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PUBLIC
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 MONDAY, 25 JUNE, 2012

AT 11.10AM

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THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: If I could just - there's just one question I wanted to ask Mr Roche - - -

THE COMMISSIONER: I see.

MR STRICKLAND: - - - and then I'm wondering if he could be - not excused but if he could be stood down till a future second - - -

10

THE COMMISSIONER: Yes. Mr Roche, you're still under the oath that was administered when you last gave evidence and the section 38 order that was made continues to apply to you.

<PETER JAMES ROCHE, on former oath

[11.10am]

MR STRICKLAND: I just want to show you an email from Mr Greg Poller to yourself which is copied to Mr Diekman dated 3 March, 2009. Do you recognise that as an email, one of those internal Kings emails?---I do.

20

I tender that.

THE COMMISSIONER: Yes the email from Mr Poller to Mr Roche of 3 March, 2009 will be Exhibit R35. R34 I'm told.

#EXHIBIT R34 - EMAIL FROM MR POLLER TO MR ROCHE DATED 3 MARCH 2009

30

MR STRICKLAND: Just holding that document there, would you look - would you turn please to Exhibit R7. If you go to R7, page 122 and you were asked, I've asked this just last Friday, you were asked the question, "Percentage of Kings' electronic security turnover would this project represent". Now, if you go to the email R34 again, on 3 March 2009, that's on the morning, the same morning of this meeting you had, the second meeting with the Art Gallery, you sent Mr Poller that email, do you see that?---Yes.

40

And then seven minutes later you received a response. Now, that response being 18.8 per cent of your budgeted yearly sales and 35.4 per cent of budgeted yearly installation sales, your answer at page 322 in Exhibit R7 doesn't match either of those figures, does it?---No.

Either of those percentage figures. Did you get any additional information since receiving the 3 March, 2009 email?---I don't believe so.

So how did you know that - going back to your answer in 122, how did you know that the project, that is the Art Gallery project would represent about 22 per cent of your 2009 budget for electronic security?---I'm unsure how I've got to that point here. I've calculated something.

Did anyone tell you that there was a preferred answer to that question?
---No.

10 Commissioner, there are some other matters that I would like to ask
Mr Roche at a later, at a later segment.

THE COMMISSIONER: Yes.

MR STRICKLAND: And could he not be stood down.

THE COMMISSIONER: Yes. Mr Roche, this terminates your evidence for
the moment, those persons who wish to question you will have the
opportunity to do so when you are recalled. You will be stood down until
20 you are recalled and you will be, your solicitor will be informed when you
are going to be recalled?---Yes.

So you may leave the witness box now, thank you.

WITNESS STOOD DOWN

[11.15am]

THE COMMISSIONER: Mr Smith.
30

MR SMITH: Commissioner, I omitted one matter in respect of exhibit R5
last week.

THE COMMISSIONER: Yes.

MR SMITH: Could I ask for one further suppression order in that
document. It's on page 36 Exhibit R5.

THE COMMISSIONER: Yes.
40

MR SMITH: Under paragraph 8 there's a reference to the suburb.

MR STRICKLAND: There's reference to?

MR SMITH: A suburb.

THE COMMISSIONER: Yes. The, the suburb mentioned in paragraph 8
on page 36 of R5 will be subject to a suppression order.

THE SUBURB MENTIONED IN PARAGRAPH 8 ON PAGE 36 OF R5 WILL BE SUBJECT TO A SUPPRESSION ORDER

MR SMITH: Thank you, Commissioner.

THE COMMISSIONER: Mr Strickland. Yes, Mr Maher.

10 MR MAHER: Commissioner, might I also seek suppression orders in relation to two matters, they relate to mobile telephone numbers of my client and his wife in R25 and R26 there are a - there is a mobile telephone number under the name of Sue Roche. It appears twice I think in R25.

THE COMMISSIONER: Yes. The mobile telephone number in R25 is suppressed.

MOBILE TELEPHONE NUMBER IN R25 IS SUPPRESSED.

20

MR MAHER: And similarly in R26 there is another email from Sue Roche with her telephone number.

THE COMMISSIONER: Yes. The telephone number in R26 is suppressed.

TELEPHONE NUMBER IN R26 IS SUPPRESSION

30 MR MAHER: Thank you, Commissioner. In relation to my client Mr Roche there are a number of email, of emails have gone in including the most recent exhibit which attaches his details under the Kings Security Group sign off and his mobile number is included in those. So I can't itemised each and every exhibit I can do that at a later time or alternatively I'd seek a general - - -

THE COMMISSIONER: That's public knowledge. I mean he sends this to everybody.

40 MR MAHER: He does so.

THE COMMISSIONER: So?

MR MAHER: Well, it really - I haven't - - -

THE COMMISSIONER: How many people have got it? There must be hundreds.

MR MAHER: I beg your pardon?

THE COMMISSIONER: There must be hundreds of people who have it.

MR MAHER: Well it's, it's the members of the press I suppose he's concerned about having it, Commissioner.

THE COMMISSIONER: Why? Well how - what order do you want me to make?

10

MR MAHER: Well, Commissioner, if, if you're minded to I'll take a general order but his mobile number were occurring in the exhibits be suppressed, alternatively I can get you a list of, in due course a list of the exhibits which contain that mobile phone and I would seek again an order that his mobile number be suppressed in each and every one of those exhibits.

THE COMMISSIONER: Well does that mean that the Commission has got to go through all the exhibits and find the documents and black it out?

20

MR MAHER: No. I'm, I'm certainly prepared to do that, Commissioner.

THE COMMISSIONER: I don't know how you're going to do it. How are you going to get access to it?

MR MAHER: I have a copies of all the exhibits.

THE COMMISSIONER: Yes. I know but the original exhibits?

30 MR MAHER: No, I don't have the originals.

THE COMMISSIONER: Precisely. That means the Commission has got to go and do that.

MR MAHER: If the Commissioner's prepared to limit the order to those copies that are in circulation and not those within, within the (not transcribable) Commission. I certainly wouldn't propose that.

40 THE COMMISSIONER: The only problem, Mr Maher is what happens if the member - if somebody gets the telephone number elsewhere and uses that, how, how - what's the affect of the suppression order then?

MR MAHER: Well it is circumvented I perceive that, Commissioner, but I'm instructed to do what I can to prevent that from happening.

THE COMMISSIONER: I just think it pointless. You understand what I'm saying?

MR MAHER: I certainly understand, Commissioner. It's - I don't think it's relevant to the inquiry.

THE COMMISSIONER: I mean this is, this seems to be part of his - the information he disseminates in the course of his business generally.

MR MAHER: Unquestionably, Commissioner.

10 THE COMMISSIONER: So what - I am afraid I will - I can't order that nobody uses his mobile telephone number to phone him when he publishes it to the world so.

MR MAHER: No, I'm not saying that at all.

THE COMMISSIONER: No, I know you're not saying that but I mean I'm trying to think of a way in which to accommodate you but I - there are a lot of exhibits that have gone in already and with his telephone number on and it's been freely available for a period of two days, three days I think.

20 MR MAHER: It has Commissioner. I seek only to prevent everything, nothing I'm instructed has occurred to date.

THE COMMISSIONER: Yes, all right. Well I just regard this suppression as futile, Mr de Mestre and for that reason I will not grant the application.

MR MAHER: As the court pleases.

THE COMMISSIONER: Mr Strickland.

30 MR STRICKLAND: Mr Commissioner, could I tender some additional documents, I'll be recalling Mr Diekman in a moment, but I tender a copy of a tender evaluation report by an independent probity advisor being TressCox Lawyers in relation to the University of Western Sydney.

THE COMMISSIONER: Mr Strickland, what I suggest you do is have a list prepared of the, these documents - - -

MR STRICKLAND: Yes, I'll do that.

40 THE COMMISSIONER: - - - and just - - -

MR STRICKLAND: I'll tender them - - -

THE COMMISSIONER: - - - when that's ready it will be tendered and so - - -

MR STRICKLAND: Yes, I'll do that.

THE COMMISSIONER: - - - it will reduce the time.

MR STRICKLAND: Certainly time. I call Mr Diekman.

THE COMMISSIONER: Mr Diekman, the section 38 order that applied to you previously continues to apply.

PREVIOUS SECTION 38 ORDER APPLIES

10

THE COMMISSIONER: And the oath which you took to tell the truth continues to apply.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Now Mr Diekman, you ceased being an operational part of Kings in about July 2011. Is that correct?---It was some time around then, yes.

10 And after that you did not come into Kings on a day to day basis did you?
---That's correct.

In fact you, you – how often did you come into Kings after that?---Oh, it probably would have been three or four times just to sign documents.

Three or four times since July 2011?---It may have been a bit after that. Look I can't really recall.

20 Do you recall telling this Commission previously that it was July 2011 that you ceased becoming an operational part of Kings?---No, I don't recall that, but I probably – if I did well it was around that time, yes.

I'll show you this page, page 1357.

THE COMMISSIONER: Of what?

MR STRICKLAND: Of a compulsory examination?---Yes.

30 Having looked at that document does that refresh your memory that you ceased becoming an operational part of Kings in July 2011?---Yes. Yes.

If that could be MFI, could that be marked?

THE COMMISSIONER: Yes, page 1357 of compulsory examination of what date, Mr Strickland?---Could I just say though like from when I did assist - - -

MR STRICKLAND: Just can you hang on a moment?---Yes.

40 I will - you can say what you like in a moment.

THE COMMISSIONER: - - - of 14 May, 2012 will be marked for identification 3.

#MFI 3 - PAGE 1357PT OF TRANSCRIPT GIVEN BY MR DIEKMAN IN COMPULSORY EXAMINATION ON 14 MAY 2012

MR STRICKLAND: Now you wanted to say something about that?---I did assist some personnel in the company, look I can't recall though if I, if I ever did anything in the office.

Okay. So after July 2011 you came into Kings about three or four times?
---That's correct, yeah, but - - -

10 But, but – do you want to add anything?---No.

You have to speak up because every word you say we transcribe?---No.

Now but you say that you did assist Kings after that date but not in the office. Is that correct?---From my memory that's right, yes.

And what assistance did you give out of the office after that date?---Just assisting the new general manager of sales.

20 What was his name?---James Martin.

And how did you assist James Martin?---He was getting a lot inquiries from jobs that I was involved in.

How did you assist him?---Telling him what I knew about it and if there's any information that I could provide that would help him.

And did you do that?---Yes.

30 Were you involved in any, in the awarding of any new contracts after, to Kings after July 2011?---Not, not that I can remember, no.

And since July 2011 have you been involved in the stock market from time to time?---From time to time, yeah.

Is that something you didn't do before July 2011?---Oh, I think I was, yeah.

Now before, before you stopped working full-time for Kings say in the financial year 2010/2011 - - -?---Yes.

40 - - - approximately what was your, the income you derived from Kings?
---Myself?

Yes?---You're talking 2010?

Sure, before you retired from Kings?---I, I think I was on about \$150,000 wage.

Right?---I think I collected about 250 in dividends and I think there was also another dividend payment, maybe a few dividend payments of a couple of hundred thousand.

So you - - -?---Oh, look, I, I couldn't be sure of that, I'd need to check with the accountant.

So do you mean a total dividend payment in that year of about 450,000, is that what you mean?---It could have been, yes.

10

On top of \$150,000 wage?---That's right.

And was that a - was that approximately \$600,000 income in Kings, was that something you, was that the order of what you, of the income you earned in previous years?---I'd have to go back through the records.

Well, you'd know roughly. Were you making about \$600,000 a year from Kings since - in 2009/10 2008/09?---Could have been.

20

Well, do you know?---No, I don't.

Excuse me. Now, you have given evidence in what's called a compulsory examination before this Commission in September last year?---Yes.

You agree with that?---Yes.

And after that evidence you gave did you visit any person who is the subject of questions that you were asked at that hearing?---Oh, I may have, yes.

30

Did you visit a Mr Cameron Creary?---I may have.

You're not sure?---I'm not sure.

I want to show you something please.

(VIDEO FOOTAGE PLAYED)

MR STRICKLAND: Do you recognise yourself in that - on the video?

---Yes, yes.

40

And do you recognise - - -?---Yes.

- - - Mr Creary?---Yes.

And that was his house at , , ,. Is that correct?---Yes.

In the , ,?---Yes.

And I want to suggest to you that that visit occurred on 25 October last year. Do you accept that?---If you say so, yes.

And you – how long were you there for?---Five minutes. Look I can't – five or ten minutes.

And if I suggested that you were there for one hour, do you, would you deny that or would you agree with it?---No, I wouldn't deny it. I really can't remember how long I was there for.

10

Well if I suggested that you were seen going into the house and then coming out about an hour later, do you agree with that?--- I could have, yes.

All right. And what was the purpose of going to see Mr Creary?---To say hello.

That's it?---Yeah, I went up and had a chat to him.

What was the purpose of having a chat to him?---Just to say hello.

20

You gave evidence last week that you did not socialise with Mr Creary and that your only conversations related to work. Do you remember giving that evidence?---Yes.

So in October 2011 you had retired from full time employment at Kings. Correct?---Yes.

And did you know that Mr King, sorry, Mr Creary was also on long service leave at that time and had been for some months?---Yes.

30

So you went up to pay him a social visit did you to say hello?---Yes.

And was there any particular reason why you went to pay him a social visit to say hello at that particular time?---No. I had nothing to do.

You had nothing to do?---Mmm.

But he wasn't a friend of yours was he?---Oh he was an associate, a business associate.

40

He was not a friend of yours was he?---Well a business friend.

A business friend whom you previously had not socialised with according to your evidence?---That's correct. That's correct.

Did you talk to him about the plasma TV that Kings had provided him?
---Not that I can recall, no.

Well if you had you would recalled it wouldn't you?---Well I can't recall it, so - - -

Did you talk to him about the car that Kings provided him?---Not, not that I can recall. I may have, but - - -

You'd never previously gone up to spend an hour with him to say hello had you?---No.

10 So can you explain why you did on this particular occasion?---No.

It's the case isn't that you went to talk to him to get – to make sure that you and he got your story straight about the circumstances in which you, you and Kings provided a plasma TV and a car to him. That's right isn't it? ---No. Not to get the story straight. That's what happened, that's what did happen.

20 Have you spoken to any other person, business associate in relation to questions that you had been asked in a compulsory examination?---I may have.

Who?---Oh, I don't know.

Well if you may have, who? You would know who you've spoken to? ---I've spoken to a lot of people.

No, I'm talking about in relation to questions you were asked in relation to this matter at the Commission?---I, I may have.

30 Who?---I don't know but I may have.

THE COMMISSIONER: Did you speak to many people about what you were asked at the Commission in the compulsory examination?---I was probably questioning people to get my facts right and get my - get information that I needed to make sure that I could recall it I think.

40 But you went around to speak to people and discuss with them the evidence you given at the compulsory examination or the questions you've been asked?---Just discussions in general.

No, no. Discussions about the questions you'd been asked at the compulsory examination?---Not like - not that I can recall.

MR STRICKLAND: Did you want to try and get your facts straight by speaking to people?---My memory's not very good, I wanted to recall the dates or recall, you know if asked questions, yes.

And is that one of the reasons you went to see Mr Creary to try and get dates right?---I probably would have asked the questions, you know I asked him - I'd give him a receipt or you know.

And what did he say?---He said I signed a document.

What document did he say he signed?---The transfer.

10 Right. And what else did he say?---That he's doing a milk run and his businesses, yeah, he's want to get - he was doing a milk run at the time and he was talking about that.

So you wanted to ask Mr Creary about the receipt for the - whether he signed a receipt for the car because you weren't sure about the dates. Is that right?---I asked him if I gave him a receipt 'cause I couldn't remember.

Which is for the car?---I think so, yeah.

20 Right.---Look I can't recall saying that but I just assume that I probably would have asked that.

All right. Okay. And you assumed you would have asked it because you needed to know what facts to get straight. Is that right?---No.

No?---Well I just wanted to see if I gave him a receipt.
Right. And why did you - - -

30 THE COMMISSIONER: Why?---Well 'cause I, I'm sure that I would have been asked to get a receipt by our - when this came up by our accountants.

By your accounts?---(No audible reply)

Someone in your accounts department asked you to get a receipt for the car. Is that what you're saying?---No, I just wanted to get - I, I couldn't recall whether I gave him a receipt or not, I just wanted to - - -

Why did you want to know?---Well I needed information to - so I can provide it here.

40 MR STRICKLAND: Why didn't you ring him up and ask him, why did you have to go to all the way to , , to ask him?---I wasn't working. He always said come up and have a look at my car, he's got some hot rod car.

And, and what did you ask him about the TV to get your facts straight?---I didn't, I can't recall saying he had a TV. Maybe I - well not that I can recall, no.

And in relation to the car did you talk about the, the money that he gave you for the car?---Not that I can recall. I think he may have, I'm - just yeah, I couldn't - - -

You obviously were concerned about the circumstances in which Kings provided Mr Creary a car. Is that right?---Well at the time I said - I asked if he was going to declare it.

At what time?---When he purchased the car.

10

Right. You - and what did he - - -

THE COMMISSIONER: To declare what?---Well did he have to declare a conflict that he's buying a car from me, from the company.

Well why would he?---And he said doesn't need to he's just buying a car.

MR STRICKLAND: Do you mean declare to his employer, is that what you mean by declare?---Yes.

20

All right. And did you, did you - when you went up to see him in October 2011 did you speak about that whether he declared - - -?---Oh, not that I - - -

- - - the car to the - to his employer?---Not that I can recall.

But go back to my question, you obviously were concerned about the circumstances in which Kings gave a car to Mr Creary. Is that right?---I wasn't concerned about it I just wanted to make sure that - well just find out whether I gave him a receipt or not. Like I - my recollection of it was very poor.

30

But that is the real reason you went up there, isn't it?---No.

Are you telling the truth, Mr Diekman?---Yes.

You went up for the first time, you had never been to Mr Creary's place before, correct?---That's correct.

A few weeks after your compulsory examination you went up to Mr Creary for an hour, you spoke to him about the car that Kings provided him and you're saying that's not the real reason you went up there?---Well, as I said, I wanted to get the facts to make, find out whether I gave him a receipt.

40

Well, you were obviously concerned, weren't you?---Yeah, concerned, you could say that.

Do you agree with that?---Yeah.

Because it appeared suspicious, didn't it, that Kings were providing a car to a government employee?---Not if he's paid for it.

No, but I'm talking about the appearance, it appeared suspicious, is that right, you knew that?---You could say that, yes.

And you knew that you had to provide an explanation for that, didn't you?
---A receipt.

10 Well, you knew you had to provide it didn't you?---Yes.

Because you, you were hoping that he would be able to assist you in the information you would give to the Commission about that, is that right?
---Not necessarily assist him, I wanted, assist the Commission, I wanted him to assist me, I just wanted to know whether I gave him a receipt or not.

Now, is there no other person that you have been to to seek that kind of information about matters concerning the subject matter of this inquiry?
---There, there may have been to gather information.

20

Well, surely you would know who they were - - -?---Oh, well - - -

- - - if you had done so, Mr Diekman?---I can't recall making any special trip to find out information but - - -

Well, forget any special trip. Have you had any discussion with anyone along the same, along the same lines, to find out information?---I, I may have, yes.

30 Well, with whom?---Oh, I can't recall with whom exactly but I, I may have, yes.

Well, you must know with whom?---(No Audible Reply)

You must?---Well, I may have had a chat to Robert Huskic but I just, yeah.

And what did, what did you talk to Mr - or may you have talked to Mr Robert Huskic about?---Anything actually, I see a lot of him because I see him at the football a lot.

40

Yeah. But, but, about, I'm talking, I'm not talking general, I'm talking about these matters, the matters the subject of this inquiry?---Yes.

You know I'm asking about that?---Yes.

And what did you ask him about that?---I remember asking him at some stage did he declare that he was doing part-time work for me.

Yeah, but I'm talking - and this is after you had been interviewed?---Oh, I can't recall that. I don't know.

Well, did you ask him about any things that Kings had done for Mr Huskic?
---No, not that I remember.

You didn't?---Not, not that I remember.

10 What about Mr Nguyen, Jonathan Nguyen, do you know him?---Yes.

Have you ever asked him, have you ever gone to see him - - -?---Yes.

- - - or ask him any questions?---Yes.

And when did you do that?---Oh, a couple of months ago, three months ago.

Right. And what did you ask him? Sorry, where did you see him?---At his factory.

20 At Padstow?---Yes.

And did you - and what time was that?---In the evening.

Right. Did you, did you ring him beforehand to say you were coming?
---Ah, yes, I believe so.

You did, on his mobile phone?---I believe so, yes.

30 All right. And did you tell him on the mobile phone what you wanted to see him about?---Oh, I can't recall.

And you went to see him at his factory, is that right?---That's right, yeah. A few - - -

40 And what did you ask him about?---Oh, a few people said you should go and see what he's doing, it's amazing, he's started in the integration business and now he's got a full engineering workshop and manufacturing his own, oh, what are they? Camera housings that were suitable for defence and - - -

Mr Diekman, that's not why you went to see Mr Nguyen at his shop in Padstow is it?---(No Audible Reply)

That's not the reason you went to see him at workshop in Padstow, is it?
---Well, it was one of the reasons - - -

Yeah?--- - - - and the other one of the reasons I wanted to know about, 'cause I couldn't recall when I sent him a price to do the gates and so I just said, like, 'cause I couldn't remember it.

And what did you talk to him about then? What did you say to him about that?---I - - -

The price to do the gates?---I just - - -

10 What did you actually say?---I just said to him what was, did you end up putting a price in to do, to do the job and he said, he said, told me he had, yes.

And why did you ask him that?---I wanted to gather my information.

THE COMMISSIONER: What job is that?---It was a job for Sydney Ports that was done in two thousand and - oh, I'm not, I'm not sure when it was, it was 2006 or something.

20 MR STRICKLAND: You have been specifically directed at - when you gave evidence at this Commission not to disclose the type of matters that you did, that is you were told not to disclose any questions you'd been asked or the fact that you had given evidence at a hearing or anything of that nature hadn't you?---I thought unless I had to gather information to assist my side of it.

THE COMMISSIONER: Where did you get that from?---Well that's what I just thought.

30 Why did you think that?---I don't know, it was just what I thought, I could, I could - - -

But you were told not to speak to anyone about what you had been asked and what evidence you'd given were you not?---It was just my understanding that I could - - -

It's on the transcript?---Okay.

And we can look at it?---Okay.

40

Were you told that or not?---If it's on the transcript I must have, yes.

You don't remember it?---Well I do remember it, but I thought I could gather information - - -

What made you think that?---Well I just thought I could.

You just thought you could breach any order the Commission made didn't you?---It wasn't my – that wasn't my intention, no.

You thought no one would find out didn't you?---It wasn't my intention.

What wasn't your intention?---Well I needed to gather information because you were throwing questions at me and I couldn't remember them.

10 So you just decided not to obey the Commission's order?---Well I didn't see it like that, no.

Well how did you see it?---I saw it as I was just gathering information.

Yes, Mr Strickland.

MR STRICKLAND: See in relation to Mr Nguyen, you asked him about a letterhead didn't you?---Not that I recall, no.

20 You don't recall that?---When I went and saw him?
Yes, that's right?---Oh, I may have but I don't recall it.

See with Mr Nguyen, isn't it the case that you went to his work office in Padstow, but you did not call him beforehand?---I don't, I don't remember how it came - - -

And isn't it the case that when you got to his work office in Padstow you asked a – one of his workers at the factory to give him a call on his mobile? ---I may have.

30 But you had his mobile number didn't you?---I don't think – I don't know.

Well you just said before that you did call him using the mobile phone?---I may not have used my phone. Yes, now you say it, it was, I was in the factory there and the girl offered to call him.

The girl offered to call - - -?---Call, yes.

And then he came from his home didn't he?---That's correct.

40 So you did not use your mobile phone to call him did you?---Well if it's not on the record I mustn't have, no.

Well you just that?---Okay.

And why didn't you, why did you not use your mobile phone to call him? ---I might not have had it with me, it was flat, I don't know. And she offered, I went in there to see him and she offered.

But why didn't you call beforehand to say you were coming?---Oh, I was going for a drive, I just wanted to get out of the house and go for a drive.

Where's your house?---Curl Curl.

Right. And you just wanted to go out driving and you happened to go past his workshop in Padstow. Is that right?---No, it wasn't I happened to go past it, I was meaning to go there.

10 Right. Just because you wanted to go for a drive?---Yeah.

And how did you know he was going to be there?---I didn't.

Right?---That's why I wanted to go for a drive.

Isn't it the case you deliberately did not call him on your mobile phone because you did not want to leave a record of you contacting him?---No.

That's the reason isn't it?---No.

20 See your mobile phone was working on that day. Can I, can I suggest that to you?---Yeah.

You agree with that don't you?---Yes, yep.

So there is no valid explanation that you didn't call him on your mobile because your phone didn't work, which is one of the explanations you just gave. That's not true is it?---Sorry, say it again.

30 It is not true to say that you did not call him on your mobile phone because your mobile phone did not work that day?---Well I went into his offices and then she offered to call.

Yes, but why didn't you call him before you were coming? You had his mobile number why not ring him up and say I'm coming over?---As I said I wanted to go for a drive.

See you're just not telling the truth are you Mr Diekman, about that?---(No Audible Reply)

40 Can you explain why, if you had his mobile number as you did, you didn't ring him up beforehand to say you were coming? Do you have any explanation for that?---No.

Well one obvious explanation is you didn't want to leave any record on your mobile phone call records about you call him. That's an obvious explanation isn't it?---It could be, yes.

And that's because you knew that you shouldn't be talking to him, isn't it?

---Yes.

So why did you talk to him? You, you have - we spent the last 10 minutes where you have indicated that you didn't think there was anything wrong in talking to him and now you've just admitted that you knew you shouldn't?
---Well - - -

So were your previous answers a lie?---Well you've just told me and, yeah.

10 Were your previous answers a lie about the circumstances in which you said you believed you were able to talk to Mr Nguyen? Mr Diekman?---Could, could you ask the question again?

Were the previous answers you gave about you thought you were able to talk to Mr Nguyen a lie?---No.

20 Isn't it the case you, you talked to Mr Nguyen because you wanted to get your story straight with him about the circumstances in which you tendered - Kings tendered for the Sydney Ports Corporation contract?---I asked the question because I did not - I couldn't - when you showed me that I didn't even remember doing it and he answered and he said yes, we were going in above you. Sorry, he said to me he wanted to put a tender in and 'cause he was concerned that if he didn't he would get left out on the other ones and I provided him our price for - I don't know whether it was the whole lot 'cause I didn't (not transcribable) or it was just the gate component.

30 And he said to you as you've just said that he was going in above you?--- Well actually he didn't say he was going in above me but he said if he happened to win it he would sub contract it back to us.

But, Mr Diekman, they, they were the words you just used?---Okay. Well I, I take that back.

So why - - -

THE COMMISSIONER: So why did you say it?---Well it just came out of my mouth. I sometimes talk before I think.

40 MR STRICKLAND: You mean sometimes you tell the truth before you realise that that truth doesn't actually suit your purpose. Is that what you mean?---No.

I want to ask you some questions about the Art Gallery. Could the witness please be shown exhibit R3. I'm just showing you this document to refresh your memory about the dates when things happened in relation to the Art Gallery tender. Do you accept that on 3 February 2009 Kings was advised by Daniel Paul about the availability of the tender documents for the Art Gallery contract?---Yes.

Thank you. Did you know before then that the Art Gallery, Art Gallery contract was - I withdraw that. Did you know before that about the Art Gallery contract?---About this, this tender?

Yes. About the tender?---Yes, I did, yes.

And who told you about - who was the first person that told you about it?--- I, I can't recall, it was, it was probably a bit of industry knowledge.

10

All right. Did, did, did you have any discussion with Daniel Paul before 3 February about the Art Gallery tender?---Components of the tender.

I beg your pardon?---Components of the tender, yes, as we were doing some work prior, a few months prior to the tender coming out and we were also asked to manufacture some sample housings for the aesthetics of the, the cameras for the Art Gallery and we did a few samples. You see, actually I can't even recall whether the samples were after or before this but - - -

20

But did you attend a site visit at the Art Gallery on 6 February, 2009?---Yes (not transcribable) yes.

Now, the first bid that Kings put in, where you presented the three alternatives to the Tender Evaluation Committee, was on 23 February, 2009?---Yes.

And would you accept that from the documents that have been tendered? ---Yes.

30

I've finished with that document. Now, between, between 3 February, 2009 - I withdraw that question. Before 23 February, 2009 did Daniel Paul ever attend Kings' offices in order to discuss the Art Gallery tender?---I know he attended the offices to discuss the housings.

This is before you put in your bid?---Oh, I'm not sure whether it's before or not.

40

Well, did, did you ever have any discussion with Mr Daniel Paul before you put in your first bid about, about the bid you were going to make, Kings was going to make?---I may have, yes.

And what, well, do you have any specific recollection of that?---No, no specific recollection.

What - if you say you may have, what - do you recall what the subject matter of those discussions might have been?---Well, we were always just talking technology so, I mean, whether it's for the Art Gallery or not I don't

recall any of us saying oh, look, what about the Art Gallery, it was just more or less the technology that's available at the time for any job.

On, on 23 February you put in three alternative - Kings put in three alternative bids?---That's correct.

And one of them was for Pelco Lenel, is that correct?---That's correct.

10 And did you discuss with Mr Paul before you put in that alternative bid the fact that you were going to do that?---Oh, not, not that I recall, no.

I, I may have but I just don't, I don't recall it.

Now, the person you were dealing with at Pelco - - -?---Mmm.

- - - was Terry Yallouris, is that right?---That's correct.

He was the Australian representative of Pelco?---That's correct.

20 But his bosses were in the United States?---That's correct.

And you knew, didn't you, that Mr Yallouris before he would sign off on any particular deal with Kings or with Q Video had to get approval from his bosses in the United States?---I, I don't know what his process was but - - -

30 Well, you knew that he - before he could offer a price for a particular Pelco product he'd have to get it okayed from one of his, the people he reported to in the United States, you knew that, didn't you?---I probably assumed it but it's not that - I don't know the process that the goes through.

Now, when you were - I want to ask you about this alternative price you put in for 23 February?---Yes.

You - was the arrangement that in relation to Pelco that that was going to be supplied, Pelco would supply its products through, through Q Video? ---There was no arrangement, no.

Well, was that your understanding of what would happen?---No.

40 Did Pelco supply the products directly to Kings or would it go through Q Video?---We have the option.

What, and what option were you going to exercise in relation to that contract?---Whoever gave the better price.

I see. Either, but it's the same, now just talking about the Pelco - - -?---Yes.

- - - product?---Yes.

Are you saying that you may have purchased it from Q Video or from Pelco depending upon which offered the better price?---That's correct, yes. Or, or better outcome or what, what other added value they could add to the job.

Could Mr Diekman please be shown an email on 19 February, Art Gallery volume 1, page 553. 17 February, I beg your pardon. I'll try, I'll try again. If you go to – just go to 536 first if you could, please.

10 THE COMMISSIONER: Can I have the document, please?

MR STRICKLAND: So I'll just show you an email from yourself to Mr Yallouris on 17 February, 2009. Do you recognise that?---Yes.

I tender that.

THE COMMISSIONER: Email from Mr Diekman to Terry Yallouris of 17 February, 2009 is Exhibit Y35.

20 MR STRICKLAND: Would it be D, a D document Mr Commissioner?

THE COMMISSIONER: I beg your pardon?

MR STRICKLAND: Did you say R?

THE COMMISSIONER: R, yes, R - - -

MR STRICKLAND: I think it should be D, because - - -

30 THE COMMISSIONER: Oh, is it D?

MR STRICKLAND: Yes.

THE COMMISSIONER: I beg your pardon. So D46.

MR STRICKLAND: And I'll just show you another email, page 535. I'm wondering, perhaps, I'm just showing them individually because I wonder if this could all form part of D46? It might be convenient to do it that way.

40 THE COMMISSIONER: Yes, we'll do it that way.

MR STRICKLAND: Do you recognise that email, two emails?---Yep.

I tender that document.

THE COMMISSIONER: May I have copies, please. The two emails dated 17 February, 2009 from Paul Thompson form part of Exhibit D46.

**#EXHIBIT D46 - EMAIL FROM MR DIEKMAN TO MR
YALLOURIS & MR THOMPSON DATED 17 FEBRUARY 2009**

MR STRICKLAND: Thank you. Now if I can show you now a separate email with some attachments, D – I beg your pardon, Art Gallery 554-563.

10 THE COMMISSIONER: This is not part of - - -

MR STRICKLAND: No. I'll tender this as a separate - - -

THE COMMISSIONER: This is separate.

MR STRICKLAND: But do you recognise, just have a look at those, do you recognise as emails between yourself and Tony Theissen of Q Video? ---Yes.

20 And attached to that email is a letter from Mr Theissen to you dated 18 February together with a quote from Q Video Systems?---Yes.

And that attached to that is another letter from Mr Theissen to you, this time dated 19 February also with a quote from Q Video Systems?---Ah hmm.

Is that correct?---Yes.

I tender that as a single bundle.

30 THE COMMISSIONER: Is 555 an email, Mr Strickland?

MR STRICKLAND: 555 is, it doesn't look to be, sorry, I thought it was, I'll clarify that. I don't think it is.

THE COMMISSIONER: No.

MR STRICKLAND: There's a covering email which, I'll clarify the order of this. Mr Diekman do you remember - - -

40 MR SMITH: Commissioner, I haven't been through this document but can I just ask in respect to page 556 that the name of the suburb in the first row be suppressed?

THE COMMISSIONER: Where's the suburb?

MR SMITH: .

THE COMMISSIONER: Where do I see it on the document?

MR SMITH: It's in the first row at the end, the last column on the first row.

THE COMMISSIONER: The last column on the first row.

MR SMITH: Yes.

THE COMMISSIONER: I see. The heading.

MR SMITH: Perhaps if it might be struck from the transcript as well.

10

THE COMMISSIONER: Yes. The reference to _____, will be struck from the transcript and the name _____, will be subject to a suppression order where it appears on page 556.

**REFERENCE TO _____, WILL BE STRUCK FROM THE
TRANSCRIPT AND THE NAME _____, WILL BE SUBJECT TO A
SUPPRESSION ORDER WHERE IT APPEARS ON PAGE 556**

20

MR SMITH: And 563. Is the heading above the box.

THE COMMISSIONER: Yes. The heading on page 563 is suppressed.

**SUPPRESSION ORDER IN RELATION TO THE HEADING ON
PAGE 563**

30 MR LORKIN: Excuse me, Commissioner, about 11.30 there was some footage of Mr Creary's home address and some reference to his suburb and location. Could have the reference to the suburb suppressed - - -

THE COMMISSIONER: Yes.

MR LORKIN: - - - and the footage.

THE COMMISSIONER: Not the footage.

40 MR LORKIN: All right. I'm just wondering, Commissioner, that on viewing - on plain viewing of the video you would be able to identify the address of Mr Creary.

THE COMMISSIONER: It doesn't seem like that to me. It just looks like any suburban house anywhere.

MR LORKIN: With the greatest respect, Commissioner, if someone has (not transcribable) with the suburb that is plainly a (not transcribable)

THE COMMISSIONER: Will I give you a suppression order on the, on the evidence relating to Mr Creary's residential address?

MR LORKIN: (not transcribable) the footage?

THE COMMISSIONER: No. For the reasons I've explained.

10 MR LORKIN: I'm sorry to be a pain, Commissioner, but there may be some issues that you'll hear later in relation to aspects of Mr Creary's evidence which may have a, have an effect on the (not transcribable) being public.

THE COMMISSIONER: All right. There'll be a suppression order on the video played this morning in relation to Mr Creary but that will be reviewed before the end of the inquiry.

20 **A SUPPRESSION ORDER ON THE VIDEO PLAYED THIS MORNING IN RELATION TO MR CREARY BUT THAT WILL BE REVIEWED BEFORE THE END OF THE INQUIRY.**

MR LORKIN: As the Commission (not transcribable)

THE COMMISSIONER: Mr Strickland.

30 MR STRICKLAND: So if I can just ask you to have a look at these documents. Is it the case that you received a - two quotes from Q Video Systems, the first quote attached to 18 February letter quotes the actual hardware that was going to be - that Q V - Q Video's offered to supplied and the quantity of that hardware. I'm sorry, have a look at that. First page 556.

THE COMMISSIONER: I haven't, I haven't completed the tendering of the document. I mean you, you're clarifying - - -

MR STRICKLAND: I beg your pardon.

40 THE COMMISSIONER: You're clarifying the order.

MR STRICKLAND: I'll just, I'll just clarify the order.

Is it the case that 556 and 557 are a quote of the type of products that you've been quoted together with the quantity of those products. Is that correct?--- That's correct.

And then the second quote the 559 you received - is a quotation of the price of those particular products in the earlier quote. Is that correct?---That's correct.

So I'll tender that document.

10 THE COMMISSIONER: Well I think what we'll do is we'll - a bundle the documents the top of which is the email from Mr Diekman to Mr Theissen of 19 February 2009 and containing as part of the bundle quotations from Q Video Systems will be exhibit D47.

#EXHIBIT D47 - BUNDLE OF DOCUMENTS WITH EMAIL FROM MR DIEKMAN TO MR THEISSEN DATED 19 FEBRUARY 2009

MR STRICKLAND: If you go to D, if you go to page 556 please and you'll see at the bottom of that first quote it refers to a supply only price?---Yes.

20 785,535 plus GST?---Yes.

And that is a quotation for the entire Pelco component of the bid you were going to give for the Art Gallery, is that right?---(No Audible Reply)

Do you understand my question?---Yeah, I, I do. I don't know whether they got their number rights but - and I'm not sure about that exact numbers there but at the time, yeah.

30 Well, that's the number you were given, is that right?---Yes.

All right. And I want to suggest that is the only written quote you got from Q Video systems in relation to the Pelco product, do you agree with that? ---Before the tender?

The only written quote you got from Q Video Systems in relation to the Pelco product before you were actually awarded the contract?---Yes.

40 And I want to suggest that you, you did not - this was the only written quote you got from anyone in relation to the Pelco products before you were awarded the contract?---I believe I got some unit rates from certain suppliers.

I beg your pardon?---I believe I got some unit rates.

THE COMMISSIONER: In writing?---I think so, yes.

Those have not been produced to the Commission despite notices requiring their production so can we assume then that you didn't?---No, I'm, I'm pretty sure I got some unit rates from - - -

Well, where are they?---Well, I would have, wouldn't have used them and throw them, thrown them out. I didn't keep - - -

You assume. You, do you - name the persons who gave you the quotes please?---Well, I think Pacom, I think Annixter.

10

MR STRICKLAND: I'm sorry, could you just go a bit slower?---Pacom.

Pacom?---Yeah.

Yeah, and?---Annixter was another distributor.

Yes. And - - -?---But I would have - maybe it wasn't - - -

20

THE COMMISSIONER: Who did you deal with at - - -?---Sorry, maybe it wasn't written, I would have rung up and said oh, what sort of price can you do 200 of these cameras for.

Who did you speak to?---Oh, whoever, whoever would have been the salespeople there.

So you can't remember?---I could find out for you.

You can't remember at the moment?---Yeah.

30

MR STRICKLAND: Do you want to, do you want to reconsider your answer about whether there were any other written quotations?---Yeah, but I can't recall any other written quotations.

To your knowledge this was the only written - that is, what's contained in D47 is the only written quotation for the Pelco products that you bid for for the Art Gallery, is that correct?---Before, before the tender closed, I believe so, yes.

40

And what, before the contract was awarded?---I believe so.

Now, you knew - - -

THE COMMISSIONER: Sorry, and you acquired the Pelco product for the contract from Q Videos?---Well, you've got, there's about three distributors - - -

Yes?--- - - - and then you can also - - -

But you in fact obtained the product through Q Videos?---That's correct.

MR STRICKLAND: Now I want you to keep that D47 there - - -?---Yes.

- - - and could you please be shown Exhibit R4. Do you recognise that as the first bid that Kings made in relation to the Art Gallery tender?---Yes.

Now, I'll just get you please to turn to page 597. I'll just focus on the second or the first alternative of pricing to Lenel Pelco, do you see that?

10 --- (No Audible Reply)

Have you got that in front of you?---Yes.

That is the bid price of 2,690,000 plus GST?---Yes.

Does that bid, that bid includes, doesn't it, the \$785,000 quote for the Pelco products, is that correct?---That's correct, yes.

THE COMMISSIONER: That, that as appears in D47?

20

MR STRICKLAND: As appears in D47?---Sorry, what's D - - -

Well, that's the, that's the quote I just showed you?---Yes.

And you knew, didn't you, that - if you go to page 721 of that document, 721?---Yes.

You knew, didn't you, that the Pelco product you - that was contained in that alternative bid was for the Pelco Endura version 2.0?---That's correct.

30

Were you primarily responsible for calculating the final figures in relation to the prices that you were offering the Art Gallery in relation to this bid?
---We had a tender team. I'm normally the one that gets the feel for it to think it's going to be a right price, yes.

But ultimately was it, was it you who determined what the price would be?
---Yes.

40 And what was the profit margin, that is the gross profit margin that these offers represented, if, if, if they were accepted?---Oh, I don't know.

THE COMMISSIONER: What was your standard profit margin, gross profit margin?---Well, just there wasn't, there was no standard, it was - - -

Wasn't there a default profit margin?---For our, for normal, well, once, once it becomes a project though it's some, you know, there's - - -

Wasn't there a default profit margin for all projects?---Well, when you're putting it into our system a default number came up, yes.

And how much is that?---Oh, I don't, I'm not sure.

You don't know what your default profit margin is?---Well, I change it all the time.

10 Well, what, what does it range between?---Oh, the default one, I think it's about 30 per cent.

MR STRICKLAND: And was this bid based upon the default profit margin of 30 per cent?---Oh, I, I couldn't recall that, no.

If I show you please an email from yourself to Mr Roche dated 26 February, 2009, Art Gallery 2 on page 22. It goes from 22 to 24. Do you recognise that as an email, the one below, from Mr Morris through to yourself which you then forwarded on to Mr Roche, is that correct?---Yes, yes.

20 I tender that, the email together with an attachment, being questions for interviews.

THE COMMISSIONER: The email from Mr Tony Morris to Mr Diekman of 26 February, 2009 with the attachment is Exhibit D48 and D48 is the questions for interview.

**#EXHIBIT D48 - EMAIL FROM MR DIEKMAN TO MR ROCHE
DATED 26 FEBRUARY 2009**

30

MR STRICKLAND: So did you attend the interview at the Art Gallery on 27 February, 2009?---Yes.

Who else attended?---Peter Roche.

Yes?---And Damien Dunphy.

40 Now before that interview - - -?---Yes.

- - - did you have any discussions with Mr Yallouris from Pelco about the Pelco product that you were going to offer?---Yes. Yes.

And did you speak to him over the phone?---Yes.

And when did you – how far – how long before this meeting did you have that conversation? Was it that morning or the day before or a couple of days before?---Oh, I was probably, I was probably talking to him a lot.

A lot was it?---Yeah.

So now I want to ask you – I’m asking you now about between the time you tendered your first bid which was 23 February - - -?---Yes.

- - - until the first meeting for the Art Gallery on 27 February?---Yes.

10 So you talked to him a lot during that time did you?---I talked to him a lot, whether it was between that time I can’t recall.

THE COMMISSIONER: Well did you talk to him at all in that time?---I assume I did.

Why do you assume that?---Well we were looking at his product.

Why did you need to look at his product during that time?---Just to confirm that we’ve got everything right and he also offered us a, a better price.

20 But you’d already put in your tender?---That’s correct.

So what’s the point of talking to him after that?---Maybe other jobs, but I’m constantly talking to him, well sorry, I shouldn’t say constantly.

THE COMMISSIONER: But I mean you’ve being asked whether you spoke to Mr Yallouris about the Pelco products for this tender between the time that you put in your tender - - -?---Yes.

30 - - - and the first meeting?---Ah hmm.

Did you speak to him?---I believe I would have, yes.

About what?---About the tender.

Why?---Well just to confirm that - - -

But you wouldn’t put in a tender without confirmation of the prices would you?---Well as I said we could buy direct and - - -

40 You had, you had a quote in writing from him?---No.

From - - -

MR STRICKLAND: Q Video?---Q Video.

THE COMMISSIONER: - - - Q Video?---Yeah.

Yes?---Well Mr Yallouris works for Pelco.

So you were trying to find out whether Pelco could get it at a lower price?
---That's correct.

But you'd already put in your tender?---Well maybe he called me, I can't - -
-

10 Well what's the point of – what I'm trying to find out is what would the
point of such a discussion be once you've put in your tender?---Well just
with talking and - - -

Do you accept that you – that ordinarily you would not be able to change
your tender once you had put it in?---Yes.

MR STRICKLAND: Now have you still got that email on 26 February,
2009? Just go to the third, page 24. Do you see that?---Yes.

20 And the first question – these are the questions that you have been told
you'll have to answer at the 27 February interview. Correct?---Mmm. Yes.

The very first question is, in your own words describe the solution being
offered?---Yes.

And the solution that you had offered in your first tender was the Lenel
Verint complying solution. Correct?---Yes.

But when you went to the meeting on 27 February you did not offer that
solution did you?---No.

30 You offered the alternative solution?---That's correct.

And you not only offered an alternative solution but you reduced your price
at that meeting for \$2 million didn't you?---That's correct.

And did you – before you went into that meeting to offer a different solution
from the one that you had primarily offered at a significantly reduced price -
- -?---Yes.

40 - - - did you discuss that that's what you were going to do with your partner,
Mr Roche?---Probably.

Did you?---Yes, I would have discussed the tender, yes.

No, I'm asking specifically did you discuss with Mr Roche you were going
to offer a different solution from the one you primarily offered at a
substantially reduced price?---I believe I said if we get the opportunity that
Pelco had offered me a reduced price.

I'm sorry?---Pelco had offered a reduced price and if my memory serves me correct that Terry Yallouris said that we want the job and we're willing to do whatever it takes to get the job. And I just said, well you're going to have to drop, you know, drop your price. So, and I can recall even saying I don't whether we'll get the chance to, but if we get the chance to it would be, what he was offering it'd be irresponsible not to offer it to the Art Gallery.

10 Did you tell this to Roche that - - -?---Oh, I don't know whether - - -

THE COMMISSIONER: But you wouldn't have done this without telling Mr Roche would you?---I can't recall if I did, but - - -

No, that's not my question?---I would have told him because he would have, he would have been with me and we would have had the \$2 million mark (not transcribable)

And he was your partner?---Yes.

20 And makes a big difference dropping a price by some, almost \$700,000 doesn't it?---Absolutely yes.

And it also is an unusual thing to change the solution offered as the primary solution in the official tender that you had made. Isn't that also an unusual thing?---No, that's, that's pretty common in a lot of the tenders.

Oh, common is it?---Yes.

30 Yes Mr Strickland.

MR STRICKLAND: If I can just ask you about this conversation you had with Mr Yallouris?---Mmm.

That must have been a conversation you had before 27 February, 2007 if it occurred?

THE COMMISSIONER: 2009.

40 MR STRICKLAND: 9, I'm sorry?---I believe so, yes.

Well let me ask you this, there is no doubt is there that you made an offer of \$2 million at that 27 February meeting?---That's correct.

Did you make that offer without knowing whether, knowing whether Terry Yallouris had said he would drop the Pelco price?---From memory he held me he would do it, he'd help out.

THE COMMISSIONER: That's not the question. That's not the question?

---Sorry, ask the question again.

MR STRICKLAND: Just listen carefully. Did you make the \$2 million offer at the 27 February meeting - - -?---Yes.

- - - without knowing whether Pelco would drop its price?---No.

Well then it follows that you must have had the conversation with Mr Yallouris before the 27 February meeting. Correct?---Yes.

10

Do you agree with that?---(No Audible Reply)

THE COMMISSIONER: He said yes?---Yes.

MR STRICKLAND: And what was – what did he say to you about Pelco dropping the price?---From memory he said that they're really keen on the job, they need the reference site in Australia for version 2 and he said he would help out. He said he'll get a better price. He said he would provide the technical support and bring in the engineers from overseas.

20

THE COMMISSIONER: So did he tell you by how much he would drop the price?---No.

You didn't know by how much he dropped the price?---Well I've dealt with him before and it was – look he may have but I - - -

Did he tell you - - -?---Not that I can recall. He said he'd drop the price but I can't recall how much he said he would drop the price.

30 MR STRICKLAND: I missed that. What did he say about drop the price?
--I can recall him saying - - -

Yes?--- - - - that he'll look after us.

Yes?---But I can't recall exactly how much he said he was going to drop the price.

THE COMMISSIONER: Did he tell you by how much he was going to drop the price?---No.

40

So how, as a reasonable businessman how dare you go ahead and reduce the price by \$700,000 approximately without knowing what he was going to send – he was going to sell it to you at?---I had my ways and means thinking I could get, get the job in at that price. I thought - - -

Your ways and means?---Well just negotiating a better supplier price and probably being more efficient in the installation.

No, no, you said that you dropped the price because of the reduction - - -?
---Yes.

- - - that Terry Yallouris was going to - - -?---Yes.

Did you think he was going to offer you a \$700,000 reduction?---No, no.

How much did you think he was going to offer you?---Maybe a couple of
hundred.

10

So where's the \$690,000 reduction coming from?---The rest of it?

Yes?---Probably out of my pocket, because I just had the passion, I just
wanted that job by then. I was just thinking I've got to get this job.

So you were going to pay something like \$500,000 out of your own pocket
on a contract of \$2.7 million to enable Kings to get the price – to get the
contract?---Well sorry, I wouldn't be taking it out of my own pocket, we'd
be doing it for a very low margin.

20

So you were not going to take out of your own pocket?---No, sorry. Well - -
-

Are you changing your mind now?---Yes, sorry. We do it for a very low
margin.

Very low margin. What margin?---I don't know I just - - -

30

What - I can't believe that you don't know what margin you wanted to do
this very important contract for and you're the boss?---Mmm.

What margin?---I don't know.

Yes.

MR STRICKLAND: So based on those answers I take it that Mr Yallouris
did not say to you that Pelco would give you the product for nothing?---
That's correct.

40

He did not say that?---He did not say that, no.

But, but, but did you have any discussion with Mr Paul before the 27
February meeting about the fact that you were going to significantly lower
your bid and bid or make your primary offer on a non compliant product?
---Not that I can recall. I remember I kept saying to him that I don't think
the rent was the right solution and I think I made it quite clear to him on a
number of occasions that I thought Pelco would be a better outcome for the
Art Gallery.

And you told him - this is before the 27 February meeting, is that right?
---Probably, yeah.

And what did he say when you said those things?---Oh, I can't, I can't recall what he said.

10 THE COMMISSIONER: Why can't you recall that?---Well it's a constant conversation I had with Dan, the technology was changing so much and you're working on other jobs and you get problems with different, different products and - - -

That means you can't recall what he said does it?---Well I can't recall exactly what he said.

Well get - tell us more or less what he said?---I, I just - I spoke to him that often.

20 No. I don't care how often you spoke to him. You were asked what he said about your view which you expressed to him that the Lenel Verint Solution was not appropriate?---I'd only be guessing what he said if I talk (not transcribable)

So it was so unimportant what he said if you can't remember?---I spoke to him on a daily basis, I don't, I don't actually recall.

30 No. But did you speak to him on a daily basis about the appropriate solution for the Art Gallery contract?---I spoke to him on a daily basis about technology and the different products that are out there.

That's not my question was it?---No, no, I didn't.

MR STRICKLAND: It was a - if you had not spoken to Mr Paul - - -?---Ah
hmm.

- - - before 27 February meeting - - -?---Yes.

40 - - - about using a Pelco Lenel product and dropping your price \$2 million it was a very big gamble that Kings was taking wasn't it?---Yes.

And you were saying you took that gamble, that very big gamble - - -?---
Mmm.

- - - without any information from Mr Paul as to whether that was a good idea or not?---As I said I discussed the technologies with him whether he thought it was a good idea or not.

Well that's what I'm - that's exactly what I'm asking you?---So ask the question again?

It was a very big gamble for Kings to offer a non compliant product at a substantially different price from what you offered in your original tender - - -?---Mmm.

- - - without receiving any information from Mr Paul as to whether that was a good idea or not?---That, that's correct, yeah.

10

And so do you say that when - what was his reaction at the meeting when you said you were going to drop your price to \$2 million and offer this different solution?---Don't know I probably thought gees they're going to say at the Art Gallery, a fair bit of money.

THE COMMISSIONER: Did you say that?---No, sorry. You asked me what - - -

20 Yes. What did he say when you - - -?---I, I don't - - -
- - - announced this - when you made this dramatic announcement?---I don't, I don't know what he said, I can't recall what he said. If he said anything at all.

MR STRICKLAND: What did the other members of the Tender Evaluation Committee - what was their reaction when you made this dramatic announcement of a substantial - - -?---Well they - - -

30 - - - drop in price?---They asked 'cause I kept saying that Pelco was coming to the party and they want the Art Gallery as the, the reference site and, and I said to them I said they[re willing to come up with, you know help on the price and you should consider looking at the Pelco option and especially with this new price and I didn't submit the price until they asked for the price. They said what, what would - I can remember them saying well what, what is this, what is the new price and that's when I said \$2 million and from memory I think they were a bit taken back and I, I can't - - -

40 THE COMMISSIONER: What did Mr Paul - you can remember what they did why can't you remember what Mr Paul said?---Well I don't remember what they said I just said they were taken back (not transcribable) I don't think there was much said at all.

Was Mr Paul taken aback?---I don't know, he was - - -

He was there?---He was there, yes. I don't - I can't recall him saying anything.

He was the consultant?---Yes.

And what did he say?---I can't recall what he said. Maybe, he maybe didn't say anything or maybe he asked for more clarification on it, I - - -

MR STRICKLAND: Did you tell them why you were able to drop the price so significantly?---Yes.

And what did you say?---I believe I told them I said Pelco are coming to the party and they want, want this a reference site.

10 And, and, and in your mind that was the reason you were able to drop the price because in your words Pelco was coming to the party, is that right?--- Well when they said that - - -

Is, is that right?---In my mind, well - - -

Well you've just said that you told - that the reason you told the Tender Evaluation Committee you could drop the price - - -?---Mmm.

20 - - - was because to use your words Pelco was coming to the party, that's what you told them?---Yes.

And was that the truth?---Yes.

So the reason you could drop the price was because Pelco was coming to the party?---Well at the same time I think I just gathered so much more passion to want to get the job that in my spontaneous way I just turned around and I just said we've got to get that job, I want the job and I'm just willing to do - - -

30 THE COMMISSIONER: I thought you discussed it before with Mr Roche?---I would have discussed it with him.

You discussed with Mr Roche the price before you announced it at - to the Tender Evaluation Committee?---That's correct.

The day before?---I can't recall, it would have been very close 'cause - - -

40 This wasn't a spontaneous act on your part it was a deliberate act that you'd considered carefully and spoken to Mr Roche about?---Well at the time I, I was getting - working out what the price was going to be, it would have been spontaneous.

It was not a spontaneous act - - -?---It was a spontaneous act.

But you'd already spoken to Mr Roche about it and got his decision, his agreement?---I don't know whether he agreed, I said this is what I'm doing.

You would, you would drop a price by 700,000 without Mr Roche's agreement?---Well as I said I probably would have discussed it.

Yes. And got his agreement?---Yes.

The day before?---Yes. The night before (not transcribable)

10 MR STRICKLAND: And apart from the price did you explain to the Tender Evaluation Committee why you wanted the Pelco Lenel Solution rather than the complying Verint Pelco Solution?---Yeah, I - yes.

What did you say about that?---I just said we believe it's, it's a better fit for the Art Gallery, it's - Pelco at the time was the number one player in the world and it was used on most of the high profile sites in New South Wales and I was probably concerned about their support from Verint.

Did you criticise the Verint product in terms of its suitability?---I had concerns - - -

20 No. I'm not interested in your concerns I'm - what I'm asking you what you said at the meeting. Did you criticise it at the - did you criticise the Verint Solution at that meeting?---I don't know whether you'd call it criticised I may - - -

30 Did you say - sorry?---I made them aware that what they were trying to achieve with the video wall you were going to need 20 or - I can't recall how many but that many servers to run the video wall it would be (not transcribable) and it, it wouldn't be a good solution and this is the information I'm getting from our engineers and at the time it was my understanding that the video wall that all the, the service to run the video wall would be in that room and I said - I remember saying it'd be like a helicopter in there it'll be so noisy.

Did you, did you have that information before you put in your complying bid on 23 February?---That there would be a problem with it?

Yeah?---Yes.

40 With the Verint or did you only acquire that information after you put in the original bid?---No, that was always the concern with the Verint.

And did you say to the Art Gallery that you, that if they - if the Art Gallery wanted to stick to its complying product which is Verint Lenel that you wouldn't do it?---Oh, I may have said something like that.

Well, did you is what I'm asking?---I can't recall.

Did you make it clear to them that, that is to the Art Gallery - - -?---Yes.

- - - that if they did not select the Pelco solution then Kings would not be involved in that contract?---I may have said that but I can't recall it but I may have.

Well, again, if you may have said that that would have, that would be an enormous risk for Kings wouldn't it, in other words saying that you, you may not even agree to do the contract or to - you may not agree to stay in the tender process unless they switched to the solution that you said was the most appropriate?---Oh, I - - -

Is that correct?---I think I just gave them my honest opinion that Pelco was the right solution but if I did say that that would be just more on my sales spiel so - - -

When you - you said before this meeting you had discussions with Mr Paul about why you thought Verint was not appropriate and why the Pelco solution was, correct?---Mmm.

20 Is that correct?---Yeah, that's correct.

And what did he say when you said that?---Oh, I don't, I don't recall what he said but we were - - -

Did he agree with you?---No, I think he was pretty, he was confident in the, in the Verint system.

I mean, this is a, a particularly important issue, isn't it?---Yeah.

30 That is - you see, in your view even before you put in your original bid the solution that Mr Paul had come up as the specialist in the Tender Evaluation Committee was inappropriate?---Well, we were doing a Verint job at the time and we were having all sorts of problems with the video wall and Verint at the time did not have their own video wall software, it was a third party software.

What I'm asking you is did Mr Paul agree with you at any stage before the 27 February meeting that yes, you're right, the Verint solution is not appropriate - - -?---No.

40 - - - we shouldn't - no. So when you made your pitch, sales pitch on 27 February - - -?---Yes.

- - - that Pelco was the best and that Verint was inappropriate, that was in effect a criticism of Mr Paul, wasn't it?---That's correct, yes.

And did he try and - what did he say during that meeting about that?---I, I can't recall what he said.

He said nothing?---Oh, I honestly can't recall what he said.

Well, did he ever, did he call you afterwards and say, did you have any discussion afterwards because you were in, in effect changing a very significant part of the specifications that he himself had designed, correct?
---That's correct, yes.

10 Well, did he - - -?---Well, sorry, we were offering an alternative solution.

You were offering, you were offering?---Offering an alternative, an alternative solution, yes.

And did he ring you up afterwards, after the 27 February meeting and say look, did he say anything after that?---Oh, he probably did but nothing, nothing that I can recall that stood out.

20 I just want to - do you remember, do you remember participating in a record of interview with the Commission on 17 March, 2011?---No, well - - -

Do you remember, do you remember being asked some questions about - - - ?---Yes, yes, yes.

- - - this subject matter?---Yes.

I just want to show you a copy of that record of interview please?---I'm sorry, when I was giving this interview I was told that it can't be used in anything.

30 Well, I'll be seeking a variation of the suppression order but can you just have a, have a look at this please. And I just want to take you to - so just have a look at the front page, I'm just showing you a transcript of that record of interview?---Sorry, can, can I just ask my solicitor something? When I gave this interview - - -

THE COMMISSIONER: Just answer the question and then your solicitor will deal - your barrister will deal with the matter, your solicitor will deal with the matter when he thinks it appropriate.

40 MR STRICKLAND: I'll just take you to - go to page 8 please and line 5, you were asked this question and I'm just putting this in context. In between the tender being released and the short listing of tender closing (not transcribable) a short listing, I get a phone, you say, "I get a phone call from Pelco saying they've just released version 2 in Hong Kong fireworks et cetera. He's rung me and he said oh, look, it's unbelievable, the images are great, the storage, the compression, it's great" and just read to yourself the rest of that answer because it's the next answer I want to take you to. Have you, have you completed that answer?---Mmm.

Now, the next question is, by Ms White, "Who is GM sorry?" and you said Terry, Terry Yallouris. At the time he was the general manager there, sent me something from Hong Kong or I spoke to him, I can't remember if he sent me something anyway and we then did all the calculations, recalculated everything, realised we can drop the storage by masses of the compression rates and also along the time he said, 'Do what you can to get the job.' "He said", and this is in quotes, "'We'll look after you, we'll support you, we'll drop the price, we'll do it for nothing. We want the Art Gallery.'"?---Mmm.
10 Well, when I say nothing he'd probably do it for no margin I suppose, yeah.

But that's what you told the investigator isn't it?---Yes, that's correct, yeah.

Was that false what you told the investigator or was that true?---Well, we can do it for nothing, I mean do it for no margin.

I see. Is that what he told you?---I believe so, yes.

20 THE COMMISSIONER: What, told you what?

MR STRICKLAND: I'm sorry, thank you.

Are you saying that he told you, that Pelco have told you that they would offer the Pelco product for you at no margin?---He didn't say exactly what margin, he just said he'll look after us.

Well, but that's not - you've gone on to say that, that Mr Yallouris said we'll do it for nothing. Is that what, did he, did he say something along those lines?---Oh, something along those lines.
30

So he did say something along those lines?---Something, something along like those lines, he said that they really want the job and they, yeah.

THE COMMISSIONER: They'll do it for nothing?---No. Well, nothing might mean no margin, I don't know but - - -

But, but did he - I'm interested - - -?---Oh, I can't, I can't recall.

- - - in what he - well, you were - these are your words and you told the
40 Commission investigators that he told you that he would do it for nothing. Do you, do you know say that he didn't say that or do you accept that he, do you still accept that that's what he said?---I, I don't think he would have said he'd do it for nothing but maybe, yeah, I - - -

Why did you tell, why did you tell the investigators that you - that he said that he would do it for nothing?---Well - - -

Were you not telling the truth there?---Well, I'm just telling them what, what was going on in my head at the time.

Were you not telling the truth then?---I may have been misleading there.

You were being misleading?---Yeah. Well, I don't - oh, they asked me and I just went, went through my memory at the time. Now, I don't think Terry said he'd do it for nothing but it was going to be at a greatly reduced price.

10 So why did you say that you'd do it for nothing, that he would do it for nothing?---It just came into my head.

You were trying to mislead the investigators?---No.

So something came into your head that wasn't true?---Yes, that's correct.

And you decided to utter it?---Mmm.

Is that right?---Well - - -

20

Is that right?---It was a terminology I used.

The terminology is that he'd do it for nothing?---That's correct.

Was that true?---Well, you'd have to ask him, he probably did it for nothing.

Is it true that he said it?---In those words, I can't recall.

Yes, Mr Strickland.

30

MR STRICKLAND: Now if you just go over the page, page 9 you said this at line 15, you say, "I knew that it wouldn't be - you can't just turn around and go there you go \$2 million, it won't happen. I spoke to a lot of people about it. When I spoke I said what happened? And they said, well they're not allowed to accept other prices. You said, okay. I said, so can I give it to them? And they said no, not unless you asked. So technically I spent a week before, "okay, how am I going to get them to ask?" So I went in there and as I said I bagged the shit out of Verint, don't want the job - - -?--- Sorry, is this suppressed, this is - - -

40

Just listen to the question. "Don't want the job. If you're going to put Verint in there I don't want it. Don't want to put our name to it. I wouldn't put our name to that shit." And then you say later you didn't use the word shit?---Mmm.

Is it the case that you told the Art Gallery Tender Evaluation Committee that you did not want the job if Verint was going to be the product?---I, I can't recall if I said those exact words.

That's what you told the investigators didn't you?---Yeah.

Was that also misleading or was that true?---It could have been. I mean ask the Art Gallery if that's what I said.

No, I'm asking you, if you said it?---Well I can't, I can't recall.

10 You can't recall what?---I can't recall whether I actually said that we wouldn't take the tender if, if it was Verint.

Well presumably when you gave – when you answered these questions in March 2011 you could recall it because they're the words you said to the investigator?---Sorry, can you say that again?

You said to the investigator in March 2011 they were the words you used? ---Well it was a sales pitch I was putting on.

20 You were putting a sales pitch to the investigator - - -?---No.

- - - or to the Tender Evaluation Committee? Which one is the sales pitch? To whom?---Well I was putting a sales pitch obviously to the Art Gallery and I just can't recall whether I actually said I wouldn't do the job unless it was Pelco.

See that's an extraordinary risk to take unless you knew someone within the Tender Evaluation Committee had some idea that that's what you were going to do and had approved it or - - -

30 THE COMMISSIONER: Agreed to it.

MR STRICKLAND: - - - agreed to it. Do you agree with that?---No.

To say - - -?---Well it's a risk, yes. But - - -

It's a massive risk to say I, Kings don't want to do the job on the complying product isn't it?---Yes.

40 And you're saying you did not get any information from Mr Paul or any discussion with Mr Paul that that's what you were going to say at that meeting before you said it?---I never discussed what I was going to say at the meeting, no, absolutely not.

Well forget what you were going to say at the meeting that you were going to tell the Art Gallery that you were only going to do the contract if they agreed to Pelco?---I can't recall the exact words, but probably in my head that's what it was.

THE COMMISSIONER: Did you tell Mr Paul that?---No, no.

MR STRICKLAND: See - - -?---I had in my head that we're going Pelco and I would do anything to, yeah.

Do you think - - -

THE COMMISSIONER: Do anything to do what?---Well in my mind that was the right solution.

10

Do anything to do what? To get the contract?---No, to use the Pelco.

To get the contract - - -?---To get the contract.

- - - using Pelco?---Mmm.

Is that right? Does that mmm mean yes?---Yes, 'cause that's what I thought was the right solution.

20

And would anything include misleading the Art Gallery?---I don't think I've mislead, mislead the Art Gallery in any way.

Yes, Mr Strickland.

MR STRICKLAND: Didn't you tell the Art Gallery at that 27 February meeting that the old price that you had bid on was based upon an earlier version of the Pelco Endura product?---I don't think so, no.

30

Are you sure about that?---Not that I can recall because I think our first - - -

THE COMMISSIONER: You deny that?---Well I can't recall it.

Do you deny saying that?---Well I don't deny it, but I just don't recall - - -

And it would be fundamentally untrue wouldn't it if you said that? Wouldn't it?---Our second alternative was version 2, 1.5 would not have worked on the job, on the site.

40

MR STRICKLAND: Yes. But I'm asking you what you, what you advised or told the Tender Evaluation Committee. Didn't you tell them that the earlier price, the 2.69 million price was based upon an earlier version of the Pelco product and you were able to offer a substantial reduction because you had offered a new version?---Oh, I can't recall saying it. Maybe I said that, yes.

THE COMMISSIONER: That wouldn't have been true would it?---Well I'd have to go back and - - -

Oh come on. It wouldn't have been true because you know very well that your tender was based on Pelco Endura number 2?---Correct.

10 So to tell the Art Gallery Tender Evaluation Committee at the meeting that your tender had been based on an earlier version, not version 2 but an earlier version and that you had just – the new version, number 2 had just come out and you were able to offer the job at a much lower price. Isn't that what you told them?---If I did I've mislead them in that way, but I, I think if you go through all our documents we were always offering version 2.

I'm not – that is so. I'm not asking you what's in your documents, I'm asking you what you told the Tender Evaluation Committee?---I can't recall the exact words.

But you don't deny that you told them that the first version was based on Endura 1 or Endura 1.5?---No. No, the first version was always based on version 2.

20 I'm asking you whether you told them – do you deny that you told them that your tender was based on Endura, Pelco Endura, the version before version 2 and that version 2 had only just come out and you were now able to offer them a much reduced price?---Well I don't think I ever mentioned, ever mentioned 1.5.

Did you – do you deny saying what I put to you or not?---I can't recall that, but - - -

30 Do you deny – is it possible that you might have misled them in that way?
---I didn't mean to mislead them and I think that if you, if you read out tender documents - - -

You didn't mean - - -?--- - - - it was always version 2. Now whether I meant that it's the, it's, we were working with the, the Beta release and then they've released it, because they had the Beta release out for - - -

40 You knew that the people on the Art Gallery, other than Mr Paul, had no idea about this highly technical offer that you were making didn't you?
---Well I realised that the Art Gallery probably didn't comprehend much of it.

No. So it was safe to tell them that you were, that you were reducing the price because a new version, version 2 had just come out?---(No Audible Reply)

You nod your head does that mean yes?---Yeah. Yes.

But you couldn't have misled Mr Paul could you?---Well I don't think I ever mentioned 1.5.

You couldn't have misled him could you?---No.

But he didn't say anything then did he?---Not that I can recall.

10 So he must have remained silent because he knew what you were going to do and had an agreement with you?---No, that's not right.

I see.

MR STRICKLAND: I'll just mark that record of interview for the moment and I'll deal with it after lunch.

THE COMMISSIONER: Yes. The record of interview will be marked MFI 5, is it, 4.

20

#MFI 4 – RECORD OF INTERVIEW

MR STRICKLAND: Just - - -

THE COMMISSIONER: Do you want to stop now?

MR STRICKLAND: If I could just have two more minutes.

30 THE COMMISSIONER: Yes.

MR STRICKLAND: Could the witness be shown Exhibit R5. That's Art Gallery 2, page 32. And do you recognise this document as a, an answer to those questions that I showed you earlier, which were attached to the 26 February email?---Yes.

And you read this document before you, before it was prepared didn't you? ---That's correct.

40 And did you - you wrote some of it?---That's correct, yes.

If you just go to the last page, page 41. Did you write this page?---I believe so.

Right. And you see this - this was the document you spoke to or provided to the Tender Evaluation Committee on 22 February, correct?---Well not aware of but - - -

I beg your pardon?---I'm, I'm not aware if, if we provided it or not.

But you certainly you are the provider or spoke to it because that's why you prepared it. Correct?---Correct, yes.

I beg your pardon?---Yes.

10 So under the heading 'pricing' on page 41 the second last dot point says, "Priced using version 1, version 2 provide significant cost savings." Do you see that?---Yes.

And that statement was intended to represent that your first bid was priced using Pelco Endura Version 1 but your revised bid was used - using version 2 which provided significant cost savings. That's what that statement says, doesn't it?---I probably more meant that our first price we put in, yeah. I wouldn't - version 1 doesn't - well version 1 is what 10 years old.

20 I'm just asking you that's what statement represents, doesn't it, that's what it says?---Yeah, it could do, yes.

But what - it couldn't mean anything else could it?---No, but that's correct.

So but that, that's, that is false isn't it?---Um - - -

THE COMMISSIONER: That's a lie, isn't it?---Well it's not - no - misleading or I've got my words wrong there.

30 MR STRICKLAND: What words, what words do you have wrong there?---Well I probably should said price using the - my original version 2 pricing.

Well fundamentally changes the meaning of that sentence then doesn't it? ---Yes, it does, yeah, yeah.

See hadn't you - didn't you deliberately state that the original bid used version 1 and the revised bid used version 2 in order to - - -?---Well I - - -

40 - - - in order to justify why you could make such a substantial reduction in price?---I think if you go through all our tender submissions we're only ever talking version 2.

Understand that but that's not my question. You got to listen to the question?---Yeah, I understand what you're saying.

What I'm suggesting is the reason is for that statement - - -?---Ah hmm.

- - - which I think you acknowledge is misleading. Correct?---Yes.

The reason for that misleading statement is because you wanted to justify to the Art Gallery why you could make such a substantial reduction in price?
---No. Yes.

If it's a convenient time.

THE COMMISSIONER: Yes. Thank you. We'll adjourn until 2pm.

10 **LUNCHEON ADJOURNMENT**

[1.03pm]