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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 FRIDAY, 29 JUNE, 2012

AT 2.09PM

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

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

THE COMMISSIONER: Mr Maher.

MR MAHER: Thank you, Commissioner.

Ms Jarvey, I have a couple more questions about this letter that you found on the file. Do you recall whether it was signed by John Marinucci?---
10 There was a signature on the letter.

Do you recall whether there were words under that signature John D Marinucci?---I can't recall whose signature it was but I do remember there was a signature on there.

Thank you. And John Marinucci was the finance director at Kings at the time, is that to the best of your recollection?---Yes.

I won't labour the question of the date but can I show you a document
20 which is your application for unfair dismissal remedy or a copy thereof filed in Fair Work Australia. Do you recognise that document?---Yes, I do.

Is that a document you prepared?---Yes, with my solicitor, yes.

Can you turn over to the second page of that document and paragraph and paragraph 4?---Yes.

In reading that paragraph does it refresh your memory that the letter was, the actual letter was incorrectly dated 17 January, 2010?---Yes.
30

And this is a document that you filed on 2 March, 2011?---Yes.

Or thereabouts. Thank you. Now, in relation to the letter that you found on the file, did anyone ever tell you that Mr Diekman had asked that it not be issued to you because he wanted to have informal discussions with you?
---Had anyone sorry, repeat that.

Had you heard from any source that Mr Diekman had asked that this letter not be issued to you because he wanted to have informal discussions with
40 you first?---I recall something being mentioned later after I'd found it about that.

Thank you. And was it at 17 January, 2011 meeting, that is your first day back, that Mr Diekman spoke to you, informally shall we say, about those things?---Yes.

Thank you?---About those?

I beg your pardon, you're quite right?---Sorry, I mean, yes, yeah.

He spoke to you?---He spoke to me, yes.

Did he mention - - -

THE COMMISSIONER: About what?---That was about me going onto a contract instead of being a fulltime employee of Kings.

10 MR MAHER: Did he also - - -

THE COMMISSIONER: Sorry, Mr Maher. Did he speak to you about you - to quote his words, being in damaging conversations with competitors of Kings?---No, he didn't. He said that it was a conflict of interest.

MR MAHER: Thank you. Perhaps I should tender this letter that bears the date of 17 January, 2010 from John Marinucci of Kings to Ms Jarvey.

THE COMMISSIONER: I don't think the letter's been proved.

20

MR MAHER: Yes. I'll prove it from another source, Commissioner.

THE COMMISSIONER: You can mark it, we'll mark it for identification.

MR MAHER: Thank you, Commissioner.

THE COMMISSIONER: The letter of 17 January, 2010 will be marked for identification number 7.

30

**#MFI 7 – LETTER OF MR MARINUCCI OF KINGS TO MS
JARVEY DATED 17 JANUARY 2010**

THE COMMISSIONER: Thank you, Commissioner.

MR MAHER: I would like to go through a number of things that I suggest that Mr Diekman discussed with you at that 17 January, 2011 meeting and you can tell me - - -

40

THE COMMISSIONER: Which one?

MR MAHER: 17 January, 2011.

THE COMMISSIONER: Well, has it been established - do you know which meeting that is?---That was the, yes, yes, I do.

MR MAHER: Your first day back, Monday?---My first day back.

THE COMMISSIONER: Right.

MR MAHER: Did he discuss with you that you're working a lot of additional hours and unusual hours when there was no apparent need to do so excluding the Garden Island project?---No. He did say I was working excessive hours, not unusual, that I was, yeah.

Thank you. Secondly, did he - - -

10

THE COMMISSIONER: Sorry, excuse me, can I just make - I'm sorry to interrupt but I just want to - do you get paid overtime?---Yes.

So he was concerned that you were being paid too much overtime, is that it? ---No, because he wanted me - when he said why don't you go onto a contract, you'll earn a lot more money, it couldn't have been a money because - - -

20

So what was his - did he explain what his concern was about your earning, about you working excessive hours?---Just that I was working - no.

MR MAHER: Thank you, Commissioner.

I'd like to suggest or ask you whether the second thing that Mr Diekman spoke to you about was taking significant breaks at work, those being smoking breaks?---He brought that up, yes.

30

And was it suggested that you were taking up to an hour on a smoking break?---Never because Charlie used to ask me to go get him a coffee and have a cigarette break, so no, I'd never take an hour unless I was lining up getting his coffee for an hour.

I think, perhaps answer a slightly different question, was it ever suggested to you that you were taking an hour, up to an hour?

THE COMMISSIONER: By whom?

40

MR MAHER: By Mr Diekman at that meeting that you were taking up to an hour on a smoking break?---Not that I recall, no.

Thank you.

THE COMMISSIONER: Mr Maher, I'm sorry again, I apologise again for interrupting you but I take it you are putting this on instructions?

MR MAHER: I am.

THE COMMISSIONER: But your client is Mr Roche not Mr Diekman.

MR MAHER: That's so. But I - - -

THE COMMISSIONER: So where do you get your instructions from if I may ask?

MR MAHER: Certainly you may ask, it's from a document which I don't propose to tender, but it's a document going between the solicitors in the Fair Work Australia proceedings.

10

THE COMMISSIONER: Very well.

MR MAHER: The third thing I would like to ask you whether Mr Diekman asked you at the meeting on 17 January, 2011 whether or did he discuss with you that complaints were being made about your apparent aggressive presentation and manner of communication with other employees?---No, that my facial expression when I think is offensive to people.

20

Thank you. And fourthly and lastly, you may have already answered this one but that you were undertaking a contract of business that had potential conflicts with your employment?---Yes.

Thank you. Now I'd also like to suggest that at that 17 January meeting Mr Diekman suggested to you that you appeared stressed and needed flexibility in your working hours?---I'd just gotten back from a holiday, I wasn't stressed, so no.

Did he not suggest that to you?---He suggested, he suggested my anxiety.

30

THE COMMISSIONER: Sorry, I beg your pardon?---He suggested that my anxiety was an issue.

MR MAHER: Did he – I suggest that he raised with you the possibility of being a contractor?---Yes, he did.

He didn't require it of you?---Yes.

So you deny the suggestion that he did not require it of you?

40

THE COMMISSIONER: Sorry, that's too difficult.

MR MAHER: Too many (not transcribable)

THE COMMISSIONER: I think that, I think that Ms Jarvey agrees with the proposition?---The proposition, yes.

MR MAHER: Thank you. Now can I take you to the Friday where you say that your phone was taken off you and you were taken out of the premises

and locked out. Can I suggest that that was after a meeting with Mr Roche?---And Mr Diekman.

Thank you. And that the date was Friday, 21 January, 2011?---Okay, yes.

The end of your first week back from holidays?---There was meetings every week, but I can't remember the exact date, so - - -

Thank you.

10

THE COMMISSIONER: Meetings every week or every day?---Every, like there'd be you know three meetings a week. Every third day I'd be in there, fourth day.

This is after you got back?---Yes.

But it's been put to you that he spoke to you – that he spoke to you on 21 January and that's when he in effect told you to leave and took your bag? ---No. That was, the Monday was the day I returned where he offered me to go a contractor instead of being full time.

20

Yes, but I think, would you mind putting your again Mr Maher.

MR MAHER: Yes, yes Commissioner, certainly. I'd like to suggest that after you've had that meeting that you've just given evidence about on Monday 17 January, 2011 you had another meeting with people including Mr Roche on Friday, 21 January, 2011?---Yes.

THE COMMISSIONER: Which, at which?

30

MR MAHER: At which the telephone was taken off you and you were asked to leave the building.

THE COMMISSIONER: So that's four days later?---Yeah. Oh there was meetings in between that.

In those four days?---Yes.

MR MAHER: But do you agree with me that that – the meeting that you gave evidence about yesterday was on Friday, 21 January, 2011?---I'm only guessing it was that Friday, it was that week, so - - -

40

Thank you. I'd like to suggest that the reason that Mr Roche was angry with you was that you'd had access to your personnel file without his consent?---At no point was I told I needed to get consent from a director.

THE COMMISSIONER: But was he angry with you?---He was angry at me for a lot of things.

MR MAHER: Did he tell you - - -

THE COMMISSIONER: Was that one of the things that he - - -?---One of the items, yes it was.

MR MAHER: Thank you. And I'd like to put to you a conversation that Mr Roche will say occurred at that meeting. He says that you said, "I can't believe this, I went to ICAC, I did the right thing." Do you agree that you
10 said words to that - - -?---Who said that?

This is you?---Yeah.

Do you want me to read the words again?---Yes, please.

"I can't believe this. I went to ICAC, I did the right thing."?---I said that?
No.

You didn't say that?---No.

20

I'd like to suggest that Mr Roche said, "What's ICAC got to do with it?
---No.

So you disagree that- - -?---No.

You're denying that- - -?---There was a conversation but that wasn't the conversation, no.

Thank you. Ms Jarvey, do you know who ET Security are?---Yes.

30

Are they a competitor of Kings?---They did work for Kings.

Are they a competitor as well?---I wouldn't have classed them as a competitor, they were always in the office doing work for Kings.

What precisely, what precise type of work did they do for Kings?
---Security installs.

And did they operate in their own right as well as contracting for Kings?

40

THE COMMISSIONER: Operate as what?

THE WITNESS: Well, yes.

MR MAHER: Security installs?---Well, yeah, yes, they did.

THE COMMISSIONER: What, as integrators?

MR MAHER: Installs I think the evidence was.

THE COMMISSIONER: I beg your pardon?

MR MAHER: I think the evidence was installs, I-N-S-T-A-L-L-S.

THE COMMISSIONER: Installing what?

MR MAHER: Well, those were the witness's words, Commissioner.
10 Perhaps I can explore that.

THE COMMISSIONER: Who, they were Ms Jarvey's words, were they?

MR MAHER: Yes, that's how I heard it. Perhaps I could start again.

THE COMMISSIONER: Well, if Kings were, Kings carried on business as
integrators, didn't they?---Yes.

And, and this other company, what's it, ET?
20

MR MAHER: ET.

THE COMMISSIONER: Yes. Were they integrators?---I think integration
is just a fancy word.

Yes, putting in the whole system?---Yes.

So did they- - ?---But they- - -

- - -carry on a similar business, putting in the whole system?---They
30 installed systems.

The whole system?---I couldn't, yeah, I wouldn't say, I, yeah, I don't know
if they installed whole systems or not. They installed systems.

MR MAHER: And what about a company called Secom, spelled S-E-C-O-
M?---Yep.

Are they- - ?---They're- - -
40

Yes?---Yes, they're a security company.

And they're a security company. Would you describe them as a competitor
of Kings?---Yes, I would.

Thank you. What I'd like to suggest to you is that after your telephone was
taken off you by Mr Roche- - ?---Yeah.

- - -that he found emails between you and both ET Security and Secom on your, not emails, texts I should say, on your mobile phone?---Okay.

Do you agree with that?---I'm friends with everyone in the industry so I wouldn't be surprised.

So you don't deny that?---I don't deny that, no.

10 Thank you. Now, do you recall having a meeting on 31 January, 2011, with John Marinucci and Tony Davies?---Yes. Tony was my witness.

Your witness?---I requested a witness in the meeting because they wouldn't allow me a mediator.

And what's his position, is he, does he work for Kings?---Yes.

THE COMMISSIONER: Is this going, is this on instructions from Mr Roche, this line of questioning?

20 MR MAHER: Ah, it's in, it's in documents provided to me by Mr Roche.

THE COMMISSIONER: Yes. Well, I think you'll have to produce the documents.

MR MAHER: I've done that, Commissioner. So I think my question was whether Mr Davies was employed by Kings and now like you to answer that question?---Service Manager.

30 Thank you. And at that meeting do you recall being given a letter dated 31 January, 2011, headed Re Official Warning?---Yeah.

Can I show you a copy of that letter.

MR STRICKLAND: Commissioner, before we have that shown, there was I think an earlier document shown, an application, but that hasn't been tendered yet.

MR MAHER: Thank you, I'm indebted to my friend.

40 THE COMMISSIONER: Well, can we now just produce these documents by consent and put them in? I mean I'm really anxious to shorten this period (not transcribable)

MR MAHER: Certainly.

THE COMMISSIONER: Can we, if you have documents, if you simply want to put documents in you can do that by letter when these proceedings

are over, the documents due which you don't have to go through the witness.

MR MAHER: I do want to ask her a couple of questions about- - -

THE COMMISSIONER: All right. What is this document? Whose notes are on the document?---They're mine.

10 MR MAHER: I think to be fair to the witness perhaps excluding the words "hand notations made by Ms Jarvey during meeting on 31 January, 2001," do you see those notes towards the top right-hand - - -?---Yes, I do.

That's not your writing is it?---Oh, that top part, no, no, no.

But apart from that the other - - -?---Everything else.

- - - all the other handwritten notes are yours?---Yes, they are.

20 Thank you. And I won't take through the document chapter and verse but you'll see that there are three arrow, four arrow points I beg your pardon towards the bottom of the first page where Kings says that it has initiated the following remedies to use the words of the letter, do you see that?---Yes.

And the first was to agree to adjust your working hours to 7.30am to 4.00 each normal business day except public holidays?---Yes.

And do you recall agreeing to that?---No, I didn't agree to anything in this written warning.

30 I'm indebted, I'm obliged, I should say (not transcribable) putting to you, I am, I am, I do put it to you that you did agree to that first arrow point.

THE COMMISSIONER: She said no, she didn't.

MR MAHER: Thank you, Commissioner.

The second one, arrow point is - - -

40 THE COMMISSIONER: Well, you don't have to put them all to her because she didn't agree to any of them.

MR MAHER: Thank you, thank you, Commissioner, I won't take up any more time on that document.

Now, the date that you were notified of your dismissal was 17 February, 2011, is that correct?---That was the date my lawyer gave as my date of leaving the company.

When you say that it's the date that's on the application for unfair dismissal remedy?---It would have been a letter that was sent from my lawyer to Kings saying if, if they didn't respond by a certain date that I would, that I am forced to leave the company and my last day would be that day.

Does the witness have the document, do you still have the application for unfair dismissal remedy?---Yeah.

10 Do you see down the bottom it says "date notified of dismissal", do you see those words, down the bottom of the first page. No, it's not on that page, the first page of that?---Ah hmm. That's because that's - - -

No, no, I'm just asking you whether you see the words "date notified of dismissal Thursday, 17 February, 2011"?---Yes.

You see those words and then underneath that the words "(constructive termination)"?---Yes.

20 And that's a document that was prepared by I think you said you with the help of your lawyer?---Correct.

Thank you. Pardon me a moment, one last thing. Do you agree that under your employment agreement that you were not entitled to divulge without the company's consent any confidential information for your own or anyone else's benefit?

30 THE COMMISSIONER: It's common law?---I would need to check my original agreement as there was an agreement when I was given the written warning.

MR MAHER: If it's accepted as common knowledge, Commissioner, I won't pursue it. I'm happy to show the document to the witness if it's necessary.

THE COMMISSIONER: Well, I will accept that that was a term of her employment if that's what you're putting to her.

40 MR MAHER: That's all I, that's all I'm putting, Commissioner. I have nothing further for the witness, Commissioner.

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: Yes, thank you, Commissioner.

THE COMMISSIONER: Mr Strickland, I notice - I don't that we've got the letter of 13 May, 2011 and the application to which Mr Maher is referring have been tendered.

MR STRICKLAND: I'd ask them to be tendered. First the application for unfair dismissal which has a file stamp of 2 March, 2011.

THE COMMISSIONER: So the application for unfair dismissal will be Exhibit 14.

**#EXHIBIT 14 - APPLICATION FOR UNFAIR DISMISSAL
REMEDY**

10

THE COMMISSIONER: And I take it letter from - - -

MR STRICKLAND: Kings Security.

THE COMMISSIONER: No, I'm talking about the letter of 30 May, 2011 from Bartier Perry - that I'm told is Exhibit 12, I beg your pardon. So which is the letter? Sorry, this is the letter here. The letter of 31 January?

20 MR STRICKLAND: 31 January from Kings to Ms Jarvey.

THE COMMISSIONER: Yes. So the letter of 31 January, 2011 from Kings to Ms Jarvey is Exhibit 15.

**#EXHIBIT 15 - LETTER FROM KINGS TO MS JARVEY DATED 31
JANUARY 2011**

30 THE COMMISSIONER: Yes. Mr Strickland, anything else?

MR STRICKLAND: Yes, there is. Could the witness please be shown M14, sorry, I beg your pardon, Exhibit 14. That's your application for unfair dismissal. Is that correct?---Yes.

And you wrote that?---Yes.

Are the contents of it true?---Yes.

40 Can the witness be shown Exhibit 15. You've written some handwritten notes?---Yes.

Are the contents of those handwritten notes true?---Yes.

There's one handwritten note that I can't read, it's the one that's next to number 1, something about, "Someone has told me for a smoke break." Can you just read that out, please?---"Charlie used to ask me to go get him a

coffee and to have a smoke break while I'm having a coffee ah, while I'm getting his coffee."

No, can you just read out the note (not transcribable)?---Oh, sure. A bit of it's cut off. "He has told me to, oh, told me go for a smoke break and get me a coffee numerous times."

10 Just in relation to the typed part of paragraph 1 of that letter that's Exhibit 15, is it the case, is the truth that whilst you were at Kings that you did work for other companies that were competing with Kings. Is that right?---Yes.

But you had already told Kings about that?---Yes.

Well before, before, well before this letter?---When I first started.

When you first started at Kings. And you worked, did you work on, when you worked for companies that were competing with Kings were they on different projects or- - -

20 It was never on the same project 'cause it would be at the end of a project, so Kings had lost that tender and be a different project, so never at tender stage, project stage.

So you never, when you were working with a competitor- - -?---Mmm.

- - -say Secom- - -?---Ah hmm.

- - -on a job- - -?---Ah hmm.

30 - - -it was never on the same job that Kings were doing at that time?---No.

Is that correct?---Never.

Thank you. You gave some evidence that Rod Waring said you had a target on your back?---Mmm. Yes.

What was the context in which he said that?---That, it was in the kitchen at Kings' office that I'd been to, 'cause I'd been at ICAC I- - -

40 Just one moment, sorry. Sorry, go on?---That I'd had, I have a target on my back now. So basically it doesn't matter what, what happens, there's a target there so- - -

And he said that at Kings' offices?---Kings' kitchen.

Is that after you've returned from your one-month break or was it before?

---I can't recall at what point it was, I just know it was in the new office. At the same time he told me to start keeping a record of my hours and things like that.

Are you ready to continue on?

THE COMMISSIONER: I beg your pardon?

MR STRICKLAND: Shall I continue on?

10

THE COMMISSIONER: Yes, please.

MR STRICKLAND: Now, you gave some, sorry, could the, sorry, I just need the witness to be shown one exhibit, Exhibit 8. You gave some evidence about a conversation you've had in relation to those poles. Is that right?---Yes, I did.

20

And did that conversation take place during the tender process for The Gap?
---It was when we were looking at the poles during the tender stage for costing.

For The Gap project?---For The Gap project.

Yes, nothing further, thank you.

THE COMMISSIONER: And, Mr Strickland, the pages that Mr Lloyd, the pages of the transcript on which Mr Lloyd cross-examined were not tendered. I think they should be.

30

MR STRICKLAND: You've reminded me of something and I'm grateful for that. Thank you. You, I want to make this clear. When you gave evidence in October 2010 you admitted to Mr Lloyd that you, in relation to the answers, the answers he put to you, you lied. Is that right?---Yes.

Why did you do that?---'Cause I wouldn't have a job and I had, at the time my, I'd broken up with a guy, I had a lot of debt and I had to pay rent and I had to pay bills and I had to pay everything on my own. If I didn't have a job then, yeah, I couldn't afford, couldn't afford it.

40

THE COMMISSIONER: But what made you think that you would lose your job?---'Cause Kings, even the day, night I got subpoenaed I said to them, "I'll lose my job." It's, Kings were like that. If you, yeah, they'd feel that I wasn't loyal to them or, you know, I'm a threat or something like that.

MR STRICKLAND: Now you then came back and did another compulsory examination earlier this year. Is that correct?---Yes, I did.

And on this occasion did you tell the truth about Mr Paul's assistance in relation to The Gap project?---Yes, I did.

And at that stage were you working with Kings?---No.

I'll tender those pages.

THE COMMISSIONER: What pages are they?

10 MR STRICKLAND: I don't have, I have them at hand.

THE COMMISSIONER: Mr Lloyd what pages are they?

MR LLOYD: I just handed them back to my friend, your Honour.

MR STRICKLAND: They were - - -

MR LLOYD: The ones that I crossed examined on I can identify quickly.

20 THE COMMISSIONER: All right. We can do that later. The pages of the transcript of 26 October, 2010 in which Mr Lloyd cross-examined will together be Exhibit 16 and they will be later identified.

#EXHIBIT 16 - PAGES FROM MS JARVEY'S COMPULSORY EXAMINATION ON WHICH SHE WAS CROSS-EXAMINED

30 THE COMMISSIONER: Yes, thank you Ms Jarvey, that concludes your examination and the summons is discharged and you're free to go?---Thank you.

THE WITNESS EXCUSED

[2:36pm]

MR STRICKLAND: I call Ms Flanagan.

40 THE COMMISSIONER: Mr Smith.

MR SMITH: Commissioner, might Ms Flanagan have a declaration under section 38.

THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Ms Flanagan and all documents produced by her during the course of her evidence at this public inquiry are to be regarded as having been given or

produced on objection and accordingly there is no need for her to make objection in respect of any particular answer given or document produced.

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

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

MS FLANAGAN: Under oath.
20

<ANNE ELIZABETH FLANAGAN, sworn

[2.38pm]

THE COMMISSIONER: Mr Strickland.

MR STRICKLAND: I tender a number of documents in relation to this witness. They are, there are 14 documents, I wonder if they might be called as per the previous witnesses where there are multiple documents exhibit, I'm not sure, 17 F1 to 14.

10

#EXHIBIT 17 - DOCUMENTS ON WHICH MS FLANAGAN WAS QUESTIONED (F1-F14)

#EXHIBIT F1 – TENDER ASSESSMENT REPORT REGARDING CONSULTANTS DATED 20 AUGUST 2008

20 **#EXHIBIT F2 – UPGRADE BRIEFING DATED 14 JANUARY 2009**

#EXHIBIT F3 – SPONSORSHIP LETTER RE MORRIS DATED 19 JANUARY 2009

#EXHIBIT F4 – EMAIL FROM MS TREGLEAGLE TO MR MORRIS DATED 30 JANUARY 2009

30

#EXHIBIT F5 – PAUL'S STRATEGY WITH TENDERS DATED 31 JANUARY 2009

#EXHIBIT F6 – EMAILS REGARDING THE NOTIFICATION OF TENDERS DATED 2 FEBRUARY 2009

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#EXHIBIT F7 – TENDER OPENING DATED 23 FEBRUARY 2009

#EXHIBIT F7(A) - EMAIL SENT AT 10:30PM ON 26 FEBRUARY 2009

#EXHIBIT F8 – PRELIMINARY ASSESSMENT SHEETS

#EXHIBIT F9 – TENDER INTERVIEW ASSESSMENTS

#EXHIBIT F10 – TREGLEAGLE HANDWRITTEN “KINGS INTERVIEW” DATED 27 FEBRUARY 2009

#EXHIBIT F11 – EMAILS REGARDING CHANGE OF WEIGHTING 27/28 FEBRUARY 2009

10

#EXHIBIT F12 – ACG PELCO RESPONSE IN THE AMOUNT OF \$2,142,800 INCL GST

#EXHIBIT F13 – TREGLEAGLE HANDWRITTEN NOTES OF INTERVIEWS DATED 5 MARCH 2009

20 **#EXHIBIT F14 - MEMO OF DEPARTMENT OF SPORT AND REC REGARDING AWARD OF CONTRACT – NOTE REFERENCE TO \$1,832 MILL PRICE DATED 22 MAY 2009**

THE COMMISSIONER: Yes.

MR SMITH: Commissioner, in respect of a number of these documents there may well be confidential matters that - - -

30 THE COMMISSIONER: Yes.

MR SMITH: Can I deal with them - - -

THE COMMISSIONER: Yes, later.

MR SMITH: - - - later?

40 THE COMMISSIONER: Yes. Well I'll deal with it in this way, Exhibit 17 – all documents produced through Ms Flanagan will constitute Exhibit 17 and each document will be prefaced by the letter F and the first 14 documents falling into Exhibit 17 will be those described in a list which is headed Documents Flanagan. Mr Smith, I'm prepared to put a suppression order on all of the documents but when, when you tell us about the areas which have to be suppressed?

MR SMITH: When will I?

THE COMMISSIONER: Yes. As we go along today?

MR SMITH: I should be able to do that today, yes.

THE COMMISSIONER: All right. Well I won't make a suppression order now. As we come to each document - - -

MR SMITH: Yes.

THE COMMISSIONER: Yes. Mr Strickland.

10

MR STRICKLAND: Could the witness, if she could be given that bundle, thank you.

Could I ask you to speak slowly and clearly because every word you say is being transcribed. What's your full name?---Anne Elizabeth Flanagan.

And your occupation?---I'm Deputy Director at the Art Gallery of New South Wales.

20

And how long have you held that position for?---Since 2010.

And in 2009 what was your position?---I was General Manager Exhibitions Building and Security.

With a woman called Anne Tregeagle who worked there. Is that correct?---Correct.

What was her position?

30

THE COMMISSIONER: When?

MR STRICKLAND: In 2009?---At which part in 2009?

Well February/March 2009?---She was a Specialist Project Manager and she was on staff.

And Mr Morris was also employed by the Art Gallery in 2009. Is that correct?---Correct.

40

What was his position in February/March 2009?---Head of Security Services.

Now there was a painting stolen at the Art Gallery. Is that correct?---Yes.

And that caused the Art Gallery to review its entire security system. Is that right?---Yes.

The Art Gallery decided to hire a company called BRI to do a security review?---Yes.

As a result of that review there was a decision to hire Mr Paul, Daniel Paul from SCI, Security Consultants International. Is that correct?---Following a tender for that security consultancy, yes.

And were you part of selecting Mr Paul as the consultant to the Art Gallery?---No, I was not part of that tender.

10

Do you know why the Art Gallery decided to hire a security consultant for upgrading its security?---The scope of work with that upgrade was very intensive, it was very technological and certainly we needed guidance with an expert security consultant.

THE COMMISSIONER: So can I put it bluntly, and please correct me if I'm wrong, the Art Gallery simply didn't have the know how to do it itself?---Yes.

20

MR STRICKLAND: Did Mr Morris have that know how?---No, not that level of know how.

Is one of the reasons the Art Gallery needed a security consultant was to recommend precisely what security equipment the Art Gallery would need for its upgrade?---That was part of it, yes.

And did the Art Gallery rely heavily on the – any recommendations that were made by the security consultant, by Mr Paul in relation to the actual equipment that was being – to be purchased?---Yes.

30

THE COMMISSIONER: Yes?---As part of the tender, yes.

MR STRICKLAND: Yes. Thank you.

THE COMMISSIONER: And did Mr Paul explain the tender specification to you?---He did. It was a complex specification.

Yes?---So there were levels of understanding.

40

And how much time did he spend on explaining it to you?---To myself?

Yes?---It was primarily with Tony Morris and Anne Tregagle.

At meetings?---Correct.

How long? Just an approximate figure?---So he was, he was brought in, in August and then the tender went out in February, so it was over that six or so month period.

Yes. But what would you have – did you have one meeting or several meetings?---Anne Tregeagle and Tony Morris would have had several meetings.

And you?---Not so much, limited.

Yes Mr Strickland.

10 MR STRICKLAND: Could you turn to F2 please. That's Art Gallery 301, Art Gallery volume 1. From time to time, from time to time you attended meetings in relation to the security upgrade, is that correct?---Yes.

And does this reflect an internal email about one of those meetings?---Yes.

And do you recall there being discussions at that meeting about the procedure for a tender for an integrator or for a company to install security equipment?---I, I remember very clearly about the principle of an integrated system and Daniel Paul made that recommendation, yes.

20 And what did you understand was meant by integrated system?---There's a layered process so there's the security component which is security access, security equipment, it might be radio frequency tagging and also key storage and then that is interfaced and integrated with the closed circuit television system.

30 Do you recall there being discussions about whether the tender should be an open one, that is invited - any company can respond to a publicly advertised tender or was some other form of tender decided upon?---There was a recommendation by Daniel Paul for a select tender and we fully endorsed that given the confidential nature of what we were dealing with.

THE COMMISSIONER: Can you explain that? Does that mean you didn't want the world to know what was in the specification?---Yes.

But didn't - was the specification then not made public?---You choose a select number of tenderers based on their expertise, their capability and their experience so it's a select tender rather than an open advertised tender.

40 So you limited the extent to which it was made public?---Correct.

MR STRICKLAND: Mr Paul recommended it but you agreed with that, is that correct?---Yes.

And so did the other, so did Ms Tregeagle and Mr Morris?---Yes.

Thank you. Would you go please to F3. I don't need you to read this document necessarily but did you know before the tender's, before the

tender was awarded that Mr Morris planned to go on a trip to the International Security Conference in Las Vegas?---Yes.

With Mr Paul?---Yes, I knew he was, he would be there with Mr Paul.

Did you know he'd be there with Mr Diekman from Kings?---No, I did not know that.

Were you ever told that?---No.

10

Would that have concerned you if Mr Morris was attending a conference at the same time and with Mr Diekman from Kings but not with other principals of other competitive companies, other tendering companies?

---Yes, it would concern me.

And I ask the obvious, why?---Because there is a potential if we are about to go out to tender and you are in company with one supplier, I don't think that's a good thing.

20

THE COMMISSIONER: It suggest - it could lead to either actual favouritism or at least a perception of favouritism?---A familiarity, yes.

Yes.

MR STRICKLAND: Thank you. Can you go to F4 please. Now, I'm not suggesting that you - this appears to be an email written by Anne Tregeagle to Tony Morris but I want to draw your attention to the first line of that, "Dan and I had a discussion with Anne F" I assume that must be you?

---Yes.

30

"About how the tender shortlist is established." Do you recall having discussions with Mr Paul and Ms Tregeagle about who, which company should be on the tender shortlist?---Yes. There was a report done - yes, I do.

Right. And go ahead, you were saying there was a report?---There was a report done by Daniel Paul about a range of companies from a small company, medium-scale company to a large company analysing their capacity, the types of expertise that they had and the accreditations that they had.

40

And do you know who selected the companies that ultimately appeared on the tender shortlist?---Daniel Paul.

And were you, did you question him to justify why particular companies were selected on the shortlist?---Yes, we went through that document.

And by we, who do you mean?---Ah, with Anne Tregagle and also it would have been with Tony Morris.

THE COMMISSIONER: And Daniel Paul?---And Daniel Paul.

MR STRICKLAND: And you were satisfied when you went through the list that he could justify each company on the shortlist. Is that correct?
---Yes.

10 At that stage did, did he appear to show, that is did Mr Paul appear to show that he favoured any particular company or he thought that any particular company would be the most suitable?---No, it was a wide spread of companies with a wide analysis of those companies.

So at that stage, and it's before the tender process began, he didn't indicate a preference for any one of those shortlisted companies?---No.

If you go to, just excuse me for one moment, I'm sorry. Could you go to number 5, please. And I think you referred to a report. Is that the report
20 that you were referring to which contains the, a discussion of the various companies to be on the shortlist?---Yes.

If I could ask you to go to page 459, please. I should say, did you read this report?---Yes, I did.

Could you go to page 459. You can see that there is two tables, one for CCTV and one for security access control. And do I understand that the security access control relates to swipe cards and the like which allowed those who have them to access different parts of the Gallery?---Correct.
30

And if you go CCTV, you understood that was a very important part of the security installation. Is that right?---It was a major part, yes.

And can you see there that there are a number of companies with ratings on various criteria?---Yes.

And Lenel has by far the highest score?---Yes.

Was it your understanding that Lenel was, in relation to the CCTV
40 component, Lenel was the preferred product?---No, in the final- - -

THE COMMISSIONER: No, now, at this stage?---At this stage, yes, I would have imagined that, yes.

MR STRICKLAND: But did Mr Paul ever discuss with you why he considered Lenel was the best product for the CCTV?

THE COMMISSIONER: Or did he say that, did he consider it was?

---I don't recall a conversation to that effect.

But did you think that Lenel at that stage was the preferred contractor?

---Yes, I did.

What made you think that?---Based on the capabilities that are listed there. It would have been drawn up by Daniel Paul.

10 But you don't, is it your evidence that you don't recall discussing this with him or is it your evidence that you did not discuss this with him?---I don't recall discussing the detail of the, this particular page.

Go to page 460, and what I'm doing, Ms Flanagan, is I'm just drawing your attention to particular matters- - -?---Mmm.

- - -as a prompt as to whether, what your understanding was about those matters and whether you had discussions about those matters?---Yep.

20 Do you follow?---Yes, I do.

So there's two parts of 460 I wanted to ask you about. The first is on the second paragraph and states, "An integrator would require certification in both the Lenel and Verint product ranges. Do you see that?---Yes, I do.

30 MR STRICKLAND: And then if you go down to the last paragraph it says, "Security Consultants International has nominated nine tenderers for invitation. We have based the invitations on the following criteria, with most companies having adequate ability in all of the following listed mandatory capabilities". And the very first item is experienced with and accredited to install Lenel systems?---Correct.

So was it your understanding that an important criteria for the selection of an integrator/installer was that they were actually accredited to install Lenel systems?---Yes.

THE COMMISSIONER: But no other system? I mean, sorry, what I mean is there isn't such a requirement in relation to any other system?---No.

40 MR STRICKLAND: I'll take you, in that same document at page 474. And did you read the letter from Mr Paul, it's addressed to Mr Morris and Ms Tregeagle, but I wanted to ask you if you have at any stage during the tender process actually read that letter?---Page 474 I don't have.

You don't have that.

MR SMITH: I don't have that either.

MR STRICKLAND: Okay. In my bundle but not in others. Okay.

THE COMMISSIONER: It's not in mine either.

MR STRICKLAND: Okay.

THE COMMISSIONER: We can, can you just, we can just insert it in and -
--

10 MR STRICKLAND: I'll put it this way, were you aware, because it
actually appears in other parts of these documents, were you aware that Mr
Paul had disclosed that he had no commercial arrangements or known
potential conflicts of interest with any other suppliers, manufacturers,
trading companies, installers? Did you know - - -?---Yeah.

You knew that. Is that correct?---Yes. He signed a confidentiality
agreement.

Which included the same statement. Is that right?---Yes.

20 And did you know at any time that Mr Diekman and – sorry that Mr Paul
was friends with any of the principals of the companies who were bidding?
---No, I didn't know that.

THE COMMISSIONER: Mr Strickland, I think that it would be a good
idea if we made sufficient photocopies this afternoon to give to everyone.

MR STRICKLAND: Certainly.

30 THE COMMISSIONER: And then it can be, the pages can be inserted in
Exhibit 17.

MR STRICKLAND: Certainly. Yes, it's pages 474 and 475. And that will
be done.

THE COMMISSIONER: Thank you.

40 MR STRICKLAND: Did you, did you know specifically that Mr Paul
regularly attended the Kings offices during the time of the tender process for
the Art Gallery?---No, I did not.

If you had known that would that have concerned you?---Greatly.

Again, I'm sorry to ask the obvious, but why?---Because it would imply that
our security consultant was in some way working very closely with one of
the tenderers.

That concern – would you still have that concern whether Mr Paul was
working on the Art Gallery project or any other commercial project with

Kings?---It would greatly concern me that it was an Art Gallery project. I can't really comment on a relationship of a tender process that I'm unfamiliar with.

But if Mr Paul was in the officers of Kings in relation to other contracts - - -

THE COMMISSIONER: I think that's the question?

10 MR STRICKLAND: - - - would you - - -?---I would be, I would be very concerned because it leaves one open to a level of understanding that the security consultant has the level of detail about the tender, it is very easy for someone to come to know about it.

And Mr Paul never told you that, that he did in fact visit the Kings offices during that time?---No.

That is not something you would have forgotten if you had been told?---No.

20 If you go to number 6 please.

MR SMITH: Before you do that, Commissioner, I just overlooked one thing on number 5, page 456, there are some dot points about a third of the way down the page, the fourth of those dot points and the words following the dot point.

THE COMMISSIONER: You want suppression on that order over the fourth dot pointing page 456.

30 MR SMITH: Yes, Commissioner.

THE COMMISSIONER: Yes. There will be a suppression order as sought.

SUPPRESSION ORDER OVER THE FOURTH DOT POINT ON PAGE 456

THE COMMISSIONER: Mr Strickland.

40 MR STRICKLAND: Have you had a chance to read an email which is entitled "Slight change nomination of tenderers and product"?---I haven't read it.

Would you like to have a read of that please, page 477.

THE COMMISSIONER: So which email, Mr Strickland?

MR STRICKLAND: It's the first - - -?---The short email.

The short email and the long email on page 477 which goes to 478. And you've also got page 476 in tab 6, is that correct?---476?

Do you have that in tab 6?---Yes.

And so that's an email that was sent to - that was not sent to you, is that correct?---No, neither of those emails were sent to me.

- 10 Do you recall there being discussions about companies being taken off or on the shortlist?---This second email from Daniel Paul to Tony Morris and myself is indicating companies that I don't recall and were not on the list.

THE COMMISSIONER: When you say the second email, what page? Are you talking about - - -?

---Oh, sorry, 477.

Right, thank you.

- 20 MR STRICKLAND: You don't recall reading that email?---(No Audible Reply)

You don't recall receiving that email?---I don't, I don't recall reading the email at this stage.

Can you go to Exhibit 6A please?

MR SMITH: Commissioner, in respect of this document I have a number of - - -

- 30 THE COMMISSIONER: Which one? 6A?

MR SMITH: In 6A.

THE COMMISSIONER: Yes.

MR SMITH: On the first page which is 517, under the paragraph 2.3, the paragraph starting "some of the key" to the end of that page.

- 40 THE COMMISSIONER: Yes.

MR SMITH: Over the page at 518, the whole page until and including the fourth last paragraph beginning "The galleries".

THE COMMISSIONER: Yes.

MR SMITH: And then - - -

THE COMMISSIONER: So it's really from, it's from the word "Some of the key equipment"?

MR SMITH: Yes.

THE COMMISSIONER: So there will be a suppression order on page 517, there will be a suppression order of the following material on pages 517 and 518, on 517 from the words "Some of the key equipment" and the material after that until the words "system failures or loss of electricity to the building on page 518 will be suppressed.

SUPPRESSION ORDER OF THE FOLLOWING MATERIAL ON PAGES 517 AND 518, ON 517 FROM THE WORDS "SOME OF THE KEY EQUIPMENT" AND THE MATERIAL AFTER THAT UNTIL THE WORDS "WITH A LONG PATENT LIFE" ON PAGE 518 WILL BE SUPPRESSED

THE COMMISSIONER: That's correct is it?

MR SMITH: The paragraph after that one.

THE COMMISSIONER: As well?

MR SMITH: Yes.

THE COMMISSIONER: So what I said in relation to the material on page 518, that extends to the words, "With a long patent life", on that page.

MR SMITH: And next, page 520. The second paragraph.

THE COMMISSIONER: Yes. The second paragraph on page 520 will be suppressed.

THE SECOND PARAGRAPH ON PAGE 520 WILL BE SUPPRESSED.

MR SMITH: The fifth paragraph, starting with, "The Gallery."

THE COMMISSIONER: Mr Strickland? Mr Strickland?

MR STRICKLAND: I have no objection to any of that.

THE COMMISSIONER: All right. Yes, there will be a Suppression Order as sought by Mr Smith in relation to page 520.

THERE WILL BE A SUPPRESSION ORDER AS SOUGHT BY MR SMITH IN RELATION TO PAGE 520.

MR SMITH: And there's one more thing, that is the five dot points.

10 THE COMMISSIONER: In addition the five dot points on page 520 will be suppressed.

IN ADDITION THE FIVE DOT POINTS ON PAGE 520 WILL BE SUPPRESSED

MR SMITH: Thank you.

20 THE COMMISSIONER: Mr Strickland?

MR STRICKLAND: I'd like to ask you one question about 6A. Have you, when minutes were prepared such as the ones in 6A, was it your practice to read them?---Yes.

30 Now, I just want to take you to page 519, please. We've got the break-up of tender price is approximately \$1.5 for CCTV and 300,000 for the other security system and 1.8 million is considered to be at the highest end of anticipated pricing and final competitive bids may well be cheaper. Now, to your, to your knowledge, did that, did the \$1.8 million include labour costs? ---Yes, it ah, it did. There was a split of some labour and then there was additional labour as part of a capital maintenance, running IT cable and electrical contractors connected to the security rollout.

So that- - ?---That was separated from the 1.8.

I see. So do you know what the total budget was for security if you include those costs?---At this time?

40 Yes?---It was around 3.6.

I beg your pardon?---Around 3.6 mil.

But in relation to the contracts for which the tender was- - -

THE COMMISSIONER: The CCTV?

MR STRICKLAND: Well, the actual tender for which this tender process was, that was for CCTV and access control, wasn't it?---Correct. Security, which access control is a pivot for, plus the CCTV, so the two components.

Okay.

THE COMMISSIONER: And what was the, what was the total tender price which you were prepared to pay for those two?---We had an allocation of 1.8 million.

10

MR STRICKLAND: I'm just, I'm sorry labouring this point, but was the 1.8 million, that included the actual cost of the equipment. Correct? Did it include the cost of the company installing the equipment- -?---Correct.

- - -and checking it?---Yes.

Okay.

THE COMMISSIONER: So the 1.8 million covered everything?---It covered everything for that part of the project. The security control room upgrade was additional.

20

MR STRICKLAND: I see. Now, that budget was obviously a highly confidential piece of information. Is that correct?---Highly confidential, yes.

Was it spelt out to the tender evaluation team that that was highly confidential and should not be disclosed?---Yes, the whole process of the tender was highly confidential.

30

No, that's not my question. Was it spelt out? Was it – did you tell anyone, say that this is highly confidential and you mustn't disclose the budget or was it so obvious that you didn't do that?---I don't recall the statement being made, but I am reassured that Anne Tregagle would have set the parameters for the tender and that would have been included.

That's an assumption you're making rather than an actual recollection. Is that right?---Yes.

40 Okay. Thank you.

THE COMMISSIONER: But in ordinary commercial life would you regard that information as confidential?---Yes.

MR STRICKLAND: I just want to ask you about 23 February, that was when the, the tender box was opened and the various tenders were examined by the Tender Evaluation Committee. Is that right?---Yes.

And the people on the Tender Evaluation Committee were yourself, Ms Tregeagle, Mr Morris and Mr Paul?---Yes.

And if you just go to tab 7, please. Do you see that is a, a record of each of the companies that were – to whom the tender documents were forwarded and their responses, whether they withdrew and if they didn't what their price was including their alternative price. Is that correct?---Yes.

10 And now could the witness please be shown Exhibit R4. Did you ever – when you were – when the tender box was opened a copy of this I daresay colour copy, would it have been a colour copy?---Yes.

And original colour copy of the various tender reports were – you had them in front of you. Is that right?---I was not there when the tender box was opened and I didn't sign that.

Did you ever – after 23 February did you actually meet up to discuss the various tender submissions?---Yes, there were a number of meetings.

20 All right. And did you personally ever – and I'm not suggesting you should have, I'm just asking whether you did, did you personally go through each of the tender submissions page by page?---No, I did not.

Was that job you considered Mr Paul was hired to do?---Yes. And that was part of the consultancy to provide that advice.

THE COMMISSIONER: You weren't qualified to do it as I understand it? ---No, I would not be across that level of detail.

30 Nor would anyone at the Art Gallery?---No. And that was very much part of the brief for the security consultant to recommend the tender process and provide advice on the tender.

MR STRICKLAND: Thank you. Now I just want to return you, I'm sorry, to one document, excuse me just for one moment. Yes, I'd like you to go back to 6(a) please. If you got to page 522 and 523. At the bottom of 522, it says, following – this is, this is the management meeting minutes of 10 February, 2009. And under the heading Process of Production Selection for Integrated System, do you recall – there's a reference to the various criteria
40 for which, a criteria for the products that will be used for the security upgrade. Is that correct?---Sorry, can you repeat the question?

Sorry.

THE COMMISSIONER: Are those the ones headed, the first flexibility is it Mr - - -

MR STRICKLAND: That's right. I'm sorry, let me start again. You see about point 6 of the page or halfway down the page it has got "Process of product selection for integrated system"?---Yes.

And it then says "considering the wide range of security products available on the market a set of criteria was to be established for product review"?
---Yes.

And then it included all those criteria?---Yes.

10

And then at the bottom of the page it says this, "Following this extensive review the Lenel brand product was chosen for both CCTV and security access control"?---Yes.

And that was your understanding was it?---My understanding was that the Lenel brand was for the security access controlled and Verint were chosen for the CCTV as identified in the tender.

20

So what do you say though about that? Is that sentence a surprise to you?
---I think it's 10 February and it may be an annotation by the minute secretary, a misunderstanding.

I understand that but perhaps the next sentence is what I want you to particularly focus on. It says, "The selection of this product ensures all the selected tenderers will be bidding on exactly the same system and it should make," I think that should say "comparison of tender bids relatively straightforward"?---Yes. There was - - -

30

No, you go?---Yes, that's correct.

So was it your - even though you didn't have a detailed understanding of the technical requirements of the products it was your understanding and your wish on behalf of the Art Gallery that each of the companies submitting for the tender would bid on exactly the same system thereby allowing a comparison to be made particularly say in relation to price because they were all bidding on the same system?---There was a compliant bid - - -

40

Yes?--- - - - and there was also options for all tenderers to provide alternative solutions but there was a base line compliant bid.

And is it the case that the reason for there to be a base line compliant bid was to make comparison easier?---Yes.

MR SMITH: Commissioner, before we leave that page I just omitted something, that is the fourth point about a third of the way down the page, I'd ask for a suppression order in respect of that.

THE COMMISSIONER: On page 522?

MR SMITH: 522, yes.

THE COMMISSIONER: There are two sets of dot points, which one?

MR SMITH: The first set, about a third of the way down the page.

THE COMMISSIONER: Yes.

10 MR SMITH: The fourth one.

THE COMMISSIONER: The fourth dot point of the first set of dot points on page 522, that is the dot point and the words following it which end with the words "protection systems" is suppressed.

**THE FOURTH DOT POINT OF THE FIRST SET OF DOT POINTS
ON PAGE 522, THAT IS THE DOT POINT AND THE WORDS
FOLLOWING IT WHICH END WITH THE WORDS
20 "PROTECTION SYSTEMS" IS SUPPRESSED.**

MR STRICKLAND: Could you have a look at tab 8 please. It's the case isn't it that the Art Gallery arranged for interviews on 27 February, 2009 at the Art Gallery?---Yes.

For the top three tendering companies?---Yes.

30 But before that, before that interview took place there was a preliminary assessment that was undertaken, is that correct?---Yes.

If you go to tab 8 and page 12, do you see that?---Yes.

And is it, did you see this document at the time?---Yes.

And before these first interviews took place is it the company that was ranked first overall was ACG, is that correct?---Yes.

40 THE COMMISSIONER: Sorry, but it says, yes, it does say that, yes.

THE WITNESS: One is ranked on price and one is ranked on desirable

THE COMMISSIONER: And one overall, and there is an overall ranking?
---That's right.

And ACG was ranked one overall?---Yes.

MR STRICKLAND: And Kings was ranked two overall. Is that right?

---Yes.

And SNP was ranked three?---Yes.

And they were the three companies invited to the interview?---No. Sorry, yes, yes, ACG, Kings and SNP.

Thank you.

10 THE COMMISSIONER: And this, there was an established system of weighting- - -?---Yes.

- - -which was applied in order to arrive at this ranking?---Yes.

Yes.

MR STRICKLAND: And who established the weighting?---That was a discussion with the whole Tender Evaluation Committee and I note this is a preliminary assessment and I note that the ranking is 50/50, that was
20 discussed and we resolved to do 40/60.

And by 40/60 do you mean 40 per cent price and 60 per cent other, is that right?---Yes.

And when you say we resolved, who's we?---The Tender Evaluation Committee.

And was that at the instigation of any particular member of the TEC?
---I don't, I don't recall.

30

THE COMMISSIONER: But you wouldn't, or would you, would you be qualified to express a view as to weighting?---Yes, everyone brought a different set of expertise to the table and therefore one weighed up the different types of expertise, price being one, delivery being another, personnel.

MR STRICKLAND: I'm afraid I just want to, I want to come to the 27 February meeting, but just to go back a bit, the specifications, which included the scope of work for the project- - -?---Ah hmm.

40

- - -that was written by Mr Paul?---Correct.

So if I could just ask generally in relation, I've asked you some questions about Mr Paul as a security consultant and your reliance upon his expertise?---Mmm.

But you obviously, he was hired to look after the interests of the client, which was the Art Gallery. Is that right?---Yes.

And he was there to protect their interests?---Yes.

And to be a watchdog for them. Is that correct?---Yes.

To get out and get the best product at the best price?---Yes.

10 Now, can I ask you about the 27 February meeting. You, that is, you had meetings with all three tenderers on that day. Is that correct?---That's correct.

I want to ask you about the meeting with Mr King.

THE COMMISSIONER: Mr King?

20 MR STRICKLAND: Sorry, I beg your pardon, with Kings Security. And is it the case that Mr Diekman, Mr Roche and a Mr Dunphy were there on behalf of Kings?---I remember Mr Roche and I remember Mr Diekman and a third person, but I don't recall who that was.

And is it the case that Ms Tregeagle took notes, that Ms Tregeagle took notes at that meeting?---She did, yes.

Now, what is it that you can, what do you recall was said by either Mr Diekman or Mr Roche at that meeting?---I recall the ending of the meeting very very clearly.

30 Yes?---Mr Diekman presented another camera that had not been discussed previously, it was at the very- - -

THE COMMISSIONER: That is not, not Lenel or Verint. Which one is it? ---It was a Pelco- - -

Yes---?- - -Camera and- - -

In place of?---In place of I can't recall but it was a new- - -

40 Either Lenel or Verint?---Yes, it was a new product and I recall very clearly that he said he had, it had come on the market literally over the weekend and was now available.

MR STRICKLAND: And from what he said, you understood that to be a different product from that which was in his bid, the Kings' bid?---Yes.

Is that right?---Yes.

And do you recall what else he said about that?---I don't recall the detail of what he said but I have a recollection of materials being put on the table and a request to stop at that point and not proceed further.

THE COMMISSIONER: With what?---With a discussion about this additional equipment that was not part of their tender.

10 Sorry, who suggested that the discussion stop?---Anne Tregagle would have as the chair of that committee. But prior to that I very clearly remember a response from both Daniel Paul and also Tony Morris of surprise and excitement and it was palpable in the room, that response.

MR STRICKLAND: Surprise and excitement about what?---At this new piece of equipment being available.

Do you recall, do you recall whether Mr Diekman or Mr Roche gave you the name of the new equipment?---I don't, I don't recall that. I imagine they would have but I don't recall the name.

20 THE COMMISSIONER: And the equipment was what? Do you remember the kind of equipment if not the name?---It was a Pelco.

MR STRICKLAND: Was it, did you say a camera before?---It was a camera, yes.

THE COMMISSIONER: So the new equipment was a Pelco camera?---As I understand, yes. And I now know it to be an Endura 2.

30 MR STRICKLAND: But you said – in what way did Mr Paul show surprise and excitement at that meeting?---I recall there had been – the surprise was palpable. It was a physical response. But also that there was a discussion that this – they were waiting for this camera to come on the market and that they didn't know that it had in fact been announced.

When you say they, who do you mean by they?---Mr Paul.

And do you recall whether there was Mr Diekman or Mr Roche said anything about the price, whether there should be any – whether there was any revised price?---I don't recall that.

40 THE COMMISSIONER: Why were they excited? Did they explain? ---The, I remember the discussion when we stopped the meeting there was a little bit of discussion about what that capability was. Then the meeting was stopped and then once Kings had left the room we discussed in depth about this new piece of equipment. I don't know the detail of that equipment but there had been a lot of discussion about capability in terms of its storage capability and clearly its image capturing. So there were a number of topics and I don't recall the detail of it, but clearly it was a piece of equipment that

Daniel Paul and Tony felt – Tony Morris felt was going to provide the Gallery with a best practice solution.

Did Mr Paul ever say to you, well this new product that Kings are talking about is in fact what they have already included in their alternative bid?

---Absolutely not.

10 And was there – given the excitement, the palpable excitement about what you described as the new camera, was there discussion about how the evaluation process should go forward?---Yes, there was a lengthy discussion post that meeting and with the group of four on that Tender Evaluation Committee. We discussed at length about that equipment and believed that it offered an enhanced solution and that the preference was to go back to the two short listed, that was ACG and Kings and give them time to review that piece of equipment and come back.

20 When you say two what happened to the third - - -?---SNP in the process of that post first round interview evaluation, the initial discussion was of course who should proceed and then in tandem with that was this new equipment.

THE COMMISSIONER: So what was their attitude? Would they continue tendering or not? Sorry, you hadn't got in touch with them yet, but you intended to ask SNP?---No, we never intended, SNP in that first round of discussions was to say, no, we did not feel that they brought a capability, particularly - - -

30 I see, so you rejected them in the first round?---So we'd rejected from three to two and we were down to ACG and Kings.

MR STRICKLAND: Now, you say that at the 27 February meeting there was something that was, that Kings tabled something. Did they table a document?---They put on the table rather than tabled some documents and I have a vague recollection they were coloured images. They were not kept by the Gallery or by the Tender Evaluation Committee, they were taken away by Kings.

Did you read, did you read that document?---No.

40 So you wouldn't be able to say what, what the document is that was put on the table?---No.

Could the witness just be shown Exhibit R5 please. During the tender process do you ever recall seeing that document - take your time in looking at it?---This is the set of questions that were asked for all the tenderers and it can be a case that the tenderers give you an outlining response to the questions. I don't recall receiving it but that may have happened.

If the witness could be shown Exhibit R6 please. This is headed the "Revised schedule" that's in handwriting at the top, do you recall seeing this document at the first meeting?---This is dated the 23rd of the 2nd.

That's what it is dated, that's correct?---And the first round interview was on the 27th of the 2nd.

10 That's right but perhaps just put out of your head for the moment the date, right, assume although it's dated then the prices on that document at page 27 weren't recorded on that date but do you recall a price schedule being tendered at the 27 February meeting?---I don't recall that.

Now, after the first meeting if you could - could you go to tab 9 please. It should be three pages, pages 48 to 50 and you've signed the bottom of each page, is that right?---I have.

And that's the scores now given after the first interview, is that correct? ---That's correct.

20 Now was that - when you gave those scores, if you just look at 7, that is question 7, "Clarify what version of software is being offered by you for the CCTV" and there's a handwritten word saying "Pelco"?---Ah hmm.

That's correct?---That's correct.

So the score, the score that was given to Kings was based upon the Pelco CCTV product rather than their complying bid, is that correct?---Yes, yes.

30 But if you go to page 50 - I beg your pardon, I'm sorry, when I said - so the score 90 out of 100 - - -?---Yes.

- - - for question 7, and if you go to question 7 for ACG which is on page 50, their, they were given a score of 80 out of 100 for the Verint CCTV. Is that correct?---Yes.

And it transpired that Kings has now got the highest score after the first round interview. Is that correct?---Yes.

40 So is your recollection that one of the reasons that Kings jumped from number 2 to number 1 was because of their offering a new CCTV product? ---No, we would not have scored it in that way. I can only assume that, I spoke about a compliant tender which was the Lenel Verint system, but it was open for alternatives or equivalents to be provided by the tenderers. And in the assessment it may have been perceived, in fact all three have a different software, Pelco, DM and Verint. So we've obviously made an assessment on the range of alternatives that are provided.

But the assessment after the interview was that Pelco was the best product for the CCTV?---Yes, based on that scoring, yep.

Now that would have been I assume that highest rating for Pelco relied exclusively on Mr Paul's advice?---Yes. This, yes it would, yes.

Thank you.

10 THE COMMISSIONER: Well do you recall him giving that advice?---I don't recall directly him giving that advice but we were very, very reliant on his expertise in that field and that was his role on the committee to provide expert advice.

At that stage there'd been no change in the weighting or had there?---This, I think at this stage we had agreed on the weighting and it was 40 per cent for price and 60 per cent for the mandatory and desirables.

20 Now if I could next ask you to look please at the next, you said that there were now – after the first round interview there were now two companies in the bidding, ACG and Kings. Is that right?---Yes.

And they were invited for a second round interview?---Yes.

And that was to be held on the, early March. Is that right?---Yes.

And if I could just ask you please to – and questions were given to each company for them to respond to?---Yes.

30 And to respond to at the second interview?---Yes.

If I could just ask you please to go to – look at Exhibit R7 please. No I'm sorry, I'm just going to go back one step, I'm sorry. I want to go back to this 27 February meeting. When Kings, when Mr Diekman on behalf of Kings talked about the new camera and whether he nominated a particular price or not do you recall whether he said that he could do that at a reduced price?---I don't recall that.

40 You said – you say that at that point Ms Tregeagle in effect stopped the meeting and said something about the need to resubmit or something to that effect. Is that what you said?---Yes, I said that, that Anne Tregeagle stopped the meeting with this new – and when I say camera, it's a camera software interface.

Yes?---Stopped the meeting because it was something new that was being presented into the tender forum.

THE COMMISSIONER: But then you had another meeting on with the Tender Evaluation Committee on its own?---Yes. We continued that discussion after - - -

10 And what did you resolve?---So we resolved that we would, that SNP were no longer in the shortlist and we had felt very comfortable with what ACG and Kings were offering across that not only price but across the mandatory and desirables, and so we had two preferred tenderers and that in tandem with that there was a preference to move forward with exploring this new material because of its capability.

So what, what would that involve?---So that was to be a second interview, they were given time to explore what the potential was I this newly-released - - -

That is to see whether they wished to submit revised tenders?---Correct, correct.

20 MR STRICKLAND: And at that meeting, that is the 27 February meeting, when Kings were present, did you tell them at that time that they, you wanted, you wanted them to do a revised tender or did you contact them later about that?---Contacted them later.

Okay. Thank you. So when they were contacted later they were then asked for the second meeting on 3 March, 2009, to answer various questions. Is that correct?---That's correct. Ah, 5 March I think was the interview date.

30 Was it? Okay. If you go to Exhibit R7. Have you got that? It should be, it should be headed Art Gallery and it's a tender proposal clarification. Just, it's got there time, 3 March, 2009. Was that, was it actually postponed to 5 March?---I think this is, I can't remember whether this is by close of business that day to submit to, so we would then need to review it and I, my memory is the meeting was on the 5th.

Okay. If you just go to page 122 you can see question 3 is, "Percentage of Kings electronic security turnover would this project represent." Now, was that a, was that a question that Mr Paul suggested should be asked?---No, my recollection is that I asked for that question to be included.

40 And did you, did you want both companies to answer that question? ---I would have I think asked for both of them to answer that question.

So would it surprise you to learn that only Kings were asked that question? ---It surprises me.

THE COMMISSIONER: So who, you said you would have asked, who did you ask?---Ah, my concern would have been the scale of the project and the capability of those two companies to deliver the project.

Yes, you said that you would have asked for this question to be answered?
---Mmm.

Who did you ask to arrange for the question to be put?---I don't recall. I have a vague memory of an email to Daniel Paul but I had very little direct communication with him, but that's a memory.

10 Now, do you remember any discussion you had, do you remember anything particularly that happened at the second interview with Kings?---Ah, I remember very clearly ACG, Tony Grubisic, who was the managing director, entering the room with a degree of frustration I think would be the word I would use, mmm.

And what, did he say what he was frustrated about?---No, he didn't express the frustration, but he declined a resubmission based on this new equipment but he did propose a couple of alternatives as I recall.

20 And what was the reaction of the other, what was your reaction and the reaction of the other members of the TEC to that proposal?---I think we considered both of them after the meeting duly. Certainly the interest in the new equipment and its capability and its, what it offered the Gallery was the primary focus of that discussion. I think we had all felt very genuinely that both companies were offering project management, we had asked quite specifically that they bring the project manager to the meeting. I recall ACG had two project managers there and also there was a Brian Madden from Kings who would be the person on the ground.

30 MR STRICKLAND: Now, if you go please to tab - perhaps if you go to Exhibit R8, it begins at AG 150. If I could ask you about - do you recognise this Tender Evaluation Report?---I do.

If you just go page 156, that's your signature at the bottom of the page?
---It is.

And who, who wrote the body of the report?---The body of the report was written by Security Consultants International by Daniel Paul.

40 And you read it before you signed the document?---Yes.

And if you just go to - did you note that when you signed this report were there annexures to it as contained in this document from page 158 to 182?
---Yes. I don't, I don't recall the detail but that body of information in the annexures is the most critical information about the analysis of the, of the process.

So did you, did you actually look at the annexures as well?---I don't recall looking at the detail of those, no.

Just for example, if you go to page 157 do you recall whether there's a direct comparison between ACG and Kings, did you look at that table, do you remember?---I don't remember at the time but I've certainly had a look at it recently.

Yes but I'm just interested in what you looked at at the time. That is before the contract was awarded?---Yes.

10 Do you remember reading that particular table?---I don't remember specifically reading this table.

And do you remember if it was actually attached to the report?---I don't recall that.

THE COMMISSIONER: Were schedules attached to the report?---I don't recall that offhand.

20 You mean, there may have been and you don't recall or you don't recall them being attached?---No, there may have been and I don't recall them.

MR STRICKLAND: But did you know that ACG in its revised bid had submitted, had submitted a bid which included this new product, Endura 2? ---Yes, I do, there was a letter.

No, did you at the time?---Did I know, no, I didn't know.

30 THE COMMISSIONER: What did you think, you thought it was the same, that they were using the same equipment as before?---No, they had - Tony Grubisic said very clearly at that second interview that they were not going to resubmit based on this new equipment.

On the Pelco?---Correct.

40 MR STRICKLAND: So at the time you signed this Tender Evaluation Report I take it from your evidence that you did not know that Kings when they did their first submission on 23 February had actually submitted in its alternative bid for this Endura 2 product that was the same product they submitted in their revised bid, you did not know that?---I did not know that and I don't - and I'm unfamiliar with the accreditation and release process for that equipment.

And you were - when did you first learn that that was the case, that is - - -

THE COMMISSIONER: That they - - -

MR STRICKLAND: That, that they had in fact - Kings had submitted in both their first and their revised bid they were submitting on both occasions for Pelco Endura 2?---The last time I sat here.

And were you surprised?---Yes, I was.

THE COMMISSIONER: Were you angry?---Yes, I was.

10 Why?---Because clearly if we're talking about the same equipment, Endura 2, then that was already captured in that first round and it surprises me in reflection that there was a response that that first round meeting - - -

I better tell you my impression of - I thought that you were angry and upset because you'd been misled?---Yes.

Is that, is that a correct impression?---That's a very correct impression.

MR STRICKLAND: Could you please look at number 14, please. Do you have that?---I stop at 13.
20

Do you? Does everyone else have a 14?

MR SMITH: Commissioner, there's one word in that that I'd ask for a suppression order in respect of - - -

THE COMMISSIONER: Yes.

MR SMITH: It's paragraph number A - - -

30 THE WITNESS: Oh it's this one, it just hasn't got a tab.

MR SMITH: - - - under Background, the second line towards the end.

THE COMMISSIONER: Is the suburb.

MR SMITH: Yes.

THE COMMISSIONER: Yes, there'll be a suppression order over the suburb mentioned in paragraph A in the sentence, sorry in the line
40 beginning, Storage facility.

MR SMITH: Thank you.

**SUPPRESSION ORDER OVER SUBURB MENTIONED IN
PARAGRAPH A IN THE LINE BEGINNING STORAGE FACILITY**

MR STRICKLAND: Now when it came to the second interview on 3 or 5 March, 2009 did you know that Kings had dropped its price substantially?
---Yes, I did know that.

And did anyone from Kings tell you why its price had been substantially reduced?---I don't recall a direct discussion about that. I know when we looked at the pricing in that first round it was well in excess of the budget allocation and so we sought clarification on the detail of the submissions because there would be a need to remove certain items across the board.

10

THE COMMISSIONER: Clarification from whom?---From the tenderers that we had shortlisted. And the areas we had – there were select areas that we had identified to pull the project back into budget.

Did you tell them anything which could have informed them what your budget limit was or - - -?---No.

20

- - - or did you tell them anything from which they could have deduced that you needed to reduce – that they needed to reduce the budget by an amount that they could assess by virtue of what you had said?---No. You never disclose a budget parameter in a tender process.

MR STRICKLAND: So do you remember ever being advised before you signed the tender evaluation report why it was that Kings substantially dropped its price?---No, I don't recall that.

30

Okay. Do you – did you know that when Kings submitted its revised price it was a price of \$2 million plus GST?---Yes. And that ACG's price had dropped but not so much.

That was your understanding was it?---That was my understanding.

If I could just take you to this - - -

THE COMMISSIONER: By not so much, they had a low price?---That's correct.

40

MR STRICKLAND: If I could just take you to this document. And I'm not suggesting that you wrote it, but if you just go to page 188.

THE COMMISSIONER: Sorry, 188 of?

MR STRICKLAND: Tab 14. Do you have tab 14, Commissioner?---Yes.

THE COMMISSIONER: Tab - - -?---Mine happens to be tab 13, but I know it's tab 14.

It's tab 14 in Exhibit 2?

MR STRICKLAND: Yes. It's the, it's the – I think it's part of Exhibit 17. It's the Flanagan bundle of documents.

THE COMMISSIONER: Oh I see. I beg your pardon. I see. It's the last document. Yes.

MR STRICKLAND: It's a document signed by the Director General on 22 May, 2009?---Correct.

10

I just wanted to ask you this. If you go to page 188 under the heading Current Situation. It says the tender process is now complete and Kings Security Group has been selected as the preferred tenderer based on their highest score, see tab B. Excellent references, relationship with the AG NSW and a pricing offer, although four per cent higher than ACG was within the budget allocation. At \$1.803 million the contract is above the financial delegation of the AG NSW Director. Do you see that?---Yes.

20

Do you know what the source of that figure is, \$1,803,000?---That looks to me like the final price from Kings. The budget allocation we had made was 1.8 million.

Sorry to ask you, could you just go back to Exhibit R6 please. Now, forget the date on it (not transcribable) forget the date, but it appears to be that this was the revised pricing by Kings for the security upgrade project, which is \$2 million plus GST?---Ah hmm.

30

Was that your understanding when you signed the Tender Evaluation Report, that their bid was \$2 million?---Yes, it was.

So are you able to explain why at page 188 the minute states that the bid was \$1,803,000?---Yes, I don't, so I don't recall ah, that difference between the two mil and the 1.8 signoff.

Did you, did you ever advise or did anyone on the TEC advise that Kings bid had been further reduced, that is further reduced from the \$2 million bid?---Yeah, I, I don't recall that.

40

THE COMMISSIONER: Have you seen any other documents which reveals such a reduction?---The only ah, assumption, not assumption, the only connection I can make is that we had made an allocation for a provision for a collection store we were currently building of 198,000. The numbers align and maybe there had been a decision that we had the 1.8 million and therefore we would strike that out and deal with that at a later stage. That's the only connection that I can see, but I don't know that that was how it arrived at that number.

MR STRICKLAND: Because if you, if you add 198 to the 1.83 you get 2.01 million. Is that right?---Mmm, mmm.

And that's what you mean by the numbers align?---Mmm.

THE COMMISSIONER: Who's the best person to ask about this?
---Anne Tregeagle.

10 MR STRICKLAND: Commissioner, could I add pages 474 and 475 to tab to F5 in that bundle?

THE COMMISSIONER: Yes.

MR STRICKLAND: Yes, they're my questions.

THE COMMISSIONER: Yes, thank you, Mr Strickland. How long would you be, Mr Lloyd?

20 MR LLOYD: Your Honour, to tell you the honest truth, I'd like to take instructions on the oral conversations said to have been had. I can't usefully do that now. Just on the documents I've been given- - -

THE COMMISSIONER: What oral conversations? I'm sorry, I'm not sure what oral conversations you mean?

MR LLOYD: In meetings. We've been provided with no minutes of meetings and no notes of meetings. I'm now having to- - -

30 THE COMMISSIONER: But the case has been put before.

MR LLOYD: (not transcribable) I've also got documents to cross-examine on. I'm going to be probably two hours.

THE COMMISSIONER: Yes, thank you. Mr Strickland, what is the date to which we should adjourn this hearing? 30 July?

MR STRICKLAND: That's right, 30 July.

40 THE COMMISSIONER: Ms Flanagan, are you able to return on that date?
---Yes, I can sure.

Thank you. Well, the Commission will adjourn until 30 July.

AT 3.59pm THE MATTER WAS ADJOURNED ACCORDINGLY
[3.59pm]