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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 TUESDAY, 19 JUNE, 2012

AT 10.15AM

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

THE COMMISSIONER: Mr Strickland.

MS TRONSON: Commissioner, one thing, my name is Tronson, T-r-o-n-s-o-n. I seek leave to represent the Art Gallery of New South Wales.

THE COMMISSIONER: Yes, very well. Thank you. Mr Strickland.

<PETER CHARLES DIEKMAN, on former oath [10.16am]

10

MR STRICKLAND: Mr Diekman, have you ever asked your wife Alison Newman to transfer any money into Robert Huskic's account?---Not that I can recall. I have access to her account.

Right. And did you yourself ever transfer money into Robert Huskic's account?---I may have for working on the boat. I mentioned that yesterday.

20 Yes, but apart from that transferring money for the boat, that's the \$7,000?
---Yes.

There's no other occasion you can recall - - -?---I do recall doing some, him doing some work prior to that.

That's the year before?---Yes or some time before, yeah.

30 But that, that transfer was – I'm talking about the one – the transfer where he had worked for a year maintaining and cleaning your boat, you transferred \$7,000 on a single occasion to him. Is that correct?---No, that's, from memory I just transferred to the bike company.

To the bike company?---Yes.

Okay. That's what you said before. You transferred the money to I think whichever the company - - -?---Yes.

- - - made the bike you transferred the money there?---Yes, that's correct.

40 So you didn't – so I'll start again?---Well sorry, from memory that's correct.

So you didn't transfer any money directly from your account or your wife's account to Robert Huskic?---I may have. He worked on the boat prior - - -

Okay?--- - - - and I may have, I remember paying him or I thought I paid him, but I just can't, I can't recall how or when or where.

Okay. Well you said that was about – was that about a year before the \$7,000 transfer to the manufacturer of the, of the scooter?---I can't, I can't recall that.

THE COMMISSIONER: It was the year before then?---I can't recall.

That's what you said?---Well he started working on the boat the year prior when he maybe first started up I paid him some, I just, the dates I don't know. I can't recall.

10

MR STRICKLAND: Okay. Well the, the Vespa scooter that was in 2009? ---Right.

Right. Does that sound right to you?---That sounds right.

All right. And that's when you transferred - - -?---Oh sorry, some time then, it might have been 2008. I can't be sure.

Okay. So if you had transferred another sum of money - - -?---Yes.

20

- - - and to his account that would be about a year before the \$7,000 to the Vespa scooter. Is that right?---Look I can't recall the dates.

THE COMMISSIONER: Well it wouldn't have been in the year because the scooter was for a year's work I thought you said. Am I wrong?---That's correct but I, I can't, maybe I paid him some first, I really can't recall.

What for? What would you have paid him for?---For working on the, for working on the boat.

30

But I thought that the \$7,000 was for the years work?---Yes.

Is that wrong?---No, that's correct.

MR STRICKLAND: The first occasion that Robert worked on your boat you said yesterday he did a few weeks worth of work, a few weeks worth of work?---Well a few weeks worth, yes.

That's right?---Yeah.

40

But that would be on weekends and the like, is that right?---Oh, from - yes, I think so and, and during the week.

And during the week?---Yes.

Wasn't he working as an employee during the week?---He may have had holidays or RDOs off, I'm not sure.

Well, when you say he may have, I mean did he?---Well, I don't, I'm, I can't recall that.

Well, how much did you pay him on that first occasion?---I, I – honestly I cannot remember.

I take it you didn't get any receipt from him, is that right?---That's correct.

Okay. So just to be clear there were two occasions then?---Yes.

10

One occasion when he did a few weeks worth of work on the boat and then another occasion when you paid \$7,000 to the person from whom he bought the Vespa or the scooter, is that right?---Yes.

Okay. Just let me show you this, these documents. I'm going to show you financial folder 229 and 230. So if I could just take you to 229. This is a Commonwealth Bank record of your wife's account, do you, do you see that?---(No Audible Reply)

20

And there's a transaction on 27 July, 2007, 6.47pm from your account to Mr Huskic's account of two and a half thousand dollars.

THE COMMISSIONER: Is it, is it Mr Diekman's account?

MR STRICKLAND: Sorry, your Honour, I withdraw that question, thank you.

From your wife's account to Mr Huskic's account in the sum of two and a half thousand dollars?---That's correct.

30

Now does that mean on the basis of your evidence that that must have related to the first time he cleaned and maintained the boat?---I believe so.

So why does it have in the account description "second hand TV"?---So he, not a tax thing I probably had in my mind I - - -

I beg your pardon?---It was probably so he – I put it down as I bought a TV so he doesn't have a tax problem, I'd imagine I did something like that.

40

What would be the tax problem?---Well, him getting paid.

I see. All right. But this is a description you've recorded in your own account?---Yes.

Sorry, it's a description – are you the person that did the transfer or was it your wife?---No, it probably would have been me.

It's got authorised by Allison Newman, can you explain that?---Well, it's her account.

Right. Why did you transfer it from her account?---Oh, I used her account a bit.

10 THE COMMISSIONER: But why did you use her account to pay Mr Huskic? Was that to disguise the payment?---No, she probably had more money in the account, if you go through the records there's lots of payments to boats out of her account.

MR STRICKLAND: But the description "second hand TV" that description was given to disguise the nature of the payment wasn't it?---Yes.

And why was it your business to disguise the nature of the payment?---Just doing him a favour.

20 And why were you doing him a favour?---By not, so he didn't have to pay tax on the, on the money.

But why would you do Mr Huskic a favour?---Well, I was paying him for working on the boat.

Yeah?---Yeah.

But – I understand that but you're saying that wasn't - the payment of him working on the boat was not a favour, was it?---No.

30 No. But the disguising of the nature of the payment was a favour, wasn't it?---Well, whether you call it a favour, yeah, I suppose you could call it a favour, yes.

But when you – you'd have to say well, whether you called it a favour you, you – that was your word and - - -?---Yes, yeah.

- - - you accept that?---Yes.

Not my word?---Yes.

40 So my question is why did you do Mr Huskic a favour?---So he wouldn't have to pay tax on the 2,500.

I understand but why pay him any favour?---Well, he was working on my boat.

Well, did you give him a favour because he was also an employee at AHS? ---No.

Not at all?---No.

THE COMMISSIONER: You didn't want to get into his good books?
---Well, I want to get into everyone's good books.

And one way of getting into his good books was to disguise the payment to him. Is that right?---It could be one way, yes.

MR STRICKLAND: Did you tell him that you had disguised the payment?
10 ---I can't recall.

Well, if you hadn't told him it would be absolutely no use to him, would it? If he, if he didn't know you disguised the payment, what's the favour to him?---Oh, so there's no favour to him.

I beg your pardon?---So, well, there's no favour to him. I can't recall whether I told him or not.

THE COMMISSIONER: You must have told him. I mean if your intention
20 was to do him a favour by giving him money without the tax office being aware of it, you'd have to tell him what you'd done so that he would know that he wouldn't have to declare it. Isn't that right?---Well, that's what I can recall doing but I can't recall the, why.

I mean that's the inference that one would have to draw. Isn't that right?
---I don't- - -

Well, you're doing the man a favour, you don't do half of the work to do the
30 favour, you do all of it, don't you?---Well, what's the rest of it?

Telling him so that he can- - -?---Well, I would have told- - -

So that he knows that he doesn't have to declare it?---I would have told him
- - -

Yes---?- - -that I was- - -

Thank you. That's all I wanted to know?---I would have told him that I was
40 depositing money into his account, if that's, so he'd know where it's- - -

You would have told him what?---I would, I would have told him I would have deposited the pay in his account.

And that he didn't have to declare it?---No, I wouldn't have said that, I just
- - -

So then what is the favour?---Oh, well, there's no favour then.

Then why did you put in, in the bank account that the payment was for a second-hand TV?---So, so it didn't come down as wages for him.

So you were doing him a favour?---Okay, call it a favour then.

So then why didn't you tell him?---I did tell him, but I didn't- - -

Ah, thank you?---No, sorry, I told him I was depositing money. I can't recall whether I said I put it down as a TV.

10

Yes, Mr Diekman.

MR STRICKLAND: So are you saying that in the, at this time, because you're saying it's at this time, around July 2007- - -?---Yes.

- - -he has cleaned your- - -?---Yes.

- - -and maintained your boat some few weeks before. Is that right?

---That's correct.

20

So we can now pinpoint the time when he cleaned and maintained your boat in that few week, the first period when he cleaned your boat was before 27 July, 2007?---Sometime before then, yes.

How long before then?---Oh, I can't recall.

Well, is it the case that he did a few weeks' worth of work and then you paid him a year later for example?---No.

30 That wouldn't make sense, would it?---No.

So what, you paid him a few days or a couple of weeks after he paid the boat, he maintained and cleaned the boat?---I can't recall.

I understand you can't recall, but as a matter of practice, if someone did a job for you on your boat- - -?---Mmm.

40 - - -would you pay them shortly after they did that job or would you wait a year?---I would pay them when the time was right to pay them, when I had the money and- - -

So if there is money in your wife's bank account- - -?---Mmm.

- - -to pay, then you would have paid shortly thereafter. Is that right?

---At some stage, yes.

Well, I know you said, it's obviously some stage?---Look, I can't recall. Sometimes it might have been 30 days, it could have been, I just- - -

So what's your, what I want to know is, what's your practice, do you sometimes delay paying people for jobs they do say six months or a year?
---No.

Or do you pay them within a fairly short period after?---Within a, within a month or two, yeah.

Within a month or two?---Yeah.

10

Okay. So - - ?---Mmm.

- - -he's, he's done the work on your boat- - ?---Yes.

- - -in June/July 2007. Is that, would that be an accurate thing to say, based upon the date of this payment?---Yes.

Okay. So before June/July 2007 he had not worked on your boat?---Well

- - -

20

It follows from what you just said, doesn't it?---I can't be exactly accurate on that.

It follows from what you said?---Okay, it follows, no, it follows what I said I normally pay within 30, 60 days. Sometimes I might pay straightaway.

Do you accept it follows from what you said or you don't accept?---Well, I said, I said I normally pay 30, 60, maybe this wasn't a normal occasion. I just can't recall. I can't pinpoint the dates when he was working on the
boat.

30

When he worked on the boat on this first occasion - - ?---Ah hmm.

- - - were you there to - - ?---At times, yes.

Right. About how many times?---Oh, I can't recall that.

THE COMMISSIONER: How do you get to the figure of \$2,500 to spend on him for his cleaning work?---Just in the hours.

40

How many hours?---Oh, look I don't know.

Well what was he charging an hour?---I think I was paying \$30 an hour. I really can't recall.

MR STRICKLAND: So he's done about 80 hours of work cleaning and maintaining the boat - - ?---Yep.

- - - over a few week period. Is that right?---It may have been a little bit more. I just, I really can't recall.

I'm just quoting back the words you said yesterday?---I said a few, I said a few weeks. It may have been three weeks. I just, it's 2007 I - - -

But on your figures \$30 an hour, two and a half thousand, he's done about 85 hours of work. Is that right? Cleaning and maintaining the boat?---Yes.

10 Okay. And did he give you a piece of paper to say that he'd done 85 hours worth of work?---Not that I can recall.

Now did you ever provide a car to Cameron Creary?---Yes.

And what were the circumstances which you provided a car to Cameron Creary?---He was asking for – it was probably 12 months he kept asking our technicians when our, our service vehicles come out of lease because we sell them to a wholesaler and we offer them, offer it them to staff what they pay for them or offer to do it – anyone like friends and anyone.

20

THE COMMISSIONER: Is Cameron Creary a friend?---A work associate. I wouldn't say, you know, a close friend. I don't socialise with him.

MR STRICKLAND: So - - -

THE COMMISSIONER: You were doing him a favour?---I was selling him a car.

30 But you were selling him a car at a particular price were you?---The same price that we were offered from the wholesaler. When the cars come out of lease we normally take - - -

That's quite a good deal isn't it? I mean ordinary purchaser of a car on a retail basis would have to pay more?---Well we sell the cars to the wholesalers. I think one of them went for \$5,000 at that time and seven ten . It depends on the condition of the cars. But we're not in the - - -

40 But the – just answer the question, please?---We're not in the practice of putting ads in the paper.

My question was you sold it to him for a price on the basis you've explained which must be cheaper than an ordinary person would be able to buy that, that car on the market?---Well if you're paying retail yes.

Yes.

MR STRICKLAND: So did you yourself discuss with Mr Creary him purchasing a car?---I think he had some discussions with our technicians at the time.

My question is - - -?---Yes.

It's going to take a long time if you don't listen to the question. The question is this, did you have a discussion with Mr Creary about him purchasing a car?---Yes.

10

Right. What were the discussions with you?---That some cars were coming out of lease if he was interested. He just had to match the quotes we had from the wholesalers.

And how was he going to get the quotes from the wholesaler?---Oh, I think I told him we've had quotes come in and this one's \$7,000. And he came down and had a look at it.

So you gave him a quote did you?---Well just over the phone.

20

Okay. And you said he came down where to have a look?---To my house.

Right. And because that was -- was that a car you were driving?---At the time I think, oh look I'm not sure, I swapped cars all the time, whichever was in the, in the garage.

Okay. This was the 2004 Holden Commodore sedan. Is that right?---That's correct.

30 Okay. So - - -?---Oh yes, I think so. I think so.

So he came to your house to check out the car?---Yes.

And did he decide then that he wanted to buy it?---Yes.

All right. And did you agree upon a price?---Yes.

What was the price?---\$7,000.

40 Right. And did he pay you then?---He paid me cash.

Then?---Yes.

And what did you do with the cash?---Sorry?

What did you do with the cash?---Put it in my pocket.

Yeah. And after you put it in your pocket, what did you do with it, did you, did you, this was company money, wasn't it?
---Ah, it was a company car, yes.

So what did you do with the \$7,000 of company money?---Probably spent it.

On what?---My boat, holidays, I don't know.

10 I, did you, I take it you told someone in the finance department that you'd pocketed \$7,000 of company money?---I can't, I can't recall.

But isn't that, if it's company money paid to the company for the car- -?
Mmm, mmm.

- - -that's what you would do as a matter of practice?---Oh, I, I can't, can't recall.

That would certainly be the, sorry.

20

THE COMMISSIONER: Sorry. Are you suggesting that you just put in your pocket money that belongs to the company?---Yes.

Without telling Mr Roche?---Oh, I can't recall whether I told him or not.

You might not have told him?---I may not have.

I get the impression you wouldn't care whether he knew or not?---Ah, I can't, as I said, I can't recall whether I told him or not.

30

I get the impression you didn't care whether he knew or not. Is that right?
---Oh, yes, I cared, yes.

So you must have told him?---Well, I can't recall telling him.

But you must have?---Well, I said I- - -

If you cared?---Huh?

40 If you cared that your partner would know?---Well, as I said, I can't recall telling him.

Yeah. But did you, if you cared, you must have told him?---Well, I said I can't recall telling him.

Mmm.

MR STRICKLAND: That would not be an honest thing to do, would it, to pocket \$7,000 of company money without accounting for it?---Well, I think the car had been paid out of a lease, it was, it was a, it was a write-off.

THE COMMISSIONER: It wasn't your money?---I own the company.

You certainly don't. You're a shareholder with Mr Roche?---Yes.

10 MR STRICKLAND: Would you agree, if it's the case that you didn't account for that money to the company, that would not be an honest thing to do?---Well, as I said, I don't recall whether I told him or not.

But do you, did you ever account for the \$7,000 that you pocketed?---I said, I don't recall.

THE COMMISSIONER: How did it come about that you were paid in cash?---I, I was quite surprised, he came down to have a look and he just pulled out a wad of cash.

20 How did he know how much he was going to pay, had you told him?
---I told, I told him beforehand, I said there's one, there's one that's coming out of lease or one that we want to get rid of and we had a price for \$7,000.

So he, he, it was his idea to pay you cash?---I, yes.

And you hadn't discussed how you were going to be paid beforehand?---No.

'Cause you were surprised when he ended up paying you cash?---Yes.

30 And what sort of cash notes did he have?---Oh, I can't recall.

What denomination?---I can't recall them.

MR STRICKLAND: So you discussed the price when, when he arrived at your house. Is that right?---I think I told him over the phone that there's a car, cars coming out of lease and there was a, for some reason in my head I think we had a \$5,000 one and then there's the 7,000 and also a \$10,000 one.

40 Did you ever tell Mr Poller about the \$7,000 that you received for the car?
---I can't recall.

And what paperwork was filled out or what paperwork was there when you sold the car to him for \$7,000?---Just a registration transfer.

And did you organise that?---I can't, I can't recall.

And was there, did you provide him with a receipt for the \$7,000?---I signed the registration which is a receipt as such and put the price on the back. I can't recall whether I gave him a receipt, I can't, I don't think I did but- - -

So you signed the registration- - -?---Mmm.

- - -on the day that you did the transaction?---Yes.

I'll just show you some documents.

10

THE COMMISSIONER: Mr Strickland, just what are we then going to do with the, the bank documents which you handed up and you questioned Mr Diekman about one of them?

MR STRICKLAND: Yes, I'll just, I'm just going to tender just that one page, but I'll do, can I do that at the end of, either the end of lunch or end of today I'll tender all the documents that I have asked- - -

20

THE COMMISSIONER: Well, we better – we've got a list of documents now have we - - -

MR STRICKLAND: Yes, I do, yes.

THE COMMISSIONER: - - - with numbers.

MR STRICKLAND: Yes, I'm happy to tender those now.

30

THE COMMISSIONER: Well, I don't want to go through each document now.

MR STRICKLAND: My proposal was to tender the documents.

THE COMMISSIONER: Have you got a list of documents now?

MR STRICKLAND: Yes, I do, yes. The documents that I've already shown Mr Diekman I have a list of, yes.

40

THE COMMISSIONER: Right. Well, I think it's important that all other counsel know what this list is so that anybody who wishes to obtain a copy should simply obtain copies of the lists of exhibits from the, from the Commission solicitor and those will be made, that will be made available to anybody who asks for it and the, the documents which are marked D1 to D15 will be regarded, will be accepted as exhibits, they being documents on which Mr Diekman was cross-examined or was questioned yesterday and those end at D15 so the first page of the bundle which was put to Mr Diekman this morning which is a Netbank customer support system transaction details with the receipt number 72774664870 will be marked D16 and will form part of the documents which are presently being put into

a folder and these documents will comprise as a whole one exhibit with the documents inside the folder being marked separately from Exhibit D1 and sequentially. So that document which I have just described will be D16.

**#EXHIBIT D16 – EXTRACTS FROM FINANCIAL FOLDER 229
AND 230 THE FIRST PAGE OF WHICH IS A NETBANK
CUSTOMER SUPPORT TRANSACTION IDENTIFIED BY
RECEIPT NUMBER N072774664870**

10

MR STRICKLAND: Thank you. I'll tender each document as I show them to you from now on.

So I just want to show you document AHS 368 and have you got that? I'm just going to show him this document first, I did mention four pages before, I'll just show this document first. This is AHS 68 and 369. I just want you to confirm if you can this is a – this refers to a registration plate Z-J-B-3-6-2, date 31 August, 2008, a station wagon. Is that, is that the car you've been giving evidence about?---Oh, I assume so, this is the, yes, yes.

20

If you look over the, if you look over the page the primary owner is Cameron Creary?---Yes.

And the previous primary owner was Kings?---Yes.

Acquisition date 31 August, 2008?---Yes.

And it's got the buyer's declared value at \$6,000?---Yes.

30

Did you – is it the case that you were paid 7,000 but you only recorded 6,000 on the registration documents?---Well, what's the seller's declared value?

THE COMMISSIONER: Sorry, I can't hear?---What, what's the seller's declared value, I, I thought it was \$7,000.

MR STRICKLAND: What I'm asking you is having shown you this document - - -?---Yes.

40

- - - is it the case that on the registration papers, even though you got \$7,000 what was recorded was only \$6,000?---I, I, I don't know.

You don't know?---No.

Okay. I tender that document.

THE COMMISSIONER: Yes. Well, that document being – or what is it
Mr - - -

MR STRICKLAND: It's a RTA registration record for the Holden
Commodore sedan.

THE COMMISSIONER: Sorry - - -

MR MORGAN: Morgan for Creary, Commissioner.

10

THE COMMISSIONER: I beg your pardon?

MR MORGAN: Morgan for Creary. Could I have the address suppressed?
His address.

THE COMMISSIONER: Sorry, I can't hear you.

MR MORGAN: There's an address on the registration slip.

20

THE COMMISSIONER: Yes.

MR MORGAN: Morgan is my name. I act for Creary. Could I have that
suppressed please?

THE COMMISSIONER: Yes.

MR MORGAN: Thank you.

MR STRICKLAND: Could I - - -

30

THE COMMISSIONER: I should make it clear there'll be a suppression
order on Mr Creary's address on the exhibit. But the document which is
being described by Mr Strickland as a RTA record of the registration of a
vehicle in the name of Mr Creary will be Exhibit D17.

**SUPPRESSION ORDER ON MR CREARY'S ADDRESS ON THE
EXHIBIT**

40

**#EXHIBIT D17 - RTA REGISTRATION RECORDS FOR HOLDEN
COMMODORE SEDAN**

MR STRICKLAND: Can I show you five additional pages? Poller 203 to
207. Do you recognise these, I'll just take you to the first page, 203 do you
recognise this as a Kings Security financial record for sales?---Yes.

And this records that on 31 August, 2008 there was a sale of the Holden Commodore sedan Z-J-B-3-6-2, that's the same registration number as indicated on the RTA, so do you accept that's the same car record from that?---Yes.

For the sum of \$5, 454.55 and if you add the GST that comes to \$6,000? ---Yes.

So I take it that you didn't make that entry yourself did you?---No.

10

So you've told someone in the finance section of your company about the sale of a car?---I may have.

THE COMMISSIONER: You must have. How else would they know? ---As I said I can't recall saying it.

But you must have?---Well do you want me guess, I can't recall.

20

No Mr Diekman, I don't want you to guess. I just want you to use your mind. The only person who could possibly have told the finance person in your company about this transaction is you. Is there anyone else who could have?---As I said I don't - - -

No, is there anyone else who could have is my question?---I could have told someone else to tell them, I just don't recall.

But you were the original source of this information. There's no one else who could possibly be the source of this information originally is there? ---No.

30

Thank you.

MR STRICKLAND: So if you go now to page 205. You can see that is a Kings Security record about account transactions. Is that correct?---Yes.

And if you go to the third line, well sorry on the first line it shows a debit on the company's accounts of the 5,454.55. That relates you can see that the description of that relates to the sale of that Holden Commodore. Do you agree with that?---Yes.

40

And that shows that that is an amount owed to the company. Correct? Is that correct?---Yes.

Right. So that suggests that as at 30 June, 2009 the company had not yet been paid the \$5,454.55 for the car doesn't it?---Yes.

That's inaccurate though because you had been paid?---That's correct.

Can you then go to the third line, it's got reversal GJ004602 30/6/2009 and again the same figure, \$5,454.55. Now that indicates doesn't it that that debit has in effect been reversed or cancelled. Do you agree with that?---I don't really understand it, but - - -

Well, doesn't it mean that the debt recorded in the accounts has in effect been cancelled?

10 THE COMMISSIONER: I'm not sure if that's right, Mr Strickland, because the- - -

MR STRICKLAND: Okay, well, I withdraw the- - -

THE COMMISSIONER: - - -the, what it appears is that the debit is shown on 30 June at \$5,454.55, on the same date- - -

MR STRICKLAND: Is a credit.

20 THE COMMISSIONER: - - -there's a credit which means that the company for some reason didn't want to show the debit in the- - -

MR STRICKLAND: I'm sorry.

THE COMMISSIONER: - - -(not transcribable) records.

MR STRICKLAND: That's quite right.

THE COMMISSIONER: And what they've reversed is the credit.

30 MR STRICKLAND: I accept that entirely and I withdraw the question.

THE COMMISSIONER: so what it means is that as far as the company's concerned, as at 1 July, 2009, there was still \$5,454 owing.

MR STRICKLAND: Do you understand what- - -?---Not really.

40 Well, let me just take the first entry again, because that's the clearest. On 30 June, 2009 it shows that there is still a debit on the company's books for the car. That's pretty clear, isn't it?---Yes.

Can you explain that?---No idea.

When you get to 1 July, I'll just make this simple, on 1 July, 2009, there's still the debit of 5454.55, isn't there?---Yes.

So that must mean that no one has been told in the accounts that Mr Creary, that you had received the cash for the car. Correct?---I assume so.

Right. Well, that, there's two explanations for that. The first is that you never received cash for the car?---Well, that's not correct.

That's one, that's one explanation?---Well, it's not correct.

The second explanation is you did receive the cash but you never told anyone that you'd received it. There's no other explanation, is there?
---I can't recall.

10

No, no, this is not- -?---I, I had nothing to do- - -

This is, this is not a question that I asked you to recall anything?---I had nothing to do with any of this, these records here.

No, I'm not asking you to recall anything, I'm just, I'm asking you to just listen to the question and use your mind to answer it. You've agreed they are the two explanations for that, for that record in the company account?
---Yes.

20

So on the first explanation, that is you never received the cash, you, did you actually received the cash?---I received the cash, yes.

Well, then if that's so, then the only other explanation is that you did not tell anyone in the company that you'd received that cash. Correct? That must be so if you're, if you did in fact receive the cash?---Well, as I said, I can't, I can't recall.

30

But no, I'm not asking you to recall, I'm asking you as a matter of logic, that must be so?---Well, maybe, maybe the accounts department, maybe I did give the cash to someone and they've used it, I don't know.

And who would have used the cash in the accounts department?---Petty cash, I don't know.

So you're saying someone in the accounts department may have- - -?---No, I'm not, I'm not saying that they're- - -

40

I haven't finished the question?---I'm not saying that. I'm just- - -

Well, that's, that's what follows from what you said, that someone in the accounts department did receive the cash but then did not account for it?
---That's an option.

THE COMMISSIONER: I thought you said you put it in your pocket and spent it?---I said, I said that I can't recall what I did with it.

Well, originally you said you put it in your pocket?---And I said I probably spent it or, I said I can't recall. I gave you some options what I might have done with it.

MR STRICKLAND: You're extremely vague about what you did with the cash. Correct?---Well- - -

Is that correct or not?---2007, yes, I am very vague because I really don't remember.

10

But, but, but you have a crystal clear recollection of receiving it, don't you? ---Well, I can remember coming down and taking the car and paying me the cash.

2007, as you say, five years ago- - -?---Mmm.

- - -you have a crystal clear recollection of him coming down, taking the car - - -?---I don't have a- - -

20 - - -and giving you- - -?---I don't, I don't have a- - -

- - -giving you the cash?---I don't have a crystal clear recollection 'cause I actually thought he gave me \$7,000 so, you know.

But you remember him giving you cash don't you?---Yes.

A clear memory of that?---No, not a clear memory but I remember.

30 It's not the case is it that in fact you never sold the car to him at all but you gave him the car?---Definitely not.

And that you gave him the car as a favour to him?---Definitely not.

And that you gave him the car as a favour in order to influence how he did his job as an AHS employee to favour Kings?---Absolutely not.

THE COMMISSIONER: So why on earth does your company records, do your company records show that the money is still owing if you were paid for it?---Well, as I said, I may not have - - -

40

That, I have to say that that sounds very improbable to me that if somebody pays you something more than \$5,000 in discharge of a debt that your company owes in effect that you wouldn't tell your company about it. Have you got any comment to make on that?---No, as, as I said, I cannot, I can recall him paying me, I can't recall what happened after that but I absolutely recollect I sold him the car for the cash.

And you have no explanation as to why your company records don't reflect the payment that you say was made to you?---That's correct.

MR STRICKLAND: Now I want to show you - --

THE COMMISSIONER: So that - are you - - -

MR STRICKLAND: Sorry, I tender, I beg your pardon, I tender those pages.

10

THE COMMISSIONER: Yes. A bundle of accounting documents being account records from Kings Security Group Pty Limited, the first of which is dated 6 January, 2012, that being the date of the copy, and the heading being Sales (customer detail) January 2008 through December 2008 will be marked D17 and will be an exhibit. Sorry, I'm told it's D18, yes, it is, D18 I think.

20

**#EXHIBIT D18 - BUNDLE OF ACCOUNTING RECORDS
RELATING TO KINGS SECURITY THE FIRST OF WHICH IS
DATED 16/01/2012 AND THE HEADING BEING SALES**

THE COMMISSIONER: Yes, Mr Strickland.

30

MR STRICKLAND: If I could show you two other documents, financial 231 and 232. So if I could 16 back please. If I could just show you - I'll just give you that back to put in the folder. I'll now show you another part of, another part of D16. It's 231, 232. So do you see that that's another record from the Commonwealth Bank of a payment from your wife's account to Robert Huskic's account, this time on 9 August, 2007, correct? ---Yes.

And that's for \$2,490?---Yes.

And you've got to account descriptions, balance of second TV, is that correct?---Yes.

40

So what does that payment - did you authorise that payment or was it your wife?---No, I would have, yeah.

And what does that payment relate to?---I assume it's the boat still.

When you say you assume it's the boat - - -?---Mmm.

- - - do you recall whether it was the boat?---Well, that was the only reason I was paying him.

THE COMMISSIONER: Weren't you bribing him?---No, absolutely not.

MR STRICKLAND: Well, that's some – that's a very short time after the first payment of \$2,500, the first payment was on 27 July?---Yes.

And the next payment is on 9 August?---Yes.

That's a total of \$5,000?---Yes.

10

So you've now paid him \$5,000 for cleaning and maintaining your boat for a few weeks. Is that right?---Well I said it might have been three weeks. I just, I don't recall exactly how long.

Mr Diekman, yesterday I asked you about the cleaning of the boat - - -?
---Yes.

- - - and you said it was the first period of a few weeks and then another one where he did it for a year. Do you remember that?---Yes.

20

So using your words back at you, you paid him \$5,000 in two lots of payments - - -?---Yes.

- - - on 27 July and 9 August, \$5,000 for a few weeks worth of cleaning and maintaining your boat?---Yes.

Is that right?---Well as I said it may have been more than two weeks. My best recollection I thought a couple of weeks, it may have been more.

30

That's 160 hours worth of cleaning and maintaining your boat over a few weeks. No one maintains and cleans, no one spends 160 hours over a few weeks to clean and maintain a boat do they, no one?---I totally disagree with that.

Do you?---Yes.

Because you can say here and now before this Commission that because you paid that amount you can say hand on heart that he – you paid him that for 160 hours of work - - -?---No, I can't say for - - -

40

- - - for cleaning and maintaining your boat?---As I said, I can't recall the hours. I can't recall the time. I thought it was two weeks, it may have been three weeks.

Let's say it was three weeks?---Let's say it was four weeks, as I said I cannot recall.

But in – but see if he's working in June – if it's June/July 2007 he is

working full time then. How do you explain that?---See if he was on holidays, maybe he was on holidays.

No, he wasn't. How do you explain that?---Maybe I paid him four weeks later. I honestly can't recall. It was 2007.

He is working full time during the time you paid him \$5,000 for a few weeks worth of work. How do you explain that?---I can't explain it.

10 There is no – there is no plausible explanation for that is there?---Well the two weeks may have been two months before.

I beg your pardon?---It may have been two months before he did the work and before I paid him.

Well two months before is June 2007 and he was working full time for AHS?---Well I know he did the work on the boat and I paid him for it.

20 How do you explain that he can - - -?---I can't explain it.

Exactly. See - - -?---So it might have been April he did the work or May, over Easter, I just, it was that long ago I cannot recall it.

Why did you pay it in two lots? Why, why one payment in – on 27 July and another on 9 August?---Maybe I didn't have the money in the account.

30 But if you did have the money in the account there'd be no reason to not pay him in one lot would there?---Maybe he did some work over that time, I really can't recall.

Okay. So he did another two and a half thousand dollars worth of work you say - - -?---No - - -

- - - between 27 July and 9 August?---No, no I'm not saying that at all. I'm just saying I don't really recall that. He was working on the boat at some stage in that period. And it may have been two months before and I paid him in two lots.

40 So your explanation for the payment of two lots of two and a half thousand dollars - - -?---Yes.

- - - to Mr Huskic for cleaning and maintaining your boat just isn't true is it?---It is absolutely true.

Did you ever ask anyone from Kings to repay you for these two amounts of two and a half thousand dollars?---I was always asking for money.

No, just listen to the question. I'm not asking what you always do, I'm asking about these two payments?---Yes.

Did you ever ask anyone at Kings to repay you for paying Mr Huskic two and a half thousand dollars for cleaning and maintaining your boat?---Not that I can recall.

Well there'd be no reason to would there?---Yes.

10 There would be a reason?---Yeah, 'cause I always want money from the company to maintain my boat, because I used the boat for networking.

So you did ask someone, did you, you did ask?---No, I can't recall whether I did but there would be a reason if I did.

Thank you.

MR DUNNE: Your Honour, Commissioner, might there be a suppression order in relation to Exhibit D16 in relation to Ms Newman's account number?
20

THE COMMISSIONER: To whose account number?

MR DUNNE: Ms Newman's.

THE COMMISSIONER: Yes. There will be a suppression order in relation to Ms Newman's account number, bank account number.

30 **THERE WILL BE A SUPPRESSION ORDER IN RELATION TO MS BANK ACCOUNT NUMBER.**

THE COMMISSIONER: Mr Strickland, the Exhibit D16- - -

MR STRICKLAND: Yes.

THE COMMISSIONER: - - -was the first document in the bundle and that was all, so the NetBank Customer Support System document with receipt number 8-0-9-7-0-1-4-2-5-3-3 will be marked D19 and will be an Exhibit.
40

#EXHIBIT D19 - NETBANK CUSTOMER SUPPORT TRANSACTION DETAILS RECEIPT NUMBER N080970142533

MR STRICKLAND: Thank you.

MR DUNNE: Commissioner, so that suppression order applies (not transcribable)

THE COMMISSIONER: It does indeed, Mr Dunne.

MR STRICKLAND: Right. I now want to ask you some questions about the contract that Kings did for the University of Western Sydney?---Yes.

10 Do you recall that?---The, the first one?

Well, what was the first contract you did with UWS?---The access control system.

Is that, are you asking me or is that your- -?---No, I'm just guessing, sorry.

You're guessing?---Yeah.

20 Well, I showed you an email yesterday on 19 April where you, in relation to the Department of Housing where you said that there was a big UWS contracting coming up, Mr La Greca- -?---Yes.

- - -was the consultant. Do you recall that?---Yes.

Before then you hadn't done any work for UWS, had you? Or had you? ---Look, not that I can recall. We may have through a builder or something.

30 So there was an advertisement in the Sydney Morning Herald for the tender for the installation and maintenance of Concept 4000 system at UWS campus, and that was in late June or early July 2007. Is that the, does that jog your memory as to what you were bidding for?---The dates, I remember, yes.

The Concept 4000 system?---Yes.

40 Now, if the witness could be shown the document, UWS 162. I'm just showing you some background document in relation to trying to fix the dates for the UWS contract. So I'm showing you an email from yourself to Alyson Eather of TressCox on 3 July, 2007, where you register your interest, or Kings Security Group registers its interest in the tender for the installation and maintenance of Concept 4000. Is that correct?---Yes.

And do you have a recollection of doing that?---Yes.

Not sending the email, but- -?---I can recall the- - -

- - -tendering for that- -?---Yeah, yes.

- - -contract?---Yes.

And do you remember that Mark Eschbank was the facility services manager for Bankstown Campus?---Yes.

And he, he was responsible for the security and facilities management at Bankstown. Is that correct?---He was working there, I don't know what his exact role was.

He was a friend of David McMicking?---Correct.

10

And David McMicking was an employee of Kings?---Correct.

What does David McMicking do?---David's been with the company since day 1.

That's not my question. What did he do?---Sales consultant.

Sales consultant?---Account, yeah, account manager.

20

You said sales consultant?---Oh, account manager, yeah.

So what does an account manager do?---Look after our clients as far as their needs.

And you knew, didn't you, that Daniel Paul was a consultant for this UWS contract?---I'm not sure when I knew but yeah, I knew eventually he, he was the consultant, yes.

And how did you know that?---Oh, I can't recall.

30

Well, I take it he told you at some stage, is that right?---Or it was on the tender documents, I can't recall.

I'll show you another document, UWS299. I'm sorry, I tender the previous document.

THE COMMISSIONER: The - - -

MR STRICKLAND: UWS162.

40

THE COMMISSIONER: Is this a, is this an email?

MR STRICKLAND: An email. An email from Charles Diekman dated 3 July, 2007.

THE COMMISSIONER: To, to Alyson Eather.

MR STRICKLAND: That's right.

THE COMMISSIONER: Yes. That email so described by Mr Strickland will be Exhibit D20.

#EXHIBIT D20 – EMAIL FROM MR DIEKMAN TO MS EATHER DATED 3 JULY 2007

10 MR STRICKLAND: I'll show you another email, again the first email at the bottom of the page is from you to Peter Roche dated 5 July, 2007 for your information and then there's an email at the top from, from Peter Roche to Joe Lindsay at OptusNet. In your email you have attached a tender for the installation and maintenance of the Concept 4000 system.

THE COMMISSIONER: Is this the document on the top of the bundle, Mr Strickland?

MR STRICKLAND: It's 299 at the top, I'm sorry.

20

THE COMMISSIONER: So it's that document.

MR STRICKLAND: I'm sorry. I may have made a mistake there. Is there 300 to 302 in there?

THE COMMISSIONER: Yes.

MR STRICKLAND: It is, thank you. Sorry about that. 299 at the top and – I'm sorry, I'll just – I should have just started at the earlier email. Just go to
30 page 300. You are sent an email from Alyson Eather on 5 July at 11.15am. Do you see that?---Yes.

And then you forward that on to Mr Roche?---Yes.

And did you ask him to forward that on to Mark Eschbank?---Oh, not that I can recall.

Thank you. I tender that document.

40 THE COMMISSIONER: Or the bundle.

MR STRICKLAND: The bundle, I beg your pardon.

THE COMMISSIONER: The bundle of documents, the top of which is an email from Mr Roche to Joe Lindsay dated 10 July, 2007 will be marked D21 will be exhibit.

#EXHIBIT D21 – BUNDLE OF DOCUMENTS WITH FIRST DOCUMENT BEING AN EMAIL FROM MR ROCHE TO OPTUSNET DATED 10 JULY 2007

MR STRICKLAND: I'll show you another email from Peter Roche UWS 315-316. I'll just give you a moment so you can read that.

10 THE COMMISSIONER: Mr Strickland, perhaps this is an appropriate time to adjourn for 10 minutes. The Commission will adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.15am]

THE COMMISSIONER: Mr Strickland, there's just one matter before you begin.

20 MR STRICKLAND: Yes.

THE COMMISSIONER: The last page of Exhibit D21 contains a number of addresses. All the addresses in the last page of Exhibit D21 will be suppressed.

ALL THE ADDRESSES IN THE LAST PAGE OF EXHIBIT D21 WILL BE SUPPRESSED.

30 MR STRICKLAND: Thank you. You've read the email from Mr Roche to yourself and a number of others?---Yes.

And was it the truth that this – you regarded this University of Western Sydney contract as a very, very large tender?---Yes.

Is that how you regarded it?---Oh, it was a good opportunity, yes.

You were the client manager?---Yes.

40 And so was David McMicking?---Yes.

And your job as described in the meeting, sorry, in an email was to have meetings and talks with Mark Eschbank, the Mark there is Mark Eschbank. Is that right?---Yes. I would assume so.

Daniel Paul?---Yes.

Because you know that he was the consultant?---Yes.

You knew that he was responsible for evaluating - - -?---Yes.

- - - the tenders, tender bits from the different tenderers. Correct?---I don't know what his role, whether he was going to evaluate or not, no.

Well what did you understand Daniel Paul's role was as a consultant?

---Technical consultant.

10 THE COMMISSIONER: Does that not include evaluation?---It depends on what he was contracted to do.

Are you serious?---We went over this yesterday, a lot of tenders go out there and the consultant designs it or has his input and he doesn't go to the tender evaluation.

20 MR STRICKLAND: But you had discussions with him didn't you about this contract? That was what you were told to do, not told, that 's what you were – that was one of your roles wasn't it to talk to him?---To gather as much information as we can.

So to gather as much information would involve knowing what his role was. Correct?---Well as I said I don't recall knowing what his exact role was.

But you certainly would have back the wouldn't you?---Probably not. Oh I may have, I just I can't recall, you know, he was saying he was a consultant to the job.

30 But you knew then and you know now that a consultant to the job is a pivotal position in determining who gets the job?---I don't agree with that.

You don't agree with that?

THE COMMISSIONER: Who gets the tender, you don't agree?---Well not on all occasions.

MR STRICKLAND: On this occasion I'm talking about?---Well I was unaware whether he was on the tender committee. Maybe he was, he - - -

40 Mr Diekman, I just want you to try and go – put yourself back in your own shoes - - -?---Yes.

- - - back in July 2007 and being real about it. Dan Paul was a very influential figure in the security industry wasn't he?---I can't comment whether he was influential or not, no.

You wouldn't agree with that proposition?---Well, he was working in the industry.

Well, so were hundreds and hundreds of other people weren't they?---Yes.

Hundreds and hundreds of people. Are you saying he was just one of hundreds and hundreds of people?---Yes, he was.

No more important or no less important than anyone else working in the industry?---Well, he was a consultant within the industry.

10 Just answer my question. Are you saying he was no different in terms of influence than anyone else working in the industry?---I, I, I wouldn't know.

You wouldn't know?---No.

Is that an honest answer?---Well, he's a consultant on that job so yes, he's important because he's a consultant on that job that we're tendering for.

20 But Dan Paul was one of the most influential people in that industry at the time and it was well-known wasn't it?---No, this is one of the – this is probably one of the very early jobs we've done with him. 2007, I don't think – yeah.

What – it's the case isn't it that your job at that time was to get as much information as you could from Mark Eschbank, Dan Paul and Adam Burns to ensure that you – that your company could secure the contract, ultimately that was your job wasn't it?---And, and a lot more. We were trying to gather as much information as we can.

30 Forget we, I'm asking about you. That was one of your jobs, wasn't it? ---Yes.

And Adam Burns was a, a senior person at UWS wasn't he?---Yes.

Now, if I can next show you – I tender that document, the email of 18 July, 2007.

THE COMMISSIONER: Yes. The email of 18 July, 2007 to Mr Diekman from Mr Roche is Exhibit marked D22.

40

#EXHIBIT D22 – EMAIL FROM MR ROCHE TO VARIOUS KINGS SECURITY EMPLOYEES DATED 18 JULY 2007

MR STRICKLAND: I'll show you an email dated – sorry, UWS 319 dated 26 July, 2007. That's an email from David McMicking to Mr Roche which you are copied into. Is that correct?---Yes.

And in that email Mr McMicking reveals that Mark Eschbank had given him some information about two companies, namely Signature and SNP that had withdrawn their interest on the UWS tender, is that right, that's what that email - - -?---Well, it says Mark, you'd assume it's Mark Eschbank but it could - - -

Could it be any other Mark?---It could be, yeah, any Mark.

10 It could be any Mark?---Yeah. But I, I assume it's Mark Eschbank.

Okay. And that's because you knew that Mark Eschbank and McMicking were friends?---Well, I knew they were friends, yes.

And did you know that Mark Eschbank was giving information about the tender to McMicking?---Just through general talk, I probably thought he was trying to gather information, yes.

He being who, sorry?---David.

20 Right. But you knew, didn't you, that, that McMicking was getting information from Mark Eschbank about the tender?---No, no, I didn't know he was - well, I knew he was working on getting information, yeah.

From Mark Eschbank?---Oh, from, from suppliers, from - - -

Well, I'm just talking about Mark Eschbank?---Well, he's - - -

30 You know he's getting information from Mark Eschbank?---Well, yes, more than likely. He didn't give us very good information because I don't think those companies withdrew.

I tender that document.

THE COMMISSIONER: The email of 6 July, 2007 from Mr McMicking to Mr Roche will be marked D23 as an exhibit.

**#EXHIBIT D23 – EMAIL FROM MR MCMICKING TO MR ROCHE
DATED 26 JULY 2007**

40

MR STRICKLAND: I want to show you a document, UWS 583, 587, including, and 589. I'll show them as one document if I could.

THE COMMISSIONER: One bundle?

MR STRICKLAND: One bundle. Thank you. It is one bundle I'm told. This is the tender report for the selection of the contractor for the Concept

4000 system which was to be installed in all the UWS campuses. Have you ever seen this document before?---No, I don't think I have.

If you just go to 587, I just want to fix some dates in your mind. I'm sorry, I beg your pardon, if you go to 586 first. That refers to the tender, the identities of the people on the Tender Evaluation Panel, including Daniel Paul, and you can see there it says, "The panel met on 14 August, 2007 and discussed and agreed the tender evaluation methodology, including agreement on weighting and processes." Do you see that?---Yes.

10

If you go to 587, again it refers to the Tender Evaluation Panel meeting on 14 August, '07 and 23 August, '07 and carrying out commercial and technical assessments for tenders to proceed. Do you see that?---Yes.

And then if you go to 599, on 5 October, 2007, the four members of the Tender Evaluation Committee have recommended that Kings Security be awarded the contract for the installation and maintenance of the access equipment across all UWS campuses for the contract sum of \$1.044 million, including 36 months of preventative maintenance at a cost of \$170,000 or thereabouts?---Yes.

20

I tender that document.

THE COMMISSIONER: Yes. The tender report and request for approval relating to Concept 4000 system being the tender at all UWS campuses is marked D24 and is an Exhibit, together with the, with other documents which are attached forming a bundle.

30 **#EXHIBIT D24 - TENDER REPORT AND REQUEST FOR APPROVAL FOR SELECTION OF CONTRACTOR FOR CONCEPT 4000 SYSTEM, BEING THE TENDER AT ALL UWS**

MR STRICKLAND: Just for completeness I'll show you UWS 648.

MR LLOYD: (not transcribable) page 587 of that Exhibit about point 2 refers to the probity advisor's report is attached. May I ask that we have that (not transcribable) because it appears to form part of this document.

40

THE COMMISSIONER: I don't see that, Mr Lloyd, can you just show it to me again, please. You say point 2.

MR LLOYD: Page 587.

THE COMMISSIONER: Yes.

MR LLOYD: About 10 lines down, the last sentence of the heading, Evaluation.

THE COMMISSIONER: Yes.

MR LLOYD: The probity advisor's report is attached.

THE COMMISSIONER: Yes.

10 MR LLOYD: That would appear to be a relevant document- - -

THE COMMISSIONER: Yes.

MR LLOYD: - - -that goes with this Exhibit.

THE COMMISSIONER: Yes.

MR STRICKLAND: I accept that. I accept what Mr Lloyd says and I'll
20 comply with that.

THE COMMISSIONER: It will be produced, it will be produced and form
a separate Exhibit.

MR STRICKLAND: For completeness I'll just show you UWS 648, a letter
from Leo Johnson, the senior project manager of UWS Capital Works and
Facilities, Mr Roche, dated 13 November, 2007, confirming that Kings have
agreed to the tender for the installation and maintenance of the Concept
4000 system.

30 THE COMMISSIONER: Is that a- - -

MR STRICKLAND: I tender that document.

THE COMMISSIONER: And is that part – that's a separate, yes.

MR STRICKLAND: A separate document.

THE COMMISSIONER: Yes, the letter from Mr Johnson to Mr Roche of
40 30 November, 2007 is marked D25 and is an Exhibit.

**#EXHIBIT D25 - LETTER FROM MR JOHNSON OF UWS TO MR
ROCHE DATED 13 NOVEMBER 2007**

MR STRICKLAND: So in relation to the – I've just given you the main
contractual documents for that 1.1 or \$1.2 million contract?---Yes.

To your knowledge was the only consultant on that Concept 4000 tender process Daniel Paul?---Not to my knowledge, no.

Was there another consultant?---Well not to my knowledge.

Sorry, we're at cross purposes. The question is to your knowledge was Daniel Paul the only consultant that you were aware of or were there others?---There may have been.

10 No, to your knowledge were there any others?---Yeah, I can't recall.

THE COMMISSIONER: You answer some of these questions, many questions saying you don't know. But in many cases you're intimately involved in the matter?---Mmm.

And here we have got a contract, a very important contract where – in which you were intimately involved on behalf of Kings and you say that you can't recall whether Mr Paul was the only consultant involved to your knowledge?---Well there may have been an IT consultant involved in it also because we were going on the network.
20

Well there may have been but we're only asking whether – what you knew. What did you know? Did you know of any other consultants?---I didn't know of any others but - - -

That's all you were asked.

MR STRICKLAND: Did you ever – in relation to this project did you ever ask Peter Roche for any cash for any consultant for this project?---Not that I can recall, no.
30

THE COMMISSIONER: I beg your pardon?---Not that I can recall. If you had done that you would have recalled it wouldn't you?---Well I can't recall.

I understand that. My question is if you had asked Mr Roche for cash for any consultant on this project that's something you would have recalled isn't it?---No, no I'm saying I can't recall.

40 THE COMMISSIONER: But I know you're saying that and again, shall we go – we can keep going until you answer the question?---Yes.

Will you answer the question, please?---Yes.

MR STRICKLAND: Let me put it another way then. Can you think of any legitimate reason why Kings Security would pay cash to a consultant on the UWS project?---No.

if the witness could shown Poller 90. Now this is an email from Mr Roche to Greg Poller and you are copied into it on 17 August, 2007?---Mmm.

I'll just pause before I go to the body of it. According to the documentation that I've shown you that date is right in the middle of the tender evaluation process for UWS. Do you agree with that?---That's what it – yes.

10 And in that email copied to you Peter says, “Greg, I need some cash or a cash cheque today to pay a contractor that is working for us. Also Charlie requires some cash for consultants, et cetera. I'm clean out down here.” Does that refresh your memory that you asked Mr Roche for some cash from the company for consultants?---But et cetera, I don't know what - - -

THE COMMISSIONER: I know there's et cetera, but it mentions consultants expressly. You were asked whether that refreshes your memory as to whether you asked for cash at least for consultants?---Well, it refreshes my memory but I don't recall it.

20 It's something that, according to this email from Mr Roche, happened. You're not in a position to deny that, or are you?---No, I'm not denying the email.

No, you're not denying, are you denying that you, that at this stage you informed Mr Roche that you required cash for consultants?---I'm not denying that.

30 MR STRICKLAND: So why would you have asked Mr Roche for cash for consultants?---I needed some cash to pay consultants, it may have been another job, you know, we run a thousand jobs a year.

A thousand jobs a year, but not a thousand jobs in August, 2007?---We run a thousand, we invoice about, it's probably even more than a thousand a year. I can't, you know, say.

THE COMMISSIONER: How many jobs were you working on in August 2007, do you know? On average how many jobs a month do you work on? ---Well, they range from \$200 up to, you know, \$1 million, \$2 million, so - - -

40 How many jobs?---A month, I'd imagine 3 or 400.

And what would you pay a consultant in cash for?---For getting him to do some design work for us or IT work.

But he wasn't employed by you?---Who?

The consultant?---Which consultant?

The consultants who you were working with. Are you suggesting that you retained consultants to work for you?---Well, there's all types of consultants, there's security consultants- - -

Excuse me?---IT consultants- - -

10 Please answer the question. Are you saying that you retained, in 2007 you retained consultants who worked for Kings?---Well, we call some of our account managers a consultant.

Did you retain- - -?---Not that I can recall.

- - -any consultants- - -?---Not, not that I, not that I can recall.

No. So the cash was paid to consultants retained by other parties?
---(No Audible Reply)

20 You're taking a long time to answer?---Well- - -

Do you mind answering?---Well, at times I'll pay cash for an IT consultant to do some design work.

30 No, you, all right. I have to warn you that you, the way in which you are answering these questions and taking a long, by that I mean the long time that you take to answer a question that's difficult and the short time you take to answer a question that's not difficult, and your inability to remember anything, well, that's overstating it, but many things that are important which one would ordinarily expect you to answer, does not reflect well on your credibility. I'm only mentioning that at this stage to give you an opportunity of remedying the situation and understand, so that you understand what effect this generally has. Do you understand that?---Yes.

I'm not saying necessarily I have formed any opinion about it, but I'm warning you that what, the way in which you are testifying as I have described it does give rise to a possible inference that you're not telling the truth. Do you understand that?---Yes.

40 Good.

MR STRICKLAND: Can I just show you, I want to keep Poller 90 for the moment and I'll tender it in the course of other, with these other documents I'm going to show the witness. Could the witness please be shown Poller 91, 92 and 93.

I'll just – let me just – I'll first ask you to look at Poller 91 and there's an email - - -

THE COMMISSIONER: Sorry, just – sorry to interrupt, Mr Strickland.

MR STRICKLAND: I'm sorry.

THE COMMISSIONER: But let's just get the exhibits in as we go.

MR STRICKLAND: Yes.

10 THE COMMISSIONER: Are you doing – Poller 90, are you tendering that?

MR STRICKLAND: Well I was intending to – I'll tender that separately, yes.

THE COMMISSIONER: The email from Mr Roche to Mr Poller, 17 August, 2007 is Exhibit D26.

20 **#EXHIBIT D26 - EMAIL FROM MR ROCHE TO MR POLLER DATED 17 AUGUST 2007**

MR STRICKLAND: Thank you. Now if you could just look at Poller 91, just look at Poller 91 and there's an email that you have sent, sorry that has been sent from Peter Roche to Greg Poller copied to you, "so I need to reimburse the punters club I knocked off to pay Billy a couple of weeks back, that was fifteen forty." Then if I can just go to the top email on 24 – on 21 August you have written to Peter Roche, "I need cash as follows." Do you see that?---Yes.

30 And then if I can just take you to 91 and 92, sorry, 92 and 93, I beg your pardon. Now on that date, on the same date as the email you can – if you go to 93 first you can see that there is a cheque made out to cash for \$8,000? ---Yes.

And that's signed by Mr Roche and Mr Poller. Is that right?---Yes.

40 Look at the cheque butt on 92 you will see that the, that the cheque butt has written on it consultants fees?---Yes.

Which is consistent with your email of the same date. Correct? The email at the top of 91, I need cash as follows?---Yes, yes.

And you got four lots of payment of 2,000 – the cheque it appears in the documents I've shown you - - -?---Mmm.

- - -that a cheque made to cash has been made in compliance with your request for \$8,000 worth of cash?---Yes.

For consultants. Correct?---Well now I'm not saying I need cash for – (not transcribable) paying the contractors on this job.

Well let's just, let's just marry all the emails together. On 17 August Peter Roche has sent an email to Greg Poller - - -?---Yes.

- - - copied to you saying that you require some cash for consultants?---Yes.

10 That's happened. And then four days later you write an email asking for \$8,000 cash?---Yes.

And then a \$8,000 cheque made out to cash is, is made out, written?---Yes.

And the butt says that it's consultants fees?---Yes.

So you marry all those documents together - - -?---Yes.

20 - - - and there's a, it's an escapable conclusion isn't it - - -?---That's correct.

- - - that you have - - -?---Yes.

- - - asked for \$8,000 for consultants fees?---That's correct.

All right. Now in relation to one of those \$8,000, one part of the \$8,000 is \$2,000 cash for Bankstown UWS. That's part of the consultancy fee? ---Yes.

30 Why would you pay, why would you want \$2,000 cash for a consultant in relation to Bankstown UWS?---Well I think just shows that I put down anything. I'll say consultancy fees and I was paying contractors. And I think this proves it, what we were saying yesterday, sometimes I'll say, sorry in my compulsory hearing, that I'll put down consultants fee, yet I'm just taking cash and I'm paying – these are all for contractors working.

But that's not what you've asked for, you've asked for consultants?---I just, some, oh you know, who knows.

40 MR NAYLOR: I object to that question.

THE WITNESS: But that's what I paid the money for.

THE COMMISSIONER: Just a moment. Yes, Mr Naylor.

MR NAYLOR: The word consultant doesn't appear to be used, Commissioner, in the email from Mr Diekman dated 21 August, 2007.

THE COMMISSIONER: No but – no it doesn't, it says cash for that. But the witness has already accepted that the \$8,000 was for consultants. That's his oral evidence.

MR NAYLOR: Yes, your Honour.

THE WITNESS: Sorry, I said I could not recall - - -

10 THE COMMISSIONER: I'm sorry, but you did say, you did accept that the \$8,000 was for consultants when Mr Strickland put that to you you said yes. The record will show.

MR NAYLOR: If the Commissioner pleases.

THE COMMISSIONER: Yes, Mr Strickland.

MR STRICKLAND: So your explanation for – is that when you asked for cash for consultants - - -?---Yes.

20 - - - you were in fact asking – I withdraw that. Are you saying that although you advised Mr Roche that you wanted cash for consultants - - -?---Et cetera.

THE COMMISSIONER: I think just to satisfy Mr Naylor as appears in Exhibit D26.

MR STRICKLAND: That's right.

30 THE COMMISSIONER: The email of 17 August, 2007.

MR STRICKLAND: That's right. Well, let me not put anything to you, let me just ask you. Why did you ask as reflected in the 17 August email, why did you ask Mr Roche for cash consultants?---Well, he's saying that, I said I wanted, I wanted some cash.

40 No, you have accepted – and I'm happy to play back if we have a facility to play back the answer, you have accepted that when you, when you marry – when you look at all the emails and the cheques together you must have and did ask cash for consultants?---Well - - -

My question is why did you ask Mr Roche for cash for consultants?---Yes.

What's the answer?---Well, I don't know whether I asked him for consultants, he's written that, I would have said oh, look, I need some cash and whether he's put it down as consultants because I notice it's on the cheque butt which I never, didn't have anything to do with and many a time when I want cash I'll just say put it down as consultants' fees.

THE COMMISSIONER: Why?---Well, just a way to bury the job, bury some cash.

But paying cash to consultants, would you accept that in your business where you don't retain consultants and where consultants are paid by the parties to whom you tender and to say that you require cash for consultants is suspicious in theory?---Yes.

10 So if that is suspicious in theory why would you tell people that you want cash for consultants?---I'm saying I want cash and maybe I said put it down as consultants fees.

But I'm trying to - - -?---It clearly, it clearly says here that I needed it for programming for a locksmith, the Bovis which I know was night work and Bankstown I think was from - I can't - I think it was cable that we did wrong or something, something had been wrong with the job.

20 Mr Diekman, I'm trying to understand why in general because that's your answer, in general you would often say when you wanted cash that you wanted cash for consultants to bury the payment of cash to you, why you would choose a suspicious explanation as a false explanation?---Well, it's cash so it is false, it's not right so I would have said bury it like that.

It's not right?---Well - - -

Why is it not right?---If I'm taking cash out of the business to pay contractors because we can't get them to do out of house work.

30 If you're taking cash to pay contractors and that's wrong do you think it's more correct to put in cash for consultants?---Oh - - -

I beg your pardon?---It's probably the thing that just came out of my head, put it down as consultants fees.

Yes, Mr Strickland.

MR STRICKLAND: The contract as I've shown you - - -?---Yes.

40 - - - in the documents wasn't awarded until November 2007, correct?---I can't recall.

I've just showed you, do you want me to show you the document again?
---No, if you say so, I'll take your word for it.

And so you hadn't begun work on that job before November 2007 had you?
---On the main contract?

That's right?---No.

And had you been doing any other jobs for UWS before that?---Well, it appears here that we've, we did a job at Bankstown.

No, I'm asking you did you do any jobs at UWS before the contract was awarded?---I can recall doing a job at Bankstown.

10 THE COMMISSIONER: For UWS?---For UWS or for a builder, I can't recall who, who was it was for but I remember we were doing some work out there because we had some problems with the cabling.

Was the job for the University of Western Sydney?---It was for the University of Western Sydney. I don't, I can't recall whether it was direct to the University or it was through a builder.

Or through a builder?---Yeah.

20 MR STRICKLAND: So just let me understand this. So you're saying, I'm just focusing on this one- - -?---Yes.

- - -issue for the moment, that Kings paid \$2,000 cash- - -?---Mmm.

- - -to you say a contractor, not a consultant. Is that right?---Correct.

And that was someone that, that was a subcontractor?---Yes.

And that related to work that Kings were doing at Bankstown UWS?
---Yes.

30 And so that's a legitimate expense that Kings have incurred in relation to that job. Correct?---Yes.

And you could have billed that job on to UWS, couldn't you, if they were doing it, if they were subcontracting work to you?---Not if it was a fixed sum, and that- - -

Well, was there a fixed sum contract before, before 21 August, 2007?
---Well, a fixed quote.

40 Well, was there a fixed quote before then?---There could have been.

So if it was, let's assume it was for a fixed quote?---Yes, yes.

And therefore this was a cost that Kings have to wear?---Yes.

Then I assume you would have got a receipt for that money?---Well, as I keep saying, we do have at times, pay contractors out of hours to do work.

And so, and by that you mean you're expecting, there's an understanding, is there, that they won't declare that cash. Is that right?---I assume so, yes.

That's, well, it's an understanding?---Yes.

Which is why the figure is in round numbers. Correct?---Correct.

No GST. Is that right?---Correct.

10 And why it's in cash?---Correct.

But even if that be so, you could, Kings can still claim that as a legitimate business expense, can't they?---If you get a receipt for it.

Well, whether you get a receipt for it or not you can still claim it as an expense if you've paid the money?---Well, I assume we have claimed it as an expense.

20 Okay. And why then don't you have a separate cheque for \$2,000 with a cheque butt saying Bankstown UWS or Bankstown consultant?---'Cause I've waited till we build up and I've got \$8,000 and- - -

I beg your pardon?---Well, I've waited till it builds up and I've got \$8,000.

But can you just explain why you can't do it a single cheque made out to cash for \$2,000 with a record that can be easily used by the finance department to include in the MYOB system as a legitimate business expenses?---Well, I hate going to the bank and I probably didn't want to go down there four times.

30 That's the reason?---Ah hmm.

Is that a yes?---Yes.

So why, what did you mean when you said that, you word the used consultant when you spoke to Mr Diekman in order to bury the job. What did you mean by that?---Well, just write it off as consultancy fees or, I just give them suggestions, I don't know how they- - -

40 THE COMMISSIONER: How can you write it off as consultancy fees?
---Put it into the job.

Consultancy fees to you, the consultant employed by you?---No, a contract consultant.

A contract consultant?---Yes.

What's that?---Well, we use IT consultants and we use design, drafting consultants.

MR STRICKLAND: What was the name of the contractor for UWS that you paid in cash?---I can't, I can't recall.

And did you, I think you said for your evidence yesterday that you yourself paid it?---Yeah, yeah.

10 Is that right?---Probably, yes.

Right. And what, so you gave a particular person \$2,000 in cash?
---Probably.

And did you, and you've, and do you remember who he came, what company he worked for, was he a sole trader, or you've got no recollection whatsoever of his identity or her identity?---I've got a, no, I don't. I'm trying to think. 'Cause we had, the job went on and on 'cause we had to go back and re-cable it and it would have been something to do with the
20 cabling.

And that's in August 2007?---Yes.

And whereabouts was that, where was the cabling done?---At Bankstown.

Bankstown UWS?---Yes.

And which building was that?---Oh, no, no idea.

30 Let me ask you, what about the \$2,000 cash for the locksmith at Wyong?---
Yes.

That was consultancy fees, was it?---No, it would have been for, would have been for the locksmith up there.

Right. That's in relation to the AHS. Is that correct?---It could have been, it could have been Sara Lee or it could have been Coca Cola. I, I, yeah, I can't recall what it, it was locksmiths up there that does work for us.

40 And what's his name?---I could find out for you, but yeah.

So you physically gave that person the cash?---Um, yeah.

And what about the \$2,000 cash for programming at Wyong, what was that for?---Probably one of our guys after hours.

Your guys after hours?---Yeah.

What do you mean by your guys?---One of our staff maybe, or it might have been a contractor, a guy that we had problems programming or something.

So why are you giving your staff \$2,000 cash after hours?---Well, a lot of them won't work on the weekends or do after-hours work.

And what about \$2,000, who is the, who is, who is the person you gave \$2,000 cash for programming?---I can't recall.

10 What about the \$2,000 cash for Bovis Lend Lease?---That's the electrician onsite.

What was his name?---Oh, the company that was working there, I had the guys to re-cable when they were moving walls.

So I've asked you a number of questions- - -?---Mmm.

- - -both today and yesterday- - -?---Mmm.

20 - - -about you personally giving cash to- - -?---Mmm.

- - -people?---Yes.

And you can't remember a single name- - -?---No.

- - -of, even a first name of any of those people, can you?---No.

30 Are you sure that the, none of that \$8,000 which is made out as consultants' fees was for consultants that were not retained by Kings?---No, no, it's not, look, what's a consultant doing locksmithing work or programming, it's- - -

Well, that's AHS job, isn't it?---Well, I think we were doing Coca Cola up there, it could have been AHS, it could have been, but there were a number of jobs we were doing up there.

I tender that bundle.

40 THE COMMISSIONER: Yes. Bundle of documents, the top of which is an email from Mr Diekman to Mr Roche of 21 August, 2007, is Exhibit D27.

**#EXHIBIT D27 - BUNDLE OF DOCUMENTS BEGINNING WITH
EMAIL FROM MR DIEKMAN TO MR ROCHE DATED 21
AUGUST 2007**

MR STRICKLAND: I'll show you two documents, being Poller 97 and 98. I'm just showing you, if you go first to Poller 98, cheque number 3186 on

11 December, 2007 for \$9,075, and that's Mr Poller and Mr Roche's signature. Correct?---Yes.

And if you look at the cheque butt it says for 3186 that's a cheque made out to Chubb Security. Do you see that?---Yes.

And you accept that Kings did not pay any cash payment or cheques made out to cash to Chubb Security?---Oh, I wouldn't know, I can't - -

10 THE COMMISSIONER: You're not in a position to dispute that?---So- - -

That Kings never paid Chubb by way of a cash cheque or cash?---Well, I'm not in the accounts department.

MR STRICKLAND: Okay. I'll show you a - I'll tender those two documents initially.

20 THE COMMISSIONER: Yes, the two cheque stubs of 10 and 11 December, 2007 contained in one document together with the cheque for \$9,075 made out to cash and the reverse of that cheque comprise a two page bundle of documents which is D28.

#EXHIBIT D28 - TWO PAGE DOCUMENT, THE FIRST OF WHICH IS A COPY OF CHEQUE BUTTS 3185 & 3186

30 MR STRICKLAND: Now I want you to assume that the investigators for the Commission have gone to the relevant people at Chubb Security to search for and Chubb Security have searched for whether they have received any cash deposit or indeed any payment whatsoever in that sum at that date or even thereabouts?---Yes.

And that Chubb have said that they have not received any cash payment or any other payment for \$9,075 on or around that date. Just accept that? ---Yes.

40 Can you - do you have any explanation as to why a cash cheque is made out in that sum where the payee is described as Chubb Security?---Maybe I asked for cash, I wouldn't - - -

But let's assume you asked for cash?---Yes.

Did you then go on to say to Mr Poller or Mr Roche to ask Mr Poller make it out to Chubb Security knowing that it wasn't for any actual work that Chubb Security had done for Kings?---Not that I can recall, no.

THE COMMISSIONER: I beg your pardon?---Not that I can recall.

MR STRICKLAND: If you had done that you would have recalled it wouldn't you?---Probably not.

Well is that because – have you ever asked Mr Poller or Mr Roche to ask Mr Poller to – when they make out a cash cheque to describe it in relation to a – to describe it as being payment for a company that in fact has never done any work for Kings?---I couldn't.

10 Well why could you have done that?---Well to bury the cash.

And why would you want to bury the cash?---To get cash out of the business.

All right. And why did you want cash out of the business?---To spend, pay, pay the contractors out of hours or for me to spend on the boat, do my house up, it could have been renovating the offices again.

20 What about to pay cash for consultants that were retained by Kings?---No. Absolutely not.

THE COMMISSIONER: Did you ever pay cash to consultants?---No. Well sorry, I paid some debts and I paid some tickets and things for Daniel Paul, but not for - - -

MR STRICKLAND: What about cash for bribes for government employees?---No. Absolutely not.

30 THE COMMISSIONER: You never did that?---No.

MR STRICKLAND: I just want to understand this notion because you've said it a number of times about burying payments?---Mmm.

One of the reasons you wanted to bury payments was because you were taking money out of the company you say for your own purposes, for example your boat. Is that right?---Well it could have been for contractors at night or it could have been for renovation, it could have been for tradesmen.

40 I know that, but just, one of the reasons - - -?---One of the reasons, yes.

You said this before it was for your own - - -?---Yes.

- - - personal benefit, nothing to do with the company. Is that right?
---Correct.

So that's a dishonest thing to do isn't it, to take out money for the company – from the company for your own benefit and disguise it as payments to

someone else, for example Chubb or Security Merchants. That's dishonest isn't it?---It's an error in our accounting books, whether you call it dishonest or - - -

It isn't an error in your accounting books, that's something that you have asked the accountants to do. It's an error - - -

THE COMMISSIONER: So you say, you say yes?---Yes.

10 You nodded. Yes. But it's not an error in the sense of being a mistake is it?---No. I've taken cash out of the business.

MR STRICKLAND: I know but what you're telling the finance people to do, that is record money – some of the money for your own benefit and record it as a legitimate company expense, that's a dishonest thing to ask them to do. Do you agree with that or not?---Yes.

20 So, so you were dishonest in asking your finance people in relation to recording certain cash payments, correct?---I can't recall the time but - - -

But you were, you've just said it haven't you?---No, you said it, I just – I can't recall, I didn't say bury it in Chubb so that issue there I don't recall doing it.

30 Well, you just said and to the third last question I asked you that you, that your practice of asking accountants or your finance people to record cash cheques which were paid for your benefit and to record them as being for legitimate business expense, that was dishonest. Do you recall giving that evidence?---I think you said it in a different way so - - -

Well, do you accept what I've just put to you now?---Could you say it again?

Do you agree that it is dishonest for you to have told people in your finance department to record as business expenses cash that was in fact paid for your personal benefit?---Yes.

40 And you agree that you were dishonest with your partner, Peter Roche, in asking for cash which you said was for company purposes but was in fact not for company purposes?---I don't agree I was dishonest to Peter Roche, no.

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

But you, you said yesterday that you would ask, you would tell Peter Roche that you wanted cash payments for a particular purpose, being described as business but in fact it wasn't for that business purpose?---Well - - -

Do you remember giving that evidence yesterday or not?---Yes.

THE COMMISSIONER: You said you misled Mr Roche?---I misled him, yes.

MR STRICKLAND: And misleading is dishonest isn't it?---I'm not sure.

You're not sure?---No, is misleading dishonest? I don't know.

10 It's a dishonest practice to mislead your business partner, do you agree with that?---Bloody hell, Julia Gillard did it to us on the carbon tax.

THE COMMISSIONER: Just answer the question please?---Is that dishonest?

MR STRICKLAND: Do you think it's funny, the questions I'm asking?
---No, I don't think it's funny at all but you're going over the same things.

20 I'm just asking you, is that dishonest?---It's misleading.

You have no – you would have no qualms would you about dishonestly bribing a public official would you?---You've continued to ask me that and I'll continue to say no, I have not.

But you'd have no qualms about doing it?

THE COMMISSIONER: No, no, you're not – this is the first time you've been asked that?---I would, would not.

30 It's the first time you've been asked this. Have you any qualms about bribing a public official?---Oh, I would not.

Pardon?---I would not. Maybe I'd send a Christmas hamper if that's bribing them.

So you would have no – when you say you would not you say you would not bribe. Is that what you mean?---That's correct.

40 I'm asking you whether you would have any reservations or, or feelings of guilt if you bribed a public official?---Yes. Well, if we're talking about a Christmas hamper or taking them to the football, is that a bribe?

All right. You're not answering the question but I'm not going to put it again. Mr Strickland.

MR STRICKLAND: I just want to ask you some further questions about the Department of Housing or a separate Department of Housing job. If you could – if the witness could be shown please Housing 132. And do you

recognise that as an email that you wrote to Chris La Greca on 25 October, 2007?---Yes.

I tender that document.

THE COMMISSIONER: The email from Mr Diekman to Mr La Greca of 25 October, 2007 is the top document in a bundle of documents and the bundle, that bundle will be marked D29.

10

**#EXHIBIT D29 - BUNDLE WITH FIRST DOCUMENT BEING
EMAIL FROM MR DIEKMAN TO MR LA GRECA DATED 25
OCTOBER 2007**

MR STRICKLAND: I should just, I'm sorry, Commissioner, I should have checked what has actually been handed to you. Could I- - -

20 THE COMMISSIONER: Sorry. Well, do you just want that document tendered?

MR STRICKLAND: No, it's okay. I'm sorry. I didn't appreciate what's been handed up.

THE COMMISSIONER: Well- - -

30 MR STRICKLAND: I'll just, I beg your pardon. Let me just take you to page, could the witness be handed back D29. So if you could just go to page 133. And at the bottom of that page the bottom email, an email from Chris La Greca to yourself, and you see attached to that is a draft contract for the Department of Housing quotes. Is that correct?---Yes.

And then the top email, you've reviewed the draft contract and confirm that you wish to proceed. And if you just look at the quotes, please, on 142 through to 148.

THE COMMISSIONER: I don't have those.

40 MR STRICKLAND: Oh, sorry, I beg your pardon. I apologise. I'll just tender the- - -

THE COMMISSIONER: Yes. The bundle of documents with the email of 25 October, 2007, is Exhibit D29. I've said it's a bundle of emails but it, and it is, yes.

MR STRICKLAND: Now, can I just show you some additional documents and these should be a series of quotes from Kings Security, D142 to D148. And do you recognise those quotes for Kings have written to the

Department of Housing in relation to the supply and installation of access control systems?---These are invoices.

Yes. Do you recognise those Kings invoices?---Yes.

And you'll accept from me the total of those quotes that I've handed up is the order of \$185,000?---Yes.

10 Tax, tax invoices, that is, invoices for jobs you've actually done?---Yes.

Is that correct?---Yes.

I tender that bundle of quotes.

THE COMMISSIONER: Is it, you mean, are they invoices or quotes?

MR STRICKLAND: They're invoices.

20 THE COMMISSIONER: So, and they are all in favour, they're all invoices to the Department of Housing?

MR STRICKLAND: That's correct.

THE COMMISSIONER: Yes. A bundle of invoices to the Department of Housing, the top document being dated 26 March, 2008, is Exhibit marked D30.

30 MR STRICKLAND: Now, if I could just show you another bundle of documents, Department of Housing 154 to 161.

MR NAYLOR: Commissioner, I'm sorry to interrupt, the last bundle of documents that were tendered, which I had only just received, I'm sorry, but some of the documents I see are marked tax invoice but others are not. I don't know if that is a matter of any significance.

THE COMMISSIONER: It may be. Thank you, Mr Naylor.

This is - - -

40 MR STRICKLAND: I think that should be renamed progress claims and tax invoices.

THE COMMISSIONER: Yes, D30 is a bundle of progress claims and tax invoices. The progress claims are by Kings to the Department of Housing. The invoices are from Kings to Department of Housing. And the top document is a progress claim – is progress claim number 1. And that is Exhibit D30.

#EXHIBIT D30 - BUNDLE OF PROGRESS CLAIMS AND TAX INVOICES TO THE DEPT OF HOUSING, THE TOP DOCUMENT PROGRESS CLAIM 37051

MR STRICKLAND: Now Department of Housing 154, have you got that in front of you?---Yes.

10 I'm just showing you this page (not transcribable) the documents it attaches – I'm sorry, do you accept that Mr La Greca on 22 May, 2008 performed final witness commissioning of the following sites, being Liverpool, Campbelltown and Bankstown? Is that correct?---I assume so.

And what's the significance of performing final witness commissioning?
---To ensure that we've completed the job to the specification.

And attached to this email are a number of Kings tax invoices. There's one tax invoice in NSS Group. Just putting that aside. The remainder are tax
20 invoices from Kings Security Department of Housing relating to those three Department of Housing sites. Is that correct?---Yes.

Liverpool, Campbelltown and Bankstown?---Yes.

Okay. I tender that bundle.

MR NAYLOR: Commissioner, I hesitate to interrupt, I'm sorry, but page 155 a lot of the detail is just indecipherable, I'm sorry, on my copy.

30 MR STRICKLAND: I'll make sure that Mr Naylor gets a more decipherable copy.

THE COMMISSIONER: Very well we'll attend – we'll make sure you get a better copy, Mr Naylor.

MR NAYLOR: Thank you, Commissioner.

THE COMMISSIONER: The bundle of - what are they Mr Strickland?

MR STRICKLAND: These are tax invoices.

40 THE COMMISSIONER: No they're not. It's a consultants advice document.

MR STRICKLAND: No, sorry, a consultants advice – the tax invoices are related to the same work that the consultants, that the witness – in relation to the witness commissioning of the Department sites. I'm happy to tender them separately.

THE COMMISSIONER: No, it's all right. There is a bundle which contains consultants advice as the top document which is undated but refers to a final witness commissioning on 22 May, 2008. And the other documents contain invoices from Kings save for one invoice from NSS Group will be Exhibit D31.

10 **#EXHIBIT D31 - BUNDLE WHICH CONTAINS IPP CONSULTING
CONSULTANTS ADVICE AS THE TOP DOCUMENT (UNDATED)
BUT REFERS TO FINAL WITNESS COMMISSIONING ON
22/05/2008**

MR STRICKLAND: Now do you know in relation to the contract that Kings was awarded for the Department of Housing jobs that are reflected in the quotations that I've shown you - - -?---Yes.

20 - - - do you know if any other company bid for that same contract?---I would assume so, yes.

No, no, do you know whether any company did?---I think AGC bid for it. I saw that yesterday on the document.

And that is Mr Grubisic is the principal of ACG. Is that right?---That's correct.

And did you have discussions with Mr Grubisic, is that how I pronounce it Mr Grubisic?---Grubisic, I think so, yes.

30 Did you have discussions with him about the fact that you were quoting for that job?---Oh, not that I can recall. I may have.

Right. You called him Tony. Is that right?---Yes.

And he was a friend of yours at that stage?---Yeah, well, business associate, yeah.

40 But you knew him pretty well?---I've been out a couple of times at industry functions.

Did you know him pretty well?---Oh, well, an industry person that I knew, yes.

Did you, did you ever have a discussion with him that he didn't get the job that you had won?---No, not that I can recall.

Did you ever have any discussion with him about whether, and I'm talking now at the time of, at this time, around, at the time you were doing these

jobs for the Department of Housing, did you have any discussion with him about whether you were going to ever tender for future jobs, Kings was going to tender for future jobs for Department of Housing?---Oh, I have no idea.

Did he ever express any, did Tony ever express, this is Tony Grubisic, ever express any disappointment to you or anything at all to you about the fact that he was tendering for the same job that Kings were and that he didn't get it?---Probably. Not that, I can't recall. I think we were doing- - -

10

I beg your pardon?---No, it's all right.

What were you going to say?---No, it's all right.

Now, I think I asked you before, Steve, and I can't pronounce his name, Steven Kuryj, is that how you pronounce his name?---Kuryj, yeah.

Kuryj, thank you?---Yeah.

20 K-U-R-Y-J?---That's correct, yes.

He, he was the project manager for Kings on that Department of Housing job. Is that right?---That's correct, yes.

And did he, do you remember him ever asking you for some incentive money or additional money because Kings won that contract?---He was always asking for- - -

He was?---Yeah.

30

Right?---Every job he did he wanted incentive, wanted, yeah.

And did you give him any, for that particular job, the Department of Housing?---Not, not that I can recall. He normally negotiated that with Peter.

THE COMMISSIONER: What did you mean or what did you understand him to mean by incentive money?---Well, bring the job in under budget and um, there's an incentive there for the project manager.

40

Personally?---Yes.

He puts it in his own pocket?---No, not, no, it's a, it would be a bonus.

Yes, for him?---Yes.

For his own pocket?---Yes.

Not for his company or his agency?---He works for us.

Oh, he works for you?---Mmm.

I see.

10 MR STRICKLAND: I'll just, can I just show you, please, a couple of emails, Poller 112 to 114. If you just go to, I'll just take you first to Poller 113, the first email, just to put the other emails in some context. So have you got 113, the email at the bottom of the page, from Steve Kuryj to Peter Roche on 3 March, 2008, "Peter, as per our discussions regarding incentive \$\$\$ for my job, I'm inquiring if you've spoken to Charlie about this and what feedback you have." Do you see that email?---Yes.

20 Right. And then if you can just go to the next email which begins on page 112, the bottom of it, you've got from yourself to Peter Roche, "Let's discuss, there are other fees also need to be, there are other fees also that need to apply to the job, e.g. \$15,000 to Tony Grubisic, see below. Steven ended up getting 20K when we quoted 60K for the labour for DOH. I said we would bring him with a commission, I said we would provide him with a commission to bring it home at that." Over the page, "I was thinking \$5,000 cash. What are your thoughts?" Now, that, if I can just start on the third line, the reference to, "Steven ended up getting \$20,000 cash when we quoted 60,000 for the labour for DOHS, DOH", that relates to the Department of Housing contract that you had won in 2008. Correct?---Yes.

30 And that relates to the reference to "I said we would provide him with a commission to bring it home at that" relates to Steven Kuryj, your discussions with Steven Kuryj that you would give him a commission for – in relation to the DOH job, is that correct?---Correct, yeah.

I beg your pardon?---Yes.

And you're, you're saying "I was thinking \$5,000 cash", that's the commission that you were suggesting to Peter Roche would be appropriate to pay Steve Kuryj, is that right?---(No Audible Reply)

40 Because it follows from the line "I said we would provide him with a commission to bring it home at that"?---Yes.

Would you agree with that?---Yeah.

So this email is in part a response to the email from Steve Kuryj to Peter Roche saying, requesting what he calls incentive money for his job, you agree with that?---Yes.

Now, the first part, the first line in the email you say “Let’s discuss. There are other fees also that need to be applied to the job, eg, 15K cash for Tony Grubisic.” Now the reference to the job obviously refers to the DOH job, correct?---Yes.

So - - -?---Oh, it may not be.

Well, that’s the only job that is referred to in the email which we’ve just gone through, correct?---Yeah.

10

Would you agree with that?---Yes.

So why is it – why did you discuss paying a fee for the Department of Housing job, namely \$15,000 cash to Tony Grubisic?---I think we were doing a job for him at the time. I can’t recall. He wasn’t happy with and we had to credit him or something.

20

Well, you say you see, you see in the first line you said there were other fees but is what you’re referring to is fees other than the commission or the incentive money that Steve Kuryj’s asking for, correct?---Yes, yes.

And the other fees that need to be, need to be applied to the job means the Department of Housing job, right?---Yes.

So the 15 and the eg is an example of the other fees, correct?

THE COMMISSIONER: eg means for example?---Yes.

30

MR STRICKLAND: So the reference to the \$15,000 cash to Tony Grubisic refers to fees for the Department of Housing job doesn’t it?---Yes.

So why - - -?---Well, no, you’re only assuming that.

Well, you agreed to it?---No, I –sorry, you went a bit fast for me.

40

Well, according to your own words that’s what the cash to Tony Grubisic relates to, that is the Department of Housing job?---Well, this discusses other fees that need to be applied to the job, eg, it doesn’t say Department of Housing.

Yes. But, but you, we’ve, we’ve just gone through the language of it, that this email relates to a request by Steve Kuryj for incentive payment for the, the DOH job, correct, and then you are saying there are other fees that need to be applied to the job?---Right, yes.

You’re referring to the same job, aren’t’ you?---Yes. Well, okay, yes.

Do you agree with that?---Yes.

So why does Kings need to pay \$15,000 cash to Tony Grubisic for the DOH job?---I, I don't recall. I remember we were doing some work for him on another job and it went wrong, I don't, it's a long - - -

THE COMMISSIONER: Well, wasn't it paying him because he did you some favour so that by putting in a quote a little bit higher than yours so that you would get the job?---I think it was so we had some work with a panel or something that he might have helped us with.

10

But wasn't that a payment for collusive tendering?---No.

What else – well what was it for on this job?---Ring, I'll ring - - -

I still don't understand your answer?---I'll ring Tony and ask him.

I'm asking you?---I can't recall.

MR STRICKLAND: Well let's just go to the next email from yourself to
20 Peter Roche and in that email you say, "yeah, five k per site. They split it between IPP Cons and himself. I put five k on each job and marked it up 65 per cent. The next three sites, Tony gets and he pays us and so on. Can you call me on my mobile (not transcribable) . And you see that word what??
---Mmm.

Is that your email or is that in fact Peter's or you don't know?---(No Audible Reply)

THE COMMISSIONER: You don't know, is that your answer?---Well
30 yeah, (not transcribable) I don't know.

Is that – did you – is the word what and the question mark something you put on the email or is it something that somebody else put on it?---Well I can't recall. It's got – it looks like the email from the bottom it says it's from Peter.

No this is from you Mr Diekman. You can see the top email is from you?
---I can't recall.

40 MR STRICKLAND: Let's put aside the what. Let's just go to the email that you wrote. So the reference to \$5,000 per site relates to the three Department of Housing sites doesn't it? The one at Campbelltown, one at Bankstown and one at Liverpool. Is that correct?---It could be, yes.

Well they're the three sites - - -?---Yes.

- - - that you did jobs on?---Yes.

And you say that they split it between IPP Cons, that refers to the IPP Consultant. Isn't that right?---I never discussed anything with IPP on it.

I'm just – these are your words?---Yes.

So IPP Cons, do you accept that that relates to – that refers to a consultant?
---No.

10 THE COMMISSIONER: Well what else does it mean?---I don't know.

It could only mean consultant couldn't it?---I don't know.

Well what else do you suggest? It's your word?---I don't know.

I see.

MR STRICKLAND: So what did you mean when you said that they split it
20 between the IPP Cons and himself? What did you mean by that?---I don't
know. I don't recall sending it. I remember doing some work at the time
with Tony on another job and it went bad.

What's the other job?---We did some work for him on some domestic job
somewhere in Mosman.

What do you – what – do you have any more details than that?---No, you'd
have to check with him.

30 I'm asking you, he's not here?---I don't have any more detail. I remember
we did some steel doors for him and locking systems and - - -

THE COMMISSIONER: So what is five k per site mean? Why were you
paying them five k per site?---I don't recall and I don't whether it was even
about that.

MR STRICKLAND: I beg your pardon?---I don't know.

40 Well it can only refer to the fact that – that relates doesn't it to the previous
email being \$15,000 cash to Tony Grubisic. \$5,000 per site?---Yes.

You've got three sites, that equals \$15,000. Correct?---Yes.

So in other words Kings is paying cash in, in \$5,000 lots for three different
sites. Correct? In relation to three different sites that Kings were working
on. Correct?---Yes.

And they were – and it was then split between the IPP consultant and Tony Grubisic. Isn't that right?---I don't know whether it's a consultant, whether it was, yeah, anyway.

Well that's what I'm suggesting to you?---No, I don't agree.

And in other words the IPP consultant was getting paid seven and a half thousand and Tony Grubisic another seven and a half thousand. Do you agree with that?---No.

10

Well, that's what the email's suggesting, isn't it?---Well, it suggests it but I don't agree with it.

Well- - -

THE COMMISSIONER: Well, what do you say it means?---I just don't recall it.

20

What do you say it means? It's your words?---I'd have to, give me some time and go back through my records and see what else, those other jobs we had on at the time.

Just the English language really, you don't have to go through your records, you just have to understand ordinary- -?---No, I'd need to make sure it's right, I need to go back through my records and- - -

30

MR STRICKLAND: You've then put, "I put 5,000 on each job and marked it up 65%." What do you mean by that?---As I said, I'd have to go back through my records.

Well, when you say you marked it up 65%, you're marking the job up 65%. Is that right? What, that's what the word it refers to, doesn't it?---I'd, I'd have to go back through my records.

Okay. What does the next sentence mean, "The next three sites Tony gets and if he pays us and so on?"---As I said, I'll go back through my records and I don't think there were any other sites, I think that was the last three sites.

40

What records are you talking about?---(No Audible Reply)

You said you were going to go back on your records?---Emails around the time, I need to ask Tony what was, 'cause I mean we were doing, as I said, we were doing work for him, yeah.

I just want to ask you about the, you just said I think two or three times you're going to go back to your records?---Yes.

What records are you going to go back to?---I need to go back and see the emails, I need to ask Tony what can you, what we were, what we were doing for him at the time.

And what emails are you referring to that you're going to go back to?
---My emails.

You've got them, have you?---Well, I don't know, I'm going to have to go and have a look for them.

10

THE COMMISSIONER: You mean you haven't looked yet?---No, I haven't been to the office for near a year.

MR STRICKLAND: But as far as you're aware you've kept those emails, have you?---Well, I assume they're still, yeah, I assume they'd still be there.

THE COMMISSIONER: Well, but what does it mean, the next three sites Tony gets?---Well, there were no, there were no three other sites.

20 Well, there weren't because you were talking about the future?---Yeah, yeah.

So what future, what does it mean that Tony was going to get a site, what does that mean?---As I said, I'll go back through- - -

Well, I'll suggest something to you?---Yes.

It means he gets the job. Doesn't it mean that?---No.

30 It means that the next three jobs that come up for tender, he gets, and- - -?
---I don't agree with you.

And when he gets and you collude with him, he pays you. Isn't that what it means?---No.

That's the ordinary English meaning, I suggest to you, isn't it?---No.

No. It has a different meaning?---Oh, well, as I said, I- - -

40 Does it have a, does it, just focus on the meaning, the ordinary meaning of the words. I've suggested to you a meaning which occurs to me for the words, you say you don't agree with it. I'm now asking you, what do you say the words mean?---I, off the top- - -

The ordinary English meaning of your words, what do they mean, do you say?---The next three sites he gets, the next three sites Tony gets and he pays us and so on. That's what it means.

Well, that means that he gets the next three contracts on sites that are put up for tender and he will pay you because you allow him to get the sites and so on. That is the practice that you and he have. Is that not so?---It's not so.

Well, what else do those words mean?---I don't know. I'll go back through my- - -

10 You don't know what the words mean. Is that what you say?---No, I know what the words, I know what those words there but I'll have to go back through the records 'cause there were no other sites.

Yes, Mr Strickland?

MR STRICKLAND: Well, did you ever pay the IPP consultant- - -?
---No, I did not.

- - - any money in relation to the Department of Housing jobs?---No, I did not.

20 Did you ever transfer any money from your bank account in relation to money for the IPP consultant on the Department of- - -?---No, I did not.

Did you ever pay Tony Grubisic any money in relation to the Department of Housing job?---Not that I recall. I can recall doing a job for him at the time and then it went bad and we, I can't remember what happened and that's why I need to go back through our records and check.

30 Did you ever say to anyone at Kings that you had paid money to the IPP consultant?---No, I didn't, not that I can recall. Well, I didn't do it so- - -

Is that convenient time?

THE COMMISSIONER: Yes. The Commission will adjourn till 2.00pm.

LUNCHEON ADJOURNMENT

[12.55am]