in future works. But as soon as they, they – as soon as we knew that, that there was a civil works component to the job and it was a substantial civil works component we, we had made it - - -

So you deliberately tendered a higher amount so you wouldn't get the job? ---Yes, your Honour. But we, but the, the pricing deduced from, from the industry that, you know, we knew, we knew it was about a half million dollar job so, so strategically I thought you know what, you know, put \$100,000 on top of that. If we win it, there's enough margin in there for us to - - -

20 The price you obtained from – by referring to the price you obtained from the industry you mean the price you obtained from Mr Diekman?---He would have been one, one of the sources. But you know - - -

Well we found no evidence of any other source and none has been given to us. The only source that we found was Mr Diekman. Who do you say you got quotes from in addition to Mr Diekman?---I don't, I don't think we got quotes from other people, but it was generally the knowledge that it was around a half a million dollar project. I can't recall.

30 Yes, Mr Strickland.

MR STRICKLAND: You have – your computer was seized by this Commission. Correct?---Yes I, yes, that's right.

And you, and you hadn't deleted any emails from it?---No, no, no.

40 The emails from your computer included all the relevant emails from – sent to Mr Ashworth because they have – as Ms Barker's statement indicates, there's an automatic forwarding from his email to yours. Do you accept that?---Yes, yes.

And the only quotes on your computer that have been sent to Mr Ashworth or any other employee or yourself is that from Mr Diekman. Do you accept that?---That may well be true, yes.

Well do you accept that that is true?---I don't specifically recall if we - - -

No. I'm asking from your computer records do you accept that it is true that on your computer there is no record of any other quote sent to Mr Ashworth

or to you to any other of your employees for which you have been forwarded other than the one from Kings. That is the one Exhibit 1, tab 70. Do you accept that or not?---Yes, I do.

Okay. So if you did receive any other quotes they must have been verbal mustn't they?---When I say we deduced the pricing, it doesn't necessarily mean you have to formally say, hey, how you going.

10 Just answer that question. Just answer that question. If you did receive any other quotes from any other persons or entities in relation to this job they must have been verbal?---There would have been other ways of, of obtaining pricing.

I'm asking about quotes?---Quotes, yes, I, I suppose.

20 But you don't recall any verbal conversations do you in relation to quotes for this job from other companies or entities?---I don't specifically recall the, the timing. There was something about easy automation or something I, I can recall at the time, I think they were in some trouble or something like that but I, I can't recall whether we, we, we might have tried to get some quotes off them or something like that but I, I can't, I can't specifically recall.

Commissioner, I tender the Kings proposal for the Sydney Ports Corporation dated 31 October 2007. Just for the benefit of the members at the bar table there are extracts of this at Exhibit 1 tab 72 and there were extracts of this quote in relation to Austek at Exhibit 1 tab 71.

30 THE COMMISSIONER: Exhibit 206 is Kings quote for the access control security upgrade for Sydney Ports.

**#EXHIBIT 206 - KINGS SECURITY PROPOSAL FOR THE PROVISION OF ACCESS CONTROL FOR SYDNEY PORTS CORPORATION (ICAC REF: 108-189)**

40 MR STRICKLAND: And just go to page 117. You can see the final quote for Mr - for Kings for the total quote is \$576,000 including GST. Do you see that, page 117? About the fourth line down?---Yes.

Yours, your quote was 593 plus GST wasn't it?---Yes.

All right. And if you just go to Exhibit 206 to page 111 and then also have Exhibit 1 tab 70 which is the email from Mr Diekman to Mr Ashworth and go to page 168.

THE COMMISSIONER: Sorry. What page again, please - sorry, Mr Strickland?

MR STRICKLAND: Page 111 of Exhibit 206 that's the Kings quote.

THE COMMISSIONER: Yes.

MR STRICKLAND: Page 168 of Exhibit 1 tab 70. Have you got those two documents side by side?---Yes.

10

And you can see can't you that 111 is a customer quotation from Kings which breaks down in summary form the different locations at page 168. Do you see that?---Yes.

And you can see that not all of the locations at 168 contain any electronic component. Do you agree with that? So for example, Overseas Passenger Terminal is simply the installation of an alarm.

THE COMMISSIONER: What page are you, page - are you looking at page - - -

MR STRICKLAND: I'm sorry. I'll go a bit - I'll take more, more slowly. If you just - let's, let's take the bulk liquids berth. Do you see that?---Yes.

Exhibit 1 tab 70 the price of that is \$107,000, correct?---Yes.

And what you have said is that that only contains a quote for gates and bollards. Do you remember giving that evidence?---Yes, that's what we asked for, yes.

30

Right. I know that's - but listen to the question carefully. Evidence you have given as that quote is only for gates and bollards. Do you remember giving that evidence - - -?---Yes.

- - - just before the break?---Yes.

Now if you go to the actual Kings quote in their final proposal at page 111 under the heading - under the same heading 'Bulk Liquid Berths' you can see that the - that is actually broken down into different components. That is there is a component for access control 27,000, a component for physical gates, barriers and gates 78,000 and then a small, very small component 1070 for locksmith. Do you see that?---Yes.

40

Do you see it?---Yes.

So your evidence - so in other words and that, that total is about 106,000 or it is 106,070 that is in page 111?---Yes.

So in other words the bulk liquids berth component quoted to you from Mr Diekman on 29 October at Exhibit 1 tab 70 does include the physical barriers, the gates and the bollards plus the access control component doesn't it?---But we're not to know that, we, we - this is the first time I've ever seen the Kings tender.

10 Doesn't matter whether it's the first time or not it's quite obvious isn't it that the bulk liquids - you see when, when Mr Diekman said in his email that's what we're going in at and then he gives a quote for bulk liquids berth at 10,770 that is precisely the quote that he went in at minus \$1000 when he, when he submits his final proposal and the final proposal as is clear from page 111 is for the entire job, that is gates, bollards and what you describe as electronics or access control. That's - you can see that from the figures can't you?---Is that the same? I don't have time to, to actually - I can't do the calculations off the top of my head but is that the same for all the columns or just - - -

Well I'm just asking you about that one.

20 THE COMMISSIONER: He's just asking you about - - -?---For, for that one.

- - - bulk liquid berth. Just focus on that, Mr Nguyen. You can see it, it's obvious?---I can, I can, I can see that, his, his price for the client includes all those things but - - -

30 MR STRICKLAND: Well you evidence about bulk liquids berth that only contained for gates and bollards that's false isn't it? Yes or no?---No, that's incorrect. We asked him, you can see what we asked him, we asked him for gates and bollards.

But the quote he gave you and as he said this is what I'm going to quote in at, it contained the entire quote didn't it?---Is that, is - - -

For gates, bollards and for access control?---Can, can, can you give me five minutes with a calculator?---Well I'm telling you - - -

THE COMMISSIONER: Just answer the question.

40 MR STRICKLAND: The figures of bulk liquids berth 27,000 plus 78 plus 1070 is \$106,070 that's the total as compared to \$107,070 in his quote to you?---I would agree they are close figures if that's - if you're asking me to, to verify your - - -

THE COMMISSIONER: Right. Look I mean if you can't add up then we'll move onto the next question because the figures speak for themselves.

MR STRICKLAND: See what I want to put to you is that you knew what Kings were going to put their bid in before you put your good bid in?---I didn't know their specific bid but I, I, I gleaned from, from what they quoted us for the sub contract component, you know I figured there would be about \$100,000 worth of work of access control. That was my - - -

THE COMMISSIONER: Did you agree to the sub contract component?  
---Your Honour, you can see that we requested a sub, a sub contract component.

10

Can you please answer my question. Did you agree to the sub, did you agree with Kings that they would - that if you got the contract they would perform the sub contract component in accordance with the quotation which you were sent by them?---Your Honour, the fact that we asked for a quote did not mean - - -

Do you mind answering my question?---No, your Honour. If - - -

All right. That's all I wanted to know, thank you.

20

MR STRICKLAND: And when you put your bid in at Austek there is not - there is absolutely no mention that you proposed to sub contract any part of your work to Kings, is there?---No, there isn't because we may not have - if we had won the job.

THE COMMISSIONER: No, no. You've just answered the question, that's fine, thank you. The answer's no.

30

MR STRICKLAND: What I want to suggest to you is this when Kings sent their quote to you Exhibit 1 tab 20 you knew when you read it that that was at that stage on 29 October the quote that Kings was going to put in for the whole job, didn't you? Not just the bollards and the gates but the whole job? Do you agree or disagree?---I disagree.

And I want to suggest to you that you knew based on your discussions with Mr Diekman that the reason - there was one of - there were one of two alternatives as to why Mr Diekman provided you with this quote; alternative one is that he provided you with this quote to ensure that you put in a higher bid. Do you agree with that or not?---I can understand how you could draw that conclusion.

40

I'm asking, I'm not asking you to comment, I'm asking you do you agree or disagree?

THE COMMISSIONER: That's a possible explanation?---It is a possible explanation, I understand.

MR STRICKLAND: And another possible explanation I suggest is that Mr Diekman gave you this quote because there was an agreement between you

that if you won the job then you would subcontract a significant component of the work back to Kings. That's why he's sent it to you.

THE COMMISSIONER: That's another possibility?---Yes, that's another possibility.

MR STRICKLAND: And there's no other third possibility is there?---There is.

10 What's the third possibility?---The third possibility is we could have won the job and chosen to use another contractor.

THE COMMISSIONER: No, but you've got to – the possibility as to why Mr Diekman gave you the information?---oh for why, what inspired him to send me his schedule?

Yes?---Because the obvious reason is because we asked for it. We asked for quotes for gates and bollards.

20 But do competitors send you their quotes?---When, when you ask for a component and it's not unusual, I know it sounds, it's unusual outside the security industry but it's not unusual in our industry if there's a component that you're not capable of doing to turn around to, to another company and say, you know, how much would it cost for you to do this component.

MR STRICKLAND: Mr Nguyen, Exhibit 1, you can see from the figures at Exhibit 1, tab 70, page 168 with the figures at page 111 that he has not quoted you the component of the job. He has quoted you the – he's give you quotes for the whole job?---Sorry, can I, excuse me - - -

30 Do you just agree with that or not?---So you're asking me if this document here – the email that he sent Mark was in fact the same bid that he went in as?

No. I'm saying you – I've said this – I asked you this before, you knew that when you received this email he was giving you a quote for the whole job not just a component of it, because that's what it says, "this is what we are going in at". It doesn't say this is, this is the costings for the gates and the bollards, it says, "this is what we are going in at". And then he gives you a  
40 breakdown of a quote for the whole job. And you knew that didn't you?  
---No. I would argue that, that's not, that's not – I wouldn't draw that conclusion if, if you read what we ask for. We ask for a component. And so it's, it's quite plausible that Charlie may be saying this is what we're going in at to you, but he didn't say this is what we're going, I don't see anywhere in this email that says this is our final tender to the client.

Going back to these alternatives as to why you asked Kings to send you a quote for the job that you were competing to get. Alternative 1) as I've said,

which you said is a possibility is that he's giving you a component so you can put in a higher price, a deliberately higher price so that they can the job. You said that's a possible alternative. The second alternative I suggest to you is that you, the reason he is sending you the quote is because there's an arrangement between you that if you, if Austek happens to get the job then you will subcontract a significant part of the work back to Kings. That's true isn't it?---They are two possible explanations and - - -

10 And I suggest they are the only two alternatives?---And I would argue that they are not.

Well what is another alternative as to why Kings is sending you a quote? ---Because we were the incumbents at the time. There was a possibility, albeit a very long shot that we may have actually won the job. All right. There was a possibility. And, and of course if we had won the job they would have wanted to, to sell us equipment and gates. But it's not to say that we were necessarily bound and one of the reasons why I would have – and once again I'm only reconstructing a tender that five years ago I lost - - -

20

THE COMMISSIONER: Well look let me just ask you – put this to you. You see on page 167 on tab 70 of Exhibit 1, that's the email of 29 October, you can see the contract management costs document preparation 2,500 OHS compliance 1, 800, project management 8,000. Do you see that? ---Yes.

Please go to page 119 of Exhibit 206, see there are the exact same, same rates, the same costs for the whole job?---Okay.

30 Do you see that?---I see that, your Honour.

So I mean there are other aspects and we haven't got time to go through every one, but it does look as if, as if the document at page 167 is not the quotation for gates and bollards, it's the quotation for the whole job?---Your Honour, I, I don't have any control over what Kings had submitted. But what we clearly asked for was, was a component. And you know it might be - - -

40 Are you saying that you don't – it doesn't matter to you whether Charlie Diekman sent you a quotation for the gates and bollards or the whole job, you simply understood it as a quotation for gates and bollards. Is that right?---I, recollecting from this email, your Honour, that's how I interpret it.

That's your reconstruction?---Yeah, reconstruction, your Honour.

And so would you say that – well gates and bollards you could reasonably charge what is set out at page 167 for documentation preparation, OHS

compliance and project management just for the gates and bollards alone? Is that a reasonable price?---Being that it's not our area of speciality I took it on face value that that's, that's what he has quoted. Now I'm also aware that obviously Charlie has to make a margin and profit and that so if we, if we had chosen not to proceed with Charlie's quote if we had won the job, you know, we might have, might have been able to do it for cheaper. But it gave us, this document - - -

All right. Okay. Thank you. Mr Strickland.

10

MR STRICKLAND: Do you accept that the conduct of Austek in relation to Sydney Ports on your own evidence skated extremely close to collusive conduct with Kings?---Yes, I accept it. We're always trying to glean information from our competitors and, and you know - - -

I'm just asking you about this job. Do you accept that?---I suppose that was a general comment because it's - - -

Do you accept it or do you not accept it?---Yes, I do.

20

Could the witness please be shown Exhibit 30? Do you recall receiving this email?---Yes, I do.

And what is this email about?---That was an invoice from Daniel that was overdue and I, I had promised to pay him and I was a bit short on funds and I was delayed. And that was Daniel's email to say, hey pay up.

THE COMMISSIONER: Payment of what?---This is November 2008, most probably we were at the closing stages of some shopping centre job and probably got an invoice for, for witness testing.

30

So what does the PS mean?---I guess 2008 was probably coming to the end of my relationship with, with Daniel, you know, us working together and I, I did actually say to him that, that, I was starting to, I was starting to question the invoices for witness testing because I had understood when we were doing lots and lots of rollouts in shopping centres that we were incurring in fact a lot of defects and re-witness tests and all that kind of stuff and, and I think, you know, Daniel had committed to, to, to helping me get access to the Lenel product or, or something like that.

40

Well, WF is Westfield I take it?---Yes, that's right, yeah.

And what's Colonial First invitation, that must be an invitation to tender? ---Yes, he's, he's put Colonial First State but I - - -

So clearly his - - -?--- - - - I'm assuming that's a shopping centre.

- - - his bargain involved something to do with Westfield?---Yes, that's right.

And what was that, getting you some work there?---Well, I suppose with consultants and clients, consultants and contractors are, are, are geometrically opposed and I think that he believed, he genuinely believed that he was doing me a favour at Westfields.

10 Do what, to do what, what was the favour?---Well, helping me out with Westfields and, and, and - - -

Helping you out how?---Daniel charges for giving advice.

So what, what advice, he was the consultant, you were a supplier?---Yes, but he was - - -

Integrator?---Yes.

20 So what, what was he doing for you for which he could charge?---Witness testing. You know, it's an unusual arrangement but it's not unusual in this, in the industry.

What do you mean, that if he passes your products you pay him?---Well, if we, if we get defects on a job he sends a, you know, the sends the, he sends a bill for his time.

30 But if they're defects he sends a bill for his time to you?---Yes, some, some clients will, will get charged by the consultant and then on-charge it to the, to the contractor and other clients will, will say to their consultant charge it to the client, the contractor directly.

And what's Westfield's position?---It's, it's actually, with some, some projects we, we get charged by the consultant directly and sometimes, and some, and some projects we, we get charged through deductions from our contract.

40 So was the bargain in relation to Westfield the fact that he had passed your products?---No, I believe that he, he, I can't, I can't, I can't recall why he put Westfield or Colonial First State - - -

Oh, come on, Mr Nguyen, you're not going to get out of this, I'm sorry. Mr Paul is telling you that he's lived up to his side of the bargain in relation to Westfield. You have said that he did the witness testing for that and he would - - -?---I would argued - - -

- - - he would, he would issue defect notices which would mean you'd have to go and redo the work. Is that right?---Yes, that's correct, that's the arrangement.

And you would then have to pay for that?---Yes, that's right.

And he could do that even if there were no defects, is that right?---It's, it's subjective, the defects were - - -

It's subjective, he might think that there were - - -?---It's discretionary on the consultant which I - - -

10 It's discretionary and you have no recourse, you've just got to obey the consultant, is that right?---As a contractor we, we don't have a choice.

Yes. So if he, if he passes your, your work quickly you get paid quickly, is that right?---Yes, that's correct.

And if he doesn't pass your work not only is there a delay but you've got to pay him?---Yes, it compounds the losses on the job.

20 So what was the bargain then, Mr Nguyen? Just tell us the truth, it's not difficult?---Towards the end, basically I, I, I said to Daniel why am I still getting invoices for, for, for defects and, and because the projects had stopped, the witness testing had stopped and, and I, I guess I assumed at the, you know, that, you know, that the projects were over that we'd, we'd stop getting invoices and, and, and we still received the invoices and I think one of the things that Daniel, Daniel mentioned to me was, look, you know, I'll help, you know, I'll help you out with getting access to the Lenel product and - - -

30 No, no, just about Westfields, let's stick with Westfields?---That is actually related to the Westfield project - - -

I see?--- - - - yeah, because I can't recall specifically but there was a, the timeframe but there was a job that, because we weren't Lenel, we weren't, how this, how the industry works is you have to - - -

Look, Mr - I'm just trying to - can you just try and be shorter. I'm trying to find out what is it that Mr Paul did you for in connection with Westfield?  
---He organised - - -

40 Can you tell us in a few words?---Westfield had changed one of the, one of the projects was changed from an Inner Range concept system which is one, one brand to Lenel so another consultant, not Daniel, had decided that Lenel would be a better system for that particular system. Now, we didn't have access to the Lenel product which meant that we were potentially going to be booted out of that contract for a provider who, who had the Lenel certification.

So?---And so - - -

What did Mr - - -?---I believe Daniel - - -

He got you access to Lenel?---Yeah.

And you paid him for that, you agreed to pay him for that?---I believe Daniel was a gatekeeper, yes.

How much?---I can't recall the amount but - - -

10

All right. And what about - - -?--- - - - I'm assuming that this, this, this email was because that invoice wasn't paid, that was - - -

He sent you an invoice?---Yes, I - - -

We have not seen any invoice like that?---It didn't, it didn't say access to, you know, he has - - -

20

What, it said something else, did it?---Yeah, I believe it was witness testing.

Witness testing?---Yes, that's right.

And what about Colonial First invitation, that's obviously an invitation to tender isn't it?---I don't even recall being invited because I, I wasn't ever interested in Colonial.

Did they have security work?---I would assume so, I, I don't know, he's - - -

30

So why, why would Mr Paul want payment from you for Colonial First?---I think it might have been Daniel trying to make me feel better about paying the invoice. Okay, its not so bad, look, I'm helping you out here and it - - -

Helping you out how?---As in, you know, giving you, you know, inviting you to - well, I'm assuming it's inviting to some kind of - - -

Well, he's putting you on a tender list?---Yeah. I, I don't recall being on a tender list for, for Colonial, your Honour.

40

I'm just trying to find out what it is that this is about?---Yeah, I'm, I'm pretty sure the, his intention was, you know, was, you know, I'll, you know, I'll put you on the tender list but - - -

And he charged you for that?---Yeah, I, I guess but once again, this, you know, he's, he's put that as a footnote which I suppose - - -

He's saying, he's saying, he's asking you to pay something and he's saying I'll await payment and he says I've lived up to my side of the bargain and

then he sets out what his side of the bargain was?---Yes, well, he, he did get us access to the Lenel product so - - -

All right.

MR STRICKLAND: I tender an email from Jonathon Nguyen to David Josey which is the first of an email chain, pages 381 through to 383.

THE COMMISSIONER: This is a chain of emails?

10

MR STRICKLAND: That's correct, yes.

THE COMMISSIONER: This is a chain of emails, Exhibit 207 is a chain of emails ending with the email from Mr Nguyen to Mr Josey of 1 December, 2008.

**#EXHIBIT 207 - CHAIN OF EMAILS ENDING WITH EMAIL  
FROM MR NGUYEN TO MR JOSEY DATED 1 DECEMBER 2008**

20

MR STRICKLAND: So if you look at the email first in time, its 26 November, 2008, this is an email that Daniel Paul sent to you and others two days before the email we've been, you've been asked about inviting you to provide a quotation for a small extension for CCTV at the Rosebud Shopping Centre, Victoria on behalf of Colonial First State, do you see that? ---Yes, yes.

30

Does that remind you that you were invited?---Yes, I, I actually forgot about this but I always, in my memory I thought that was a Lend Lease centre. It must have, I mustn't have taken it very seriously because I've palmed it off to, to David.

Do you recall ever being asked by Mr Paul to pay for anyone to attend ISC conferences?---Yeah. Daniel was - every year he'd invite clients and invite providers to sponsor clients and, and all that.

40

Did you, did you ever - you were ever asked to pay for any of those clients?--Yeah, he, he always emailed everybody and kind of - - -

I'm not asking about everybody - - -?---Yeah.

- - - I'm just asking about you?---Yes, yes, sir, he did ask me to.

And did you ever pay?---I, I can recall I sponsored a few, I'm just trying to work out whether it was - don't know if I - I can't recall if it was me, me sponsoring a like a client or was for, for my own, for my own seat on the

bus. There was one year where we, we might have received an invoice for, for the IC West trip.

THE COMMISSIONER: Did you pay that invoice?---Yes, I think I did. I may have, yeah.

MR STRICKLAND: Just show you exhibits, I'll show you Exhibits 110 through to 113 inclusive. I just particularly want you to look at Exhibit 110 which is the email from Dan Paul to yourself on 19 January and then an  
10 email - that's Exhibit 112 from Daniel Paul to you on 24 January and then your reply on 28 January your email from Jonathon Nguyen and yourself, sorry, Daniel Paul on that?---Yes.

And looking at Exhibit 113, does that remind you that you in fact did send to Mr Paul \$12,000 in response to his invitation about sponsoring someone?---I am not sure if I actually paid that invoice. I think this was - by 2009 we had stopped working together and - - -

20 What did you mean when you said, "Dan try to make my 12k last the distance, Pelco account overdue. Have you got (not transcribable) numbers." What do you mean by that?---Well Daniel and, and once again I - to the best of my recollection it was, it was going to be myself and Neville who was my project coordinator at the time who, who'll go on the bus and that was, was going to be our - that was to the best of my recollection - - -

THE COMMISSIONER: It was your \$12,000 for this person?---Yeah, for, yeah, for - it was six for me and six for Daniel, sorry, six for Neville.

MR STRICKLAND: And Neville was your employee, is that right?---At  
30 the, at the time I think I can recall, yeah.

I beg your pardon?---I think he was at the time, yes.

So did you actually - you see at Exhibit 113 Mr Paul writes to you on 24 January, "Jon, (I forgot Brad) who of these are being sponsored by you? I'm happy to pay the range to invoice you but I will want payment within 21 days." So your response to that is try to make my 12k last the distance, is it the case that you actually sponsored one of those people on the list?---I, I don't recall that I did. By January 2009 we had stopped talking to each  
40 other essentially.

But you were communicating by email aren't you?---Out of politeness, yes, I don't recall that we by then were on - working together.

Okay. When you say what do you mean by working together?---We - the, the only time I actually worked with Daniel was really on, on the shopping centre jobs and I think after a while we went our separate ways and, and we chose not to, to bid on the work that Daniel was, was doing. It was, it was a  
- - -

You actually went on that trip in 2009 didn't you?---I think I actually went privately with my wife at the time.

Just have a look at Exhibit 116, please?---116. Sorry, I don't have 116.

10 Do you recall receiving this email being an itinerary for - there's an email from you - I'm sorry Daniel Paul to Hingerty, Teasdale, O'Sullivan copy to you and others receiving an itinerary with costs for that 2009 trip?---I don't recall it but if I'm on copy then I guess - assume that I did receive it.

Excuse me, Commissioner.

Let's come back to that in a moment but I just want to show you another document, please. I tender an email from yourself to Mr Diekman dated 22 February 2008 that's page 256 and 257 and a quote at page 258 to 261. I tender that as a single document.

20 THE COMMISSIONER: Exhibit 208 comprises a bundle of documents including a string of emails and a quotation, the bundle is marked from 256 to 261.

**#EXHIBIT 208 - COMPRISES BUNDLE OF DOCUMENTS INCLUDING STRING OF EMAILS AND QUOTATION (ICAC REF: 256-261)**

30 MR STRICKLAND: Do you recall this incident where Mr Diekman asked you to provide - he said he need a second quote on a job and asked you to send your letterhead, that he will do the quote and send it back to you to send on. Do you recall that?---Actually I don't but, but I, I recall seeing the email where he requested it and thinking to myself I hope I wasn't stupid enough to reply. It turns out I was.

All right. And do you accept that you did send - you did comply with his request, Is that right?---Yes, as, as, as stupid as it sounds, yes.

40 And, and that was a dishonest thing to do wasn't it?---Yeah. I don't know why I did it.

That's not the question?---It was, it was probably 'cause he's asked me to do a second quote I told him I was too busy and - - -

Can you answer my question, please?---(No audible reply)

Can you answer my question?---It wasn't the right thing to do.

No. That was a dishonest thing to do wasn't it?---It was. I accept that that was a very poor choice.

MR STRICKLAND: After this – you became aware of this investigation and after you gave your evidence at a private hearing you were told not to speak to any potential witnesses weren't you?---Yes, I was.

But you did in fact speak to Mr Diekman didn't you?---He, he came to my workshop.

10

Just answer the question. Did you speak to him?---Yes.

All right. And you spoke to him about the matters, the subject of this investigation didn't you?---Yes, I did.

Right. But you didn't ring him up, he, he came over to your workshop. Is that right?---Yes.

Uninvited by you?---Not invited by me.

20

And unannounced?---Well he - - -

He didn't announce his visit before he came?---No, no he didn't, no.

And did he ring you on your own private number?---No. He, he, he got one of the engineers to, to call me.

Right. And you were at your house at that time. Is that right?---Yes, that's right, yeah.

30

And you were – it was late in the evening. Is that right?---Yes, that's right.

And did you come back from your workplace to your factory?---Yes, I do every night. I go home to have - - -

I'm not asking about every night, on this night?---Yes, yes I did, yes.

And you spoke to him. Is that right?---Yes, that's right.

40

And what was the conversation?---Yeah, I can recall saying, he, he wanted to know whether, whether I'd been questioned by the ICAC and I said, at first I tried to deny it, but, but then he, yeah, we had, we had just a general conversation and I basically said to him, you know what, you know, what the hell were you doing, what were you thinking.

You spoke about the Sydney Ports tender didn't you?---I don't recall that we did. I don't specifically recall that we did. Yeah, I don't, I don't specifically recall that, the Ports tender was discussed.

Well what do you recall was discussed?---I remember asking him, you know, you know, saying you know, what did you do with the letterhead that, you know - - -

What letterhead?---You know, we, we, I knew that he had a letterhead from some, some point in the past.

10 THE COMMISSIONER: A letterhead of yours?---Yes, that's right.

And what did he say when you asked him?---I think he said he couldn't ever remember what he did with it.

MR STRICKLAND: Did he ask you to switch off your mobile phone?---I think so, yes.

20 So he wanted, he wanted – is it the case that he wanted to know what you actually had said at the ICAC hearing?---I believe that was, that was the intention.

But was that what he said to you?---I, I'm - - -

THE COMMISSIONER: Did he ask you about it?---I can't recall the exact words, but - - -

Yes, but did he ask you about it?---He, he asked if I was, I was called in as a witness.

30 And did he ask you what happened?---I would assume that he would have asked me.

Well did he?---I can't specifically recall. It was a, it was a very brief conversation.

Did you refuse to tell him?---Yeah. I didn't give any, any details. I don't, I don't think I said anything specific. I was more, you know, I was more kind of annoyed that I was dragged into this, I guess, you know.

40 MR STRICKLAND: Well didn't he say something, did he tell you – did he ask you whether you had been asked about Sydney Ports?---It's not fresh in my memory. I would only be guessing. But - - -

I'll ask for a variation of the suppression order in relation to pages 1723 to 1727 of the compulsory examination on 31 May, 2012.

THE COMMISSIONER: Yes. The suppression order will be varied by vacating it in respect of pages that Mr Strickland has mentioned.

**SUPPRESSION ORDER VARIED BY VACATING IT IN RESPECT OF PAGES 1723 TO 1727 OF COMPULSORY EXAMINATION DATED 31 MAY.**

MR STRICKLAND: Just to save time I wonder if a copy of that - - -

THE COMMISSIONER: I think that's available.

10 MR STRICKLAND: - - - the copy of the transcript might be available. The one on 31 May, 2012. I'm not going to tender it at this stage. I'll just, perhaps if Ms Hughes can be given a copy. A least a copy of the relevant pages.

THE COMMISSIONER: I beg your pardon?

MR STRICKLAND: I just asked if Ms Hughes, Mr Nguyen's representative can be given a copy of the relevant pages, that's all, and Mr Nguyen. Sorry, I may have, I'm sorry to be unclear.

20

THE COMMISSIONER: Of course the other people who have an interest should also be given the other pages.

MR STRICKLAND: Indeed. Of course. What I will do - - -

THE COMMISSIONER: (not transcribable) but we will, they can be given them at, just after 1 o'clock.

MR STRICKLAND: Indeed. Could the witness just be given - - -

30

THE COMMISSIONER: Mr Strickland, can you just mention the pages again?

MR STRICKLAND: Yes. I'm sorry, I'll perhaps put the whole relevant conversation is, it's page 1720 through to 1729, I beg your pardon 1730, I beg your pardon, 1720 to 1730.

40 I just want to take you to one part, please. 1724, if you could go to that. The question that was asked was, "What did he say about it?" So you're being asked about the conversation. You said, "That, he said", that's Diekman saying to you, "they asked me about the letterhead that you sent me or something along the lines and I said, Charlie you know, you could have, what did I say, well actually", I'll just try and get to the point of it, you said, "What the hell did you, did you use my letterhead for?" And he said, "you know, you know, just what we agreed on." And I said, "Which jobs?" Do you see that?---Yes, yes.

Does that, does that true what you said?

THE COMMISSIONER: What line is that? What line is it?

MR STRICKLAND: It's line – there's no lines on my page, it's about point 7 of the page. Does that refresh your memory as to what was said?---Yes, yes.

10 And then at about the fifth or sixth last line, you said, “we talked – I was curious about that and then we talked about – and then he said something along the lines of they wanted to know about Sydney Ports. You know the quote that you sent me, you know, was that your tender submission.” “Who said that”, was the question. “I said, you know the quote, the quote that”, this is over the page, “I'm mean thinking back to when you guys showed me the schedule and I still had the question over my head at the time, you know, whether it was his whole schedule or was it the component”. Do you see that?---Which page was that?

THE COMMISSIONER: I'm a bit lost myself.

20 MR STRICKLAND: All right. It's difficult to follow the answer. Page 1724, the last question, “Who said that?” “I said.”

THE COMMISSIONER: I'm not, does everybody interested have a copy of this transcript? It's on the screen.

MR NAYLOR: No, your Honour.

30 THE COMMISSIONER: It's on the screen. I think that we'll adjourn so that everybody can follow.

MR STRICKLAND: Certainly.

THE COMMISSIONER: We'll adjourn until 2.00pm. We'll start at quarter to 2.00. Adjourned til 1.45.

**LUNCHEON ADJOURNMENT**

**[12.50pm]**