

STARKPUB00227  
26/09/2012

STARK  
pp 00227-00286

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION STARK

E08/0253

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 26 SEPTEMBER, 2012

AT 10.06AM

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.

ASSISTANT COMMISSIONER: Thank you, please be seated. Yes, Mr Downing.

MR DOWNING: Thank you, Commissioner. Before we resume with witnesses this morning, can I just tender a couple of matters? Last thing yesterday we heard the audio of two intercepted telephone calls between Mr Faysal and Mr Jurgeleit. I've tendered the transcripts of those two but can I tender the audio as well? The calls of 16 March 2012 and 22 March 2012.

10 ASSISTANT COMMISSIONER: Yes, the audio will be Exhibit 21.

**#EXHIBIT 21 - AUDIO RECORDING OF FAYSAL/JURGELEIT  
TELEPHONE CONVERSATION G00285\_00\_00 16/03/2012 10:49:34  
AND G00285\_00\_00 22/03/2012 12:22:32**

MR DOWNING: And the first witness today will be Mr Glen Rabbitt, but before he is called I also tender the transcript of his compulsory examination  
20 of 20 July 2012, I've got two copies and a copy will be distributed for the parties.

ASSISTANT COMMISSIONER: Yes. Has the suppression order been removed on this?

MR DOWNING: No, I'll need to seek a variation of that order under section 112, too.

ASSISTANT COMMISSIONER: Yes, well the compulsory examination  
30 transcript of Mr Rabbitt will be Exhibit 22.

**#EXHIBIT 22 - COMPULSORY EXAMINATION TRANSCRIPT OF  
GLEN RABBIT DATED 20 JULY 2012**

ASSISTANT COMMISSIONER: And I remove the non publication order previously made in respect of this transcript.

40

**THE NON-PUBLICATION ORDER PREVIOUSLY MADE IN  
RESPECT OF THE TRANSCRIPT OF THE COMPULSORY  
EXAMINATION OF GLEN RABBIT IS REMOVED**

MR DOWNING: Okay, I'll call Mr Rabbitt.

ASSISTANT COMMISSIONER: Yes have a seat, Mr Rabbitt. Mr Deutsch, is your client seeking a section 38 declaration?

MR DEUTSCH: He does, Commissioner.

ASSISTANT COMMISSIONER: Thank you. Yes. Mr Rabbitt, the order I'm about to make is that nothing you say here can be used in any civil, criminal or disciplinary proceedings however the exception to that is if it's found you've breached the Act by providing false or misleading evidence.  
10 Do you understand that?

MR RABBITT: Understand, yes.

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

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

ASSISTANT COMMISSIONER: Mr Rabbitt, you're required to take an oath on the bible or make an affirmation.

MR RABBITT: On the bible, yes.

ASSISTANT COMMISSIONER: Thank you.  
40

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Mr Rabbitt, if you could tell the Commission your full name?---Glen Patrick Rabbitt.

And your date of birth?---16/04/1953.

10

And your address?--- [EDITED].

And you were an employee of the University of Technology Sydney?  
---Correct.

Could you please state what your position is?---Director of Facilities  
Management Operations.

Known as the FMO?---FMO.

20

And is it correct that in 2010 the FMO was created?---That's correct. Yes,  
we - FMU were split and, and we created a PMO and an FMO.

And FMU the Facilities Management Unit had existed prior to 2010?  
---That's correct.

Going back to when?---Probably going back to, to the, the mid 90s and  
around about sort of the 2000 (not transcribable) it was changed from being  
called PMU to, to FMU.

30

Was it the PD the property development?---Yeah, PD, PD, yeah. I think it  
was the Property Development Unit, yeah.

Thank you. Now you've attended the Commission and given evidence once  
previously, that is on the 20 July 2012?---That's correct.

You recall giving that evidence?---Yes.

40 Can I ask you what was your role in the FMU before the FMO was  
created?---The - my original role in, in FMU was in fact manager of  
accommodation and refurbishment and - - -

And for how long did you hold that position from when to when?---Okay,  
from 1997 to 2006.

And in 2006 how did your position change?---At the end of 2006 the current  
director left and I was, had acted the director of, of FMU right through to  
around about sort of mid 2008.

And then in mid 2008 what happened?---Then in mid 2008 I became in fact deputy director of FMU.

Now on the last occasion you, when you gave evidence you told the Commission a bit about what the FMU and more recently FMO did. Do you recall that?---Yes, yes.

10 If I can just ask you is - well, in your words what, thinking of the FMU, that is the entity up until 2010 - - -?---Right.

- - - what were its areas of work or responsibility?---Okay, the, the FMU leading up to 2010 always had two quite distinct functions. One of the functions was in fact developing up the Master Plan and that was with FMU and also there was in fact the broader operational issues the issues associated with in fact the cleaning, security, building maintenance and, and small works projects.

20 Right. And you mentioned the, the Master Plan I think?---That's correct, yes.

And just again by way of background information in 2010 did something happen, happened in relation to that Master Plan and the creation of a separate entity?---Yes, it did. The 2010 was a bit of a, sort of a milestone where in fact it was decided in the fact that (not transcribable) to, to develop in fact a Master Plan at the, at the time I think we were hoping to actually do it, we'd really need to actually have a quite separate group just specifically focused in on in fact (not transcribable) the Campus Master Plan and so it was decided to actually split the current FMU into a PMO that which is a  
30 program management office which looked after the Campus Master Plan and separate that from the, the day to day operations of the University which would be the FMO.

And I take it that the main function of the PMO was to deliver the works under the Master Plan?---yeah. The principal function and the only function of the PMO was to deliver the Master Plan.

40 Which was a large 10 year project with significant money behind it? ---Yeah, yes, a billion dollar project that would develop a, a new campus by 2020.

Now within - you've told us a little bit about what particular functions or, or roles the FMU had, you've told us about prior to 2010 one of them being to actually work on the current Campus Master Plan but there was also an operational role?---That's correct.

And that included things like looking after cleaning, maintenance, I think you said - - -?---Security, building services, projects, shuttle bus, mail.

And did one of them - when you refer to projects, does that refer to things like small scale building or refurbishment work within the University?  
---Yeah, small, small (not transcribable) day to day churn type projects that, that keep the University operational from day to day.

Okay?---Quite separate from the fact of the Campus Master Plan where were quite specific major projects being delivered.

10 Can I ask you what you mean by churn?---Churn is in fact actually just as new programmes come on line as in new research programmes come into the University, doing modifications to the existing environment to actually sort of to address those, those chances.

And did that role that the FMU had had continue after the FMO was created in 2010?---It did, yes.

20 And just thinking about those particular works, things like minor building works and refurbishment that the FMU and then the FMO were taking care of - - -?---Yes.

- - - would that, that involve, for example, things like where emergency work was needed because something had broken down or something had flooded?---Yes. Under, under the FMO, the Facilities Management Operations, we would deal with all building maintenance work so if in fact, you know, if a chiller failed, pumps failed, we would be involved in doing that type of work.

30 And the FMU did that as well?---That was, the FMU done that as well, yes, previously.

And was there also, besides things done on the, if I can put it this way, in an emergency basis, were there also larger projects where it was known that some work was needed within the University, whether it was to refurbish something or building something, so that a project might be planned, not required on an emergency basis?---Yeah, definitely. There was, there's a capex budget that we have to mainly stage (not transcribable) activities.

40 And prior to the PMO coming into being in 2010 is it the case that the FMU was the entity that really took care of all building works or building or refurbishment works?---Yeah. Even prior to 2010 the, as we were leading up to the Campus Master Plan we, we had, had started to separate the strategic funding potential for in fact the Campus Master Plan separate from in fact actually the year to year capex funding so that the transition from an FMU to a PMO and FMO wasn't drastic in 2010, it was something that was easy able to, to manage.

If I could give you a practical example just to see what fell within the area of the FMU, for example, in 2007 or 2008 a decision was made that a particular floor of a building needed to be refurbished, would that be something that the FMU would look after?---The FMU would look after this, correct.

And were there a number of projects of that nature in the years up until the FMU became the FMO in 2010?---Yes.

10 Now, can you tell me within the FMU and more recently the FMO are there staff with different areas of speciality or expertise?---Yes.

You're familiar with Mr Faysal?---Yes.

And he was an engineer or a person with a engineering or mechanical engineering background?---Correct.

20 Were there people also with other areas of speciality or expertise within the FMU and FMO?---Yes, we, we, we have a specialist manager in security, we have in fact a specialist manager in, in building maintenance, a manager looking after the finance issues of a, we have a, a specialist looking at our, our central services, delivery of shuttle buses, mail, courier services.

And would the staff like Mr Faysal have some input and role in relation to particular projects that were coming up to be done within the FMU and FMO?---Yes.

30 And would that role encompass first of all working out who might be invited to quote or tender?---Yes.

Would it also involve them having some input into the drawing up of, I'll withdraw that, drawing up of a scope of work in respect of which quotes or tenders might be received?---In some instances, yes.

40 And would they have a role, again, thinking of staff like Mr Faysal within the FMU and FMO, would they have a role in then looking at quotes or tenders received and making recommendations as to who a contract might be awarded to?---In, in both cases in fact actually they would be, they'd certainly make recommendations as to who would potentially be on the, on the tender list and the Tender Committee would make the determination as to who would win the, the project.

Now, I'll come to the particular requirements of procurement in a moment, but the type of projects I've asked you about, that is refurbishing or building works, was that a fairly regular part of the work at the FMU and FMO?  
---Yes, yes.

And I think on the last occasion, this is at transcript 689 at about line 3, I think you said that the projects that the FMO, and I take it this applies to the FMU but please tell me if this is not right?---Mmm.

But the projects were predominantly regarding major maintenance?  
---Concerning major maintenance and the other one I mentioned to you previously was about sort of, you know, fit outs and research and sort of programs changed.

- 10 And within major maintenance would that include things like upgrading or refurbishing existing facilities?---Upgrading, refurbishing, predominantly infrastructure and compliance issues.

Now thinking again about the period from, thinking about your involvement with the FMU and the period which you had a role there, is it the case that there were particular procurement processes that were required to be followed?---Correct.

- 20 And I'll take you to some documents in the moment but can you tell us that was there any particular, speaking generally, was there any process that had to be followed in terms of the way in which procurement was to be gone about according to the dollar value of procurement involved?---Yes that was outlined in the procurement policy.

And again speaking generally was it the case that for emergency works it was okay to get someone in pretty much straight away without seeking quotes or tenders?---No, no. The procurement policy allowed us to actually deal with in fact a need to do emergency work.

- 30 And how were you to go about selecting who would do that?---In regard to sort of if a (not transcribable) or something like that the procurement policy allows you to actually go to a single source up to \$20,000 and if that type of work was in fact in excess of \$20,000 the procurement policy would allow you to seek approval from the (unintelligible) DVC to actually to go beyond that if that's what was required to actually do the task.

And then for jobs that weren't of an emergency nature was it the case that for smaller projects that what was required was obtaining quotes from potential contractors?---That's correct.

- 40 And did the number of quotes required increase according to the dollar value of the procurement activity?---That's correct, yes.

And was there then a point reached at which it went from requiring quotes to requiring a tender process?---That's correct.

Right. Now can I ask you to look at page 155 in the first volume of the exhibits folder? Do you see that's a document entitled UTS Procurement

Policies and Directives? It should be on the screen in front of you as well?--  
-Sorry.

I'm not sure which is easier for you to look at, Mr Rabbitt?---Yes, I, yes, I,  
yes, I see that document, yes.

All right?---And I know that document.

10 And if I could ask you to look at page 164 now which is at the end of the  
document, just scanning down the page there's a notation there that the  
procurement policy parts one, two, three and four were approved by the  
council on 20 June 2005 and that the procurement directives parts five to  
nine were approved by the vice chancellor on 5 June 2006. Do you see  
that?---Yes.

Can I ask you was it your understanding that this was the procurement  
policy and directives that applied in respect of procurement from 2005  
onwards?---Yes.

20 And looking at that document was this, I withdraw that. Can you tell me  
was this something that was made known to staff within the FMU?---Yes, it  
was, yes.

How was it made known to staff?---It's made known to in fact staff through  
our QA system and it would have been circulated.

Sorry, and can you tell us what that system is?---Sorry?

30 Is it QA, is it quality assurance?---Our quality assurance system, we have a  
quality assurance system in the University so it was part of our, it was made  
part of our quality assurance system. The staff would have been made  
aware that the procurement policy was online for them to actually either  
make a hard copy or refer to it electronically.

And was this something that you referred to from time to time with the staff  
within the FMU?---Yeah, very much so.

40 Is it fair to say that this was really assumed knowledge of the staff?---That's  
correct.

Now if I could ask you to go to page 156, do you see there are a number of  
principles that are set out there? Principle three is in respect of probity and  
ethical behaviour?---Yes.

And it sets out some standards of integrity, probity and professional conduct  
and ethical behaviour that were required of staff that were involved in  
procurement?---Yes.

And amongst other things it required that the staff deal fairly and partially and consistently with all suppliers?---Yes.

That they keep confidential or sensitive information obtained as part of the procurement process?---Yes.

10 And that they declare any potential conflict of interest prior to the commencement of a procurement activity and abstain from any procurement activity where it's been deemed that a perceived or actual conflict of interest exists?---Yes.

And then finally there's some requirements there in respect of documentation?---Correct.

Now in your role within the FMU you've told us that this material was known by staff within the FMU?---Yes, yes.

20 Did you ever have discussions with staff in respect of requirements such as the probity and ethical behaviour requirements?---We did as part of our quality system. We had twice a year audits and we had to have pre-audits on that one so it was a regular thing to actually be looking at the procurement policy.

Was there any system of education of staff in respect of these requirements?---There was, there was a training course, I'm not quite sure what time it was in regard to, to this procurement document. There was also a training program in regard to probity of tendering as well in, probably a few years ago as well, not long after this document went out.

30 But this document was available on the University computer system to staff wasn't it?---That's correct.

And it was an expectation that staff involved in procurement were to be familiar with it?---That's correct.

And that expectation had been communicated to staff hadn't it?---Yes.

40 Was that in writing or verbally or both?---It would've been certainly in writing, it would have been circulated to them by email and it would have been sort of verbally discussed.

I took you at the beginning when I showed you this document to the last page where it set out the dates in which it had been approved. Is it your recollection that when a new document or policy or procedure was introduced at the University that it would be disseminated to staff in some way?---Yes, this would have been distributed electronically to staff in FMU.

And by electronically do you mean by email?---Email yes.

Now if I could ask you to go to page 158 of the document, do you see that at 5.3 it sets out methods of procurement?---Yes.

And tell me if these are the rules that apply as regarded methods of procurement from 2006 until the date when this document no longer took effect but for less than \$2000 quotes weren't required?---Correct.

10 For 2000 to 10,000 you needed a minimum of one written quote?---Correct.

Then from 10,001 to 50,000 two written quotes were required?---Correct.

50,001 to 100,000, three written quotes were required?---Correct.

And then effectively beyond 100,000 there was an open tender system required?---Correct.

20 With some scope to authorise selective tender in certain circumstances?  
---That's, that's correct and we had a pre-selected list of tenderers where you'd actually selected those tenders from.

And how did that list come about and how did people come to be on it?  
---Okay. It was publicly advertised in around about sort of 2003, 2004 and it was set up on a database so our project managers had access to that database.

And when you say it was advertised was it a case of people who were interested in possibly contract - - -?---Yeah, it was advertised as a - - -

30 Sorry, if you just let me finish the question first, was there some form of advertising inviting interested parties who might want to do work for the University to lodge their details with the University?---Correct.

And was there a list then kept somewhere?---Yes.

40 Just thinking about, doing your best, when do you think this occurred, noting my reference to the dates that this procurement policy seemed to have come into being in about 2005 in part and 2006 in part?---Yes, yeah. Okay. I think it would have been prior to this document coming out, we actually went out to tender, I think it was probably about sort of 2004 but I'm, I'm just going by memory on that.

Just thinking about particular contractors for the moment, are you able to say whether for instance WJ Hood & Sons Builders were on that list?  
---I would imagine they, they would be, yeah.

What about Rega Controls?---I'm not quite sure about Rega Controls.

What about Cady, do you remember Mr Cady is someone that did air conditioning work and had a particular company Cady Pty Limited?  
---I'd imagine he could be on it. I don't know exactly.

Is it the case you're not certain about it?---Yeah, I'm not certain.

Now, in 2011 it's the case isn't it that the procurement document that I've shown you already, the UTS Procurement Policy and Directives, was replaced by a, a new procurement policy?---That's correct.

10

And if I could ask that you look at page 167?---Yeah.

Do you recognise that as the 2011 policy?---Correct.

And if you could look at page 171, you see it again set out the principles of probity and ethical behaviour?---Correct.

20

And at page 173 to 174 it again sets out a table which indicates methods of procurement to be adopted according to the value of the procurement activity?---Correct.

Now, was this document disseminated and made known to staff within the FMO by that, as it was by that stage?---Yes.

And again, was that distributed electronically?---The, the reference to the document would have been distributed electronically. In other words, in fact an email had gone out saying you will find this on our website.

30

And then staff were then able to access it?---Yes.

And is it the case that all staff within the FMU and then more recently the FMO involved in procurement work were required to abide by these procurement documents?---Yes.

Now, is it the case that beyond the procurement policy documents that I've taken you to that at all times since 1999 UTS has had in place a Code of Conduct?---Yes.

40

And if I could ask you to first of all have a look at page 70 of the brief, sorry, of the first volume of the exhibit, do you recognise that, it might actually help if you go to the second page, page 71, and you'll see some notation at the bottom of the page, do you recognise that as the Code of Conduct approved by the University Council in April 2012?---Yes.

ASSISTANT COMMISSIONER: 2002 I think.

MR DOWNING: Oh, sorry, 2002, I apologise?---2002, yeah.

And are you aware that one of the things that was covered in the Code of Conduct, being the 2002 version, was the topic of conflicts of interest?  
---Yes.

And can I ask you in respect of the Code of Conduct, again, is that a document of which staff within the FMU and FMO were made aware?  
---In regard to that Code of Conduct in fact new employees who'd come on and would sign a contract it would have in fact actually identified in fact she's, that they, they needed to abide by in fact the rules and directives including the Code of Conduct.

So to your knowledge is it a requirement of every contract with the University staff - - -?---Yeah.

- - - that they actually abide by the Code of Conduct?---Abide by these rules, yes, and these are readily available on our internet.

And then in 2011 are you aware that a new Code of Conduct came into being?---(No Audible Reply)

If you have a look at page 75. Do you recognise that?---I know that, yes.

And again it covered conflicts of interest. If I'd ask that you look at pages 79 and 80?---Yes.

And it also covered didn't it the question of disclosure of resolution of conflict of interest if you look at page 80?---Correct.

Now the codes of conduct that I've taken you to and if we go back to the 2002 version, also covered the subject matter of acceptance of gifts and benefits. If I could ask you to look at page 73. Do you see that?---Page 73, you say?

Page 73. Yes, point 9 acceptance of gifts benefits?---Yes, yes, yeah. Yeah.

And it provides at point 9 that it's unethical for staff to solicit any gifts, benefits or additional money for themselves or other employees nor should staff accept gifts and benefits which might in any way comprise or influence employees in their official capacity. Staff must not influence or try to influence colleagues by giving them gifts or other inducements. Can I ask was there ever any, ever any discussion or information provided to staff beyond this document about expectations of whether it was permissible to accept gifts or benefits or not?---I don't recall any specific training in that area.

And also within, on the same page of the 2002 Code of Conduct at point 10 there it sets out requirements in terms of outside work and private practice?  
---Correct.

And one of the things that it provided was that outside work can be permitted provided that it didn't adversely affect staff in their performance of work at the University or give rise to a conflict or potential conflict of interest?---Correct.

And to your knowledge was that always a requirement that outside work had or by, by that requirement from the period 2002 to date?---Correct.

10 And was that an expectation of staff within the FMU?---Yes, yes.

Now the 2011 version of the Code of Conduct also dealt with those subject matters if I could just ask you to have a look at page 82 of the volume?  
---Yes.

And beyond that Code of Conduct can I ask whether you recall that there were other policy or procedure documents in relation to the subject matter of outside work? Do you recall that?---The, the outside work directive was a separate document, yeah, yeah.

20

All right. Well could I ask you to look at page 111. And again you might need to look at the second page of that document which is at 112 at the bottom in terms of dates but do you recognise that as a 2002 University Outside Work Policy?---Yes, note that.

30 And was this a policy of which staff were made aware at the University in particularly within the FMU?---I don't believe in fact actually the, the, it would have been in fact actually sort of identified within there in fact actually their employment contract but it wasn't sort of specifically sort of regularly brought up to, to staff and my knowledge to probably around about 2010.

All right. But were staff expected, that is staff in the FMU to be familiar with the University's various policies?---Yes.

Including in respect of outside work?---Yes.

40 And if I could ask you then to have a look at page 115 of that document. Do you see it under the heading private consultancy?---Yes.

Provided that staff using their professional skills and knowledge for which they were employed by the University were permitted to do private consultancy in certain circumstances but provided that staff had to apply for their appropriate supervisor for permission to carry out private consulting work using the standard pro forma provided in the guidelines?---Yes, I note that.

And to your knowledge has it always been certainly since 2002, a requirement that when staff wanted to do outside work they had to fill in an application and seek permission from their appropriate supervisor?---I'm aware it was always a condition of the outside work policy that there was a pro forma available.

So there was a need for a written application for permission to do outside work?---Correct.

10 And also in respect of outside work can I ask you to have a look at page 118? Do you recognise that as the 2009 outside work vice chancellors directive?---Yes.

And are you familiar with this being a document from the vice chancellor in respect of outside work that might be undertaken by University staff?---Yes.

20 And if I could ask you to have a look at page 123. Do you see about three paragraphs from the bottom under the heading directive principles, one of the requirements was that in undertaking outside staff, sorry, in undertaking outside work staff members must be careful to avoid any real or apparent conflict of interest with the University including work that might be seen as in competition with the University?---Yes, I note that.

And were you familiar with that as a requirement that in doing outside work staff had to avoid any work that might involve an actual, a real or apparent conflict of interest?---Yes.

30 And are you able to say this document, this particular 2009 outside work vice chancellors directive, again were staff to your knowledge made aware of it through electronic communication?---Yes, I believe this is the first year where I recall that in fact electronic sort of request went out to actually sort of abide by outside work?---So that staff received what, email communication - - -?---Yeah.

- - - telling them that this policy exists and that you should read it and access it?---Yeah, that's it.

40 And at page 126, if you could look at that, can you see that there's a section there in respect of how to manage conflicts of interest? Do you see that at the bottom of the page?---Yes, I note that, yes.

Now if I could ask you beyond this document if you could look at page 148 do you see that that's an HR guideline from UTS human resources in respect of outside work?---Yes, I note that.

And are you familiar with those HR guidelines being in existence at the University?---Certainly I'm aware in fact that she, um, they were readily available from 2010.

And, well if you look at the second page do you see at the bottom it indicates approved by council in February 2002?---Yeah.

Now you recall that in one of the documents I took you to earlier there was a reference to the requirement that for outside pro-consulting work there was a need to fill in a pro forma as per the guidelines?--- Yes.

Can I ask you to look at the document at page 150 and 151?---Yes.

10

Do you recognise that as the pro forma that was supposed to be completed in respect of outside work?---In FMU or FMO we had no applications for outside work from 2002 to 2010.

But you accept don't you that these policies applied across the University not just within the FMU and FMO?---Yes, yes, I'm just saying we never had any applications between 2002 and 2010.

20

Oh, sorry, you didn't receive any applications?---No, that's correct.

But this was the form that according to the University's policies and procedures was to be filled in by staff who wanted to do outside work? ---Yeah, yes.

And if I could ask you to look at the document at page 153, do you recognise that as a UTS Human Resources HR Factsheet in respect of outside work?---Yes.

30

Now, these two UTS Human Resources documents I've shown you, that is the outside work HR Guidelines and the HR Factsheet, those Human Resources documents from UTS were available to staff, weren't they, from the period 2002 onwards?---They would have been available in the internet, yes.

And available to staff to access?---Yes.

Now, if I could ask you to have a look at page 93, do you recognise that as the UTS Gifts and Benefits Vice-Chancellor's Operational Directives? ---Sorry, what, that was page?

40

93, I'm sorry?---93, sorry, that was 93. Yes.

And you can see from the bottom of the page it was approved on 13 April, 2006?---Yes.

Did you understand that this was a procedure or a requirement that applied in respect of UTS staff contemplating accepting gifts or benefits?---Yes.

And you see at the bottom of the page at 2.2 it provided, the directive applies to all gifts and benefits received from University employees in the course of their official duties?---Yes.

Now, if I ask you go to page to 94 please, you'll see there's a definition there of the significant or major, a significant gift or benefit?---Yes.

Which is one defined as being 50 and \$250?---Yes.

10 And a major gift or benefit being one in excess in terms of value of \$250? ---Yes.

And if you would then go to page 95 you'll see the Vice-Chancellor's statement?---Yes.

And it sets out standards that were required to be met and conditions that mandated rejecting gifts and benefits?---Yes.

20 And were you familiar with the requirements that are set out in this document in respect of accepting gifts or benefits?---Yes.

And was this again a document that staff were made aware of through the University?--It, it was, it was on the, again, on the internet which was readily available to staff.

And you certainly were aware of it during the, the period that you worked within the FMU?---Yes.

30 Now, if you could then have a look at the table at page 97 and do you see that the table provides guidance as to when it's permissible to accept or reject gifts, where they're and we're looking at major gifts on that page? ---Yes.

With a value of more than \$250?---Yes.

And you'll see there's a requirement there under disclosure that University employees had to fill in a declaration form and present it to their accountable supervisor for consideration by the head of the unit?---Right.

40 Can I ask you then to go to page 100. Do you recognise that as the declaration form that was referred to in the part I just took you to?---Yes.

Now, can I ask you in respect of Mr Faysal, he was someone that worked under you in the FMU from 1999 onwards?---Yes.

And then also within the FMO?---Yes, he reported to me in the FMO period.

And it's correct isn't it that he began in 1999 in the capacity of senior mechanical engineer?---That's correct.

And is it correct that from that time 1999 through to March 2007 while he was a senior mechanical engineer he had input into specific projects that were being undertaken within the FMU?--Yes, for - yes, definitely, yeah.

So that would he have some role in providing advice about who might be put up as a potential tenderer or a quoter for a particular contract?

10 ---Certainly in regard to building services and infrastructure, yes.

And when you say infrastructure you mean things like renovation works?  
---Major sort of renovations like sort of plant upgrades and all that, yes.

So just using some examples things like say refurbishing a floor of a building that might require some building work?---Probably, probably up until 2007 more in regard to services such as chillers, plant, air conditioning, electrical works, hydraulics.

20 So air conditioning?---Air conditioning.

Electrical works?---Electrical works, hydraulics works, fire.

Use of control systems in relation to those - - -?---Control systems, yeah.

Systems like air conditioning?---Air conditioning control systems, yeah.

Now did he also have a role and I'm asking you to focus on the period up until March 2007 when it came to providing advice or recommendations about who should be awarded the contract in those areas?---He, he would have, certainly would have been assisting the, as I mentioned earlier the - there would be an area where we'd put forward in fact actually the, the contractor for the Tender Committee and the Tender Committee would make the decision as to who got the work.

30

Would he manage particular projects?---If he was in the, a project team he wouldn't do it completely by himself, no.

But I take it there are teams of people that work on particular projects - - -?  
40 ---Correct.

- - - within the FMU? So that within say a team would he have a role of providing input in the form of advice or recommendations about the type of work that needed to done?---Yes.

Who might be appropriate to do that work?---Yes.

And how it might be done?---Yes.

And when it came time to actually - I withdraw that. You've told me that for smaller jobs you received quotes, for bigger jobs you had tenders. Once the quotes or tenders were in again focusing on the period up until 2000 and March 2007 did Mr Faysal have some input into making a recommendation about who would ultimately get the job?---He, he would - it would have been based, if it was based on a tender process it would have been based on the criteria for in fact actually that, that tender. If it was actually, was just a quote he'd probably, Mr Faysal would probably have more of a say as to, to - who was the best to do the job, yeah.

10

So that he would have some input into the decision when it came to quotes? ---Yeah.

You need to give a verbal response I'm sorry?---Yes.

And with tenders who - for instance where's a project that he's a member of the project team who would ultimately be on the Tender Committee that would make a decision?---The, the - what would normally happen is in fact actually a, a Tender Committee would be made up of around about sort of  
20 three people and the price would come in and usually it was sort of just looking at the, the assessment of the, of that particular tender based on the criteria and then the project would be awarded and if Nabil was part of that Tender Committee he would, he would be, he'd be sort of part of the team that would make that determination.

Well so, so focusing in the period up to March 2007 were there projects for instance involving refurbishment work putting in air conditioning where he would be on the, the committee which would decide on - - -?---Yes.

30 - - - who got the tender?---Yes.

So he might have involvement in an earlier stage in terms of recommendations or he might have involvement at the stage of actually sitting on committees?---Yes.

Assessing tenders?---Yes.

All right. Now in March 2007 he went from being a senior mechanical engineer to the acting manager of accommodation and refurbishment?---  
40 Correct.

Now can I ask you thinking again of those procurement activities I've asked you about did his role change in that position?---Yes.

How did it change, what, what was his role or responsibility in that position?---Okay. The - in the role in fact actually of, of, of manager of projects he was involved in, in a number of in fact refurbishments for major

projects that'd be delivered across the University with potential sort of yearly sort of funding of about \$10 million a year.

And would he sit above individual project managers?---Correct.

And oversee and manage their work?---Correct.

10 So that would there be instances where project managers would come to him with a recommendation up to him to decide whether it would or wouldn't be awarded the particular contract awarded to the contractor suggested?---The process would normally be that the project manager would get a tender committee together and would tender the project and that tender committee would do the assessment and if the delegation was within Mr Faysal's role at that time which was \$200,000 he would sign off on it.

So would he still sit on tender committees in that position?---Potentially, he was able to, yes.

20 Do you know if he did?---He could have, yes. I don't recall exactly but he certainly could have, there was no reason why he would not be allowed to.

Now you said that his financial delegation was \$200,000. Can I ask you to have a look at a document at page (not transcribable). Do you see that UTS standing delegations authorities at April 2006?---Correct.

And if you could go ahead to page 185 you see a table there under the heading capital works?---Yes.

30 And it's got limits off, in terms of delegate and project budget, do you see it specifies a delegation of \$200,000 for the second person nominated being the manager accommodation and refurbishment building works and maintenance?---Correct.

And was that Mr Faysal's position?---Correct.

So that is it in respect of capital works under this document that he had the specific financial delegation?---Correct.

40 So that is this correct that for contracts that were up to \$200,000 he could make the ultimate decision?---Hey?

Subject of course to tender committee proceedings?---Exactly, yes, yes.

But he could sign off on it?---Yes.

And the order could go out after he'd given that sign off?---Correct.

For bigger amounts involving works there was a level of delegation higher up that would have to make the decision?---He would tier up for it.

And then Mr Faysal remained in the position of acting manager accommodation and refurbishment until August 2009. Are you aware of that?---I believe it was sort of around about sort of August 2009, yeah.

10 And after that are you aware that his position changed and that he became a manager engineering services within the FMU and then later it became the FMO?---Correct.

Now can I ask you his role from that point that is from August 2009 onwards did that revert to a role like it had before March 2007?---Yes with a focus more on looking after major projects.

And was he still within the FMU?---He was still within the FMU.

20 From the time, I withdraw that. So that is it the case that it was only in that specific period March 2007 to August 2009 where he had a specific financial delegation?---Correct.

But was it the case that after August 2009 he still had input in terms of looking at potential tenderers for jobs at the University within the FMU? ---Certainly in regard to engineering services and infrastructure, yes.

So that again using as an example if there was some refurbishment works involving putting in electrical works or air conditioning works - - -? ---Mmm.

30 - - - after August 2009 - - -?---Yeah.

- - - he still had input into writing recommendations about potential tenderers?---Within the procurement policy he could make suggestions, yes.

And he could provide some input into for instance who might be an appropriate tender to do the work and be awarded the contract?---Yes, yes. Again within the bounds of the procurement policy yes.

40 Did he sit on tender committees after August 2009?---I'm aware of, of, I'm definitely aware of one that he, he sat on, yes, he did.

Now, in 2010 you're aware that early in the year Mr Faysal was stood down for a period while his conduct was investigated at the University?---Correct.

And then he returned to work in July 2010, correct?---Correct.

And can you tell me, when he returned to work - I'll come to the circumstances and your involvement in counselling at a later point, but

when he returned to work was his position the same as it had been before he was stood down?---Correct.

And were his functions in terms of his involvement with projects the same?  
---Correct, yes.

And when he returned to work, July 2010, and please correct me if I'm wrong on the dates, was that also the time at which the FMU was being slid into the FMO and the PMO?---Correct.

10

Did his role continue to be within the, well, at that point, FMO from July 2010 through to when his employment was terminated earlier this year?  
---When he returned to, to work in July, August 2010 predominantly his work was work on the, the Master Plan works that were controlled by PMO.

So he had input into what, the particular projects, the big capital expenditure works being managed through the PMO?---Yes, he was to offer expert advice to, to the, to the programme management office in regard to the Master Plan.

20

But did he, did he remain under your, an employee under your direct control?---I was still his supervisor but I, I wasn't involved in the specifics of the projects he was, he was working on under the Campus Master Plan.

Within the PDO?---Within the - - -

Sorry, the PMO?---PMO, PMO, yeah.

I'm sorry, wrong acronym. Is it the case, is it the case that from 1999 when he started that you've always been his supervisor?---Correct, yes. During 1999 to 2006 Nabil spent quite a bit of that time working with the major projects team at the time in delivery of the Fairfax building which was a \$65 million project and in fact as to the delivery of the new, our new science building and, and he was providing expert advice in regard to those works during that period, around about 2001 to 2006 as well.

30

Now, you've told me that at all times through until his dismissal that Mr Faysal was under your, under your supervision?---He was, I was his supervisor.

40

And can I ask you, at any time up until his dismissal this year did he ever tell you that he was a director or had an interest in a business in the name of NA & CW Investments Pty Limited?---No.

Did he ever give you any written notification of that?---No.

Did he ever mention it to you in speaking?---No.

At any time prior to his dismissal in, earlier in 2012 did Mr Faysal tell you that he was intending to do private engineering work for companies performing contract work or tendering or quoting for that work at the University?---No.

Well, did he tell you at any time prior to his dismissal earlier this year that he was in fact doing private engineering work for companies performing contract work or tendering or quoting for that work at the University?---No.

10 Did he ever give you any written notification of that?---No.

Now, I know - well, I'll come to particular outside work application forms in a moment but can I ask you if, if Mr Faysal at any time in the period you've been his supervisor had told you that he had the intention to do work for companies that were contract work for the University or tendering or quoting to do that work at the University, what would your response have been?---I would have said that was unacceptable and that would be a conflict of interest for the University to actually do that.

20 Why would it be unacceptable?---Because it would be against our Code of Conduct and the, our, you know, it would be a clear conflict of interest.

Now in the period from about 1999 through until this year have you been familiar with the following companies as contractors that were doing work for the University, Cady Propriety Limited?---I'm aware of Cady's, yes.

As doing air conditioning work?---Yes.

30 Were you aware of them in the period say 2006 to 2011?---I'm aware of them yes during that period, yes.

What about KB Electrics NSW Propriety Limited?---Yes I'm aware of that company.

What about Rega Controls Propriety Limited?---I'm aware of that company.

Webster Wagner Engineering?---I'm aware of that company.

40 WJ Hood and Sons Builders?---I'm aware of that company.

And Targetti Australia Propriety Limited?---Yes, aware of that company.

Now in the period that I'm asking you to think about, 2006 to 2011, were you aware of each of those companies or entities as people that did work for the University?---Yes.

Contract work for the University?---Yes.

And that at times tendered and quoted for that work at the University?---  
Yes.

If Mr Faysal had told you at any time in that period that he was working or  
intending to do work for those particular companies or entities, what would  
your response have been?---I would have said that would be a conflict of  
interest and we (unintelligible) approve that.

10 Now if I could ask you to have a look at page 911 which is in the second  
volume of the exhibits, do you recognise that as an outside work application  
form completed by Mr Faysal in 2010?---Yes.

And if you go ahead to page 914 do you see it was signed, it was seen by Mr  
Faysal on 9 August?---Yes.

And then in the next section down is that your signature that's also 9  
August?---That's, that's correct yes.

20 And then further down there's another signature on 10 August 2010?---  
Yeah. Yeah. That's correct.

Do you know whose that is?---That's Patrick Woods.

Now was this a form that was submitted to you by Mr Faysal?---Correct.

He, I withdraw that. Had he ever submitted such a form to you before  
August 2010?---No.

30 And you've told me that it, I'll withdraw that. Had he ever told you that he  
was doing any form of outside work up until that, up until this form was  
completed?---No.

Now looking at the form I take it you read it when you received it?---Yes.

And looking at the first page 911 Mr Faysal indicated he was intending to  
do about five to six hours of work per week?---Yes.

40 And that in the current calendar year he was looking at about approximately  
120 hours?---Yes.

And that work was ongoing?---Yes.

And if you go to the second page that is 912 do you see that the first part  
asks about application for directorships and partnerships and that wasn't  
completed?---Yep.

And it asked the name of the company and that wasn't completed?---Right.

Do you see that under professional practice Mr Faysal indicated that he was self employed?---Yes.

And there was a reference to a copy of a PI attached. Do you recall that that was a professional indemnity insurance policy?---Yes, correct.

And you knew he was an engineer?---Yes.

10 So I take it you understood that what he was looking at was doing self employed engineering works?---That's correct.

And he then indicated just under the reference to the PI that it was not applicable the question relating to whether he was employed by another organisation?---I note that.

20 And down at the bottom of the page you'll see, or towards the bottom there's a reference there to a requirement in the form that there will be some reference to the Code of Conduct, imagined conflicts of interest and whether the consultancy has the potential to involve the applicant in a conflict of interest, that wasn't completed?---That's correct, yeah.

And the next section asking about how that conflict would be managed or handled and that wasn't completed?---Yeah.

And right at the bottom of the page there's a section that asks for confirmation that the client was not introduced to you by UTS and that you're not recommended as a consultant by UTS and that wasn't completed?---No.

30 Can I ask you what was your understanding on reading this form about the type of work that Mr Faysal was intending to do?---That he was doing work that would just maintain his accreditation as an engineer and it was, none of the work would be in conflict with contractors or, or consultants working for UTS.

Do you accept looking at the form now that it really wasn't properly completed by Mr Faysal in order for you to give approval?---Correct.

40 But at the time did you not take up or did you take any issue with the areas that weren't completed by Mr Faysal?---No.

Looking at it now do you accept that it would haven been prudent to have asked some questions about who the work was intended to be done with? ---Correct.

Do you say that Mr Faysal told you anything about who he was intending to do the work at the time?---No, no.

Now if I can ask you to page 897. Now you see that's a PI application form?---Right.

For NA & CW Investments?---Yes.

Are you able to say whether that was what was attached or whether it was a policy document?---(No audible reply)

10 Do you not recall?---I, like I - on what you're showing me that I can't recall whether that was the exact one that was attached.

Could you go ahead to page 917. 917. If you accept from me that's a document which seems to have been submitted as an attachment to the - - -?---Yes.

- - - the 2010 outside work application form. Do you recall looking at that now that that was what you received?---Yes.

20 And you see that indicates an insured NA & CW Investments?---Yes. Did you take any notice of that at the time?---The only thing I looked at that and thought and I said I better just check and make sure in fact that they don't do any work for us and that was the only check I done and I think I asked one of our finance people to, to see had that ever come up and it hadn't come up and that's as far as I, I took that I - - -

Did you also notice that the professional services covered by the policy were mechanical engineering?---Yes.

30 And you understood that was the area in which Mr Faysal had - - -?---But that was consistent with his, his comment that he was maintaining his professional accreditation.

All right. If I could then ask you to have a look at page 920, do you recognise that as the 2012 outside work application for Mr Faysal?---Yes.

Is it the case that you didn't receive one from him in 2011?---Didn't receive one in 2011, correct.

40 And again I take it you looked at this form when you received it?---Yes.

If I could ask you to look at page 921. Do you see that going down the page under the heading 'Private consulting' the same areas that weren't completed on the last occasion weren't completed on this occasion?---Correct.

And do you accept that you didn't raise any of that with Mr Faysal when you received the form?---No.

And going to page 923 it shows Mr Faysal signed the form on 1 February 2012 that you signed on 15 March 2012 and Mr Wood signed it on the same day?---Correct.

So that you gave your approval on 15 March?---Correct, yeah.

And if you go ahead to page 926, do you recognise that as the PI policy document that came with the form?---Yes.

10 And do you recall looking at that?---Yes.

Do you recall whether you noticed that NA & CW Investments was limited on there as, listed on there as the insured?---Yes.

And did you make any inquiries about that company?---At this time I don't recall I made any investigations on this one.

20 But your recollection is that when you received the first one in 2010 you made some inquiries to find out whether that company - - -?---Yes, that's correct, yes.

- - - was a University contractor?---Yeah, that's right, yes.

And you confirmed that it wasn't?---That's right, yes.

Now, if you go ahead to page 928 do you see that document, the timesheet 2011?---Yes.

30 Do you recall that was annexed to the form that you got?---I, I note that (not transcribable) in the appendix to it, I'm not quite sure of exactly what time that I, I received that doc but note it certainly was, it was probably attached to the documents when Patrick Woods and I signed off that document.

40 Looking at it now, is there anything that you believe if you'd read it carefully might have caught your attention?---When I, when I looked at the document I, I just looked down in fact as to the type of works and the companies he was working to and was, was confident that it was consistent with in fact actually his comment that he was doing external accreditation work and they weren't contractors used by, by UTS that I was aware of. I didn't notice the, the, the comment at the top there that said "Timesheet 2011" and for some reason it just, it just didn't register with me at the time of looking at it.

That he'd done work in 2011 without having submitted a form?---The, the, the title of the sheet didn't register to me.

But is it also the case that it didn't register with you that he must have done work according to that in 2011, that he hadn't submitted an outside work

application?---My, my understanding at the, at the, when I looked at this one, it was the type of works he was going to be doing in 2012, not what he had done in 2011.

And was your particular interest in evaluating these two documents whether Mr Faysal was doing work or proposing to do work for University contractors?---In looking at, at the, the people who are on that list I was mainly concerned and in fact making sure in fact they weren't our contractors and consultants on that list.

10

Now, I asked you before about Mr Faysal having had a period in 2010 where he was stood down and under investigation?---Correct.

And do you recall, I take it you would have been aware of the fact that he wasn't actually working for that period in the first half of 2010?---Correct.

20

And do you recall at the time he was stood down whether you were given any information from the University about what was the nature of the matter that was under investigation?---I understand in fact actually that it was, issues focussed around procurement were, were being investigated.

And did you receive any documents in respect of what was being investigated or what was alleged or was it something that was made known to you through conversation?---No, no, no, I didn't. It came to, it first came to my attention in around about late 2010 where my then director Robert Kelly and a, and a Peter Mulhall sort of had a meeting where in fact he's said in fact that they were, they were investigating some issues around procurement with Nabil Faysal.

30

Now, if I could ask that you have a look at a document which is Exhibit 4. You'll see from that document it's a document from Mr Mulhall from January 2010 in relation to an investigation report into Mr, alleged misconduct by Mr Faysal?---Correct.

Do you recall whether that document was made available to you at, at any time during Mr Faysal's absence from work?---No.

40

If I could ask you then to go, have a look at a document - if you just hang onto that one for the moment, if you could have a look at Exhibit 5 which is a document from Dr Barclay where he provides a report into the allegations against Mr Faysal?---Yes, notice that one, yes.

Now can I ask you did you receive that report at any time during the period when Mr Faysal was stood down and under investigation?---No.

Now in - it's the case isn't it that in mid 2010 you were called into provide some counselling to Mr Faysal on his return to work?---Correct.

And do you recall that that was something that you were called in fairly late in the piece to do?---Yes, yes, very- pretty much the last minute, yes.

And who did you meet with Mr Faysal in the company of?---Patrick Woods.

And could you tell us Mr Woods' position?---DVC Resources.

Is that Deputy Vice - - -?---Deputy Vice Chancellor of Resources.

10 And at the time you were asked to provide some counselling to Mr Faysal on his return were you told of the specific allegations against him?---We were given a, a single page sheet which in fact focused on what the counselling would be about.

And I'll show you a document and I'll tender this in a moment so I'll hand one up as well. Is the document that I've, that's just been handed to you is that the document that you got for the purposes of the counselling?  
---Correct.

20 And it refers to counselling meeting for 2 July 2010?---Correct.

Do you recall when in relation to that date you got the document?---I believe I got it that day.

And was there anything beyond this that you got for the purposes of that counselling session?---No.

30 Were you told anything beyond what's in that document about what had been investigated and what the findings of any investigation had been?  
---No.

Now looking at the document it sets out particular concerns about outside work that Mr Faysal had been doing?---Yes.

It suggested counselling, formal counselling on the need to adhere to UTS policies and procedures?---Correct.

Just before I go on I'll tender the document as this point, Commissioner.

40 ASSISTANT COMMISSIONER: Yes. These notes for the counselling meeting will be Exhibit 23.

**#EXHIBIT 23 - NOTES FOR COUNSELLING MEETING TO BE HELD ON 2 JULY 2010**

MR DOWNING: So I take it you use this document then as the source for the counselling you provided on that day?---Exactly right, yes.

And in relation to outside work I take it you read this document before you counselled Mr Faysal?---That's correct, yes.

And it's suggested that you formally counsel him about the need to adhere to UTS policies and procedures first of all in respect of outside work?---Correct.

10

And it suggested that you draw to his attention the Uni's expectations concerning obtaining approval for outside work and insuring activity doesn't result in a conflict of interest with UTS work?---Correct.

Now can I ask what did you say to him in the course of that meeting about outside work and the need to avoid conflicts of interest?---Just that the issue in regards to (not transcribable) conflict of work can't in fact actually include in fact consultants or contractors working for UTS.

20

Sorry, that?---That consultants or contractors working for UTS couldn't be people that he would be using because they'd be in conflict of interest.

You said that to him during the meeting?---That's correct. And we asked him in fact what outside work he would be doing in the future if he was doing outside work and he said in fact that it would be only work associated with in fact to actually maintain his accreditation.

Did you understand it to mean as an engineer?---As an engineer, correct.

30

All right. Then it also suggested that this, well this document suggested that there'd be formal counselling about the Code of Conduct and the application of the Code of Conduct. Do you recall specifically what you told him about that?---Yes. The, in regard to the Code of Conduct it really is in fact reinforcing the first dot point about outside work. The Code of Conduct (not transcribable) the two areas in the Code of Conduct are in fact actually a conflict of interest in outside work so it's just reinforcing the same issue.

40

Well do you see that under point two it suggested that not only the Code of Conduct be drawn to his attention but also the need to adhere to UTS policies including outside work?---That's correct, yeah.

And ensuring that his personal and professional behaviour was consistent with expectations?---That's correct. Yes.

Do you recall, so this is in July 2010. Do you recall if you actually drew to his attention for instance the 2002 or the 2009 outside work policy documents or directive documents from UTS?---We reminded him in fact actually that if he was to continue doing any outside work that in fact he

needed to put an application in and he subsequently put an application in after this counselling.

All right. But did you say anything to him about the specific policies? I mean point two suggests that he be, that it should be drawn to his attention that there were UTS policies including irrespective outside work?---Correct.

Do you recall if he did that?---Yes we did.

- 10 Did you have documents to show him or did you tell him there were policies that governed outside work?---No, no, given that in fact I'd say I only just got this document this morning, I could only just talk through in fact what this document said and just remind him in fact there's requirements to actually adhere to and in fact actually the Code of Conduct and outside work.

But did you tell him about the fact that there was a policy that applied to outside work?---Yes.

- 20 Also under point two it noted that conflicts of interest issues had to be addressed prior to him, Mr Faysal being involved. Did you say something to him about the fact that he needed to inform you as his supervisor upfront of any possible conflicts involving outside work?---No. Yes, we mentioned that to him.

But you told me already that you told him that it wouldn't be okay, that it would be prohibited to do outside work for UTS contractors?---That's correct.

- 30 But did you tell him that if there was any possibility of a conflict that he needed to raise that with you?---I can't recall the exact words of that meeting but that would've been the spirit of what we said.

Do you see that under point two it suggested that you clarify it for Mr Faysal what a conflict of interest means and what he might do in future if the circumstance arose? Can you recall what you said to him about what would be a conflict of interest?---Yes, any contractor or consultant who's working at UTS would be a conflict of interest if he was working for them.

- 40 All right. Point there was in respect of staff supervision. Do you recall if you said something to him about staff supervision and the particular approval for a UTS contractor to do outside work?---We talked about this particular instance and suggested in fact that it wasn't appropriate. We had conscience in the fact that his new position didn't have any direct reports to it so that he wouldn't have that situation in the future.

And in respect of record keeping the document suggested that he be counselled about the importance of ensuring any projects for which he is

responsible involved documents being properly retained and recorded. Did you say something about that?---We certainly did, yes. And reminded him of the need to adhere to the current procurement policy.

Okay. Now Mr Faysal returned to work shortly after this?---Correct.

10 And you remained his supervisor even though you've told us that he then did quite a bit of work within the PMO?---Yes, I was his direct report but predominantly he'd work for the PMO and in fact actually he's, he was fully capitalised against all the projects and when I say fully capitalised, his wage was actually paid for by in fact actually the work he was doing under the PMO works.

Commissioner, is that a convenient time for a short adjournment?

ASSISTANT COMMISSIONER: Yes.

MR DOWNING: Thank you.

20 ASSISTANT COMMISSIONER: We will adjourn for 15 minutes.

#### **SHORT ADJOURNMENT**

**[11.30am]**

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, Mr Downing.

30 MR DOWNING: Mr Rabbit, just before the break I was asking you about the counselling session you had with Mr Faysal and what you knew about the allegations against him at that time. Is it correct that in terms of what you'd been told up until the point in time of the counselling session you'd been told that there were problems with outside work Mr Faysal had been doing?---Up until the, the counselling the main issue appeared to be in fact in relation to in fact procurement issues and - - -

Procurement. I'm sorry?- - - compliance with procurement.

40 So can you, doing your best what can you recall about what you were told, what were you told in words about what the, the problems with Mr Faysal had been?---Okay. Yeah, the - probably, its probably going back to about sort of probably about August 2009 there was some issues raised in regards to Nabil and his team's procurement of in fact actually (not transcribable) particular project in, in, building 1.

Can I just stop you there. Can you remember who it was that raised this with you?---Yes, yes, it was actually raised by in fact the, Robert Kelly, the, the Director of FMU at the time.

And did he raise that with you in, in conversation?---In discussion with the, I believe and I'm just recalling this one at - yes, it would have been in discussion, I'm not quite whether (not transcribable) manager was involved in that discussion.

And you said it was in relation to procurement on a particular project?  
---That's correct.

10 Can you remember what the project was, what it involved?---Yeah, it was the - some air conditioning upgrade work through the tower building in the lobbies.

Is that building 1?---Building 1.

And do you recall the nature of the concern about Mr Faysal's involvement in the procurement that was raised with you?---I think it was, it was involved in the process of in fact actually the - how the project was actually procured in regard to, I recall in fact that it may have been in fact actually  
20 just tenders were called for one project and then it was actually sort of round out over several floors which is in conflict of the procurement policy.

So was, was your understanding that it was a concern that ultimately a large number of bills were rendered for work on different floors - - -?---Yes.

- - - and approved of, approved individually rather than being tendered for or quoted for and then approved as a, as a job lot?---Correct, yes, yeah.

And was it your understanding that by doing that it could mean that for  
30 instance it could bring a level, it could, being a particular purchase, within the level of financial delegation rather than taking it if it was done as one, one quote or one tender it might be higher up the chain in terms of financial delegation?---That, that was the potential that, that you could, you could raise out of this one although it didn't seem to be logical there because it would have been, wouldn't have been difficult to get the approval to do it as a holistic project.

But that's what was raised with you as to - - -?---Yes, that's correct.

40 - - - a concern about Mr Faysal?---Yeah.

So was - so that was raised by Mr Kelly you think in - - -?---That's correct.

- - - some time in mid to late 2009?---That's correct.

Then the document that I've shown you the notes for the counselling I think you said that you received them on the morning?---That's correct.

Did you get any other information about the particular allegations against - -  
-?---Yeah. (not transcribable) mentioned the - I was called in with, to a  
meeting with Robert Kelly and Peter Mulhall who was actually doing some  
investigations in probably late 2009 following on from those original issues  
about the, the lift core and I understood in fact that I was asked to just to, to  
cooperate with any issues that in fact actually Peter had may or may raise  
and he, he asked a couple of questions of me.

So he asked some questions of you?---Yes.

10

But you didn't - you've already had a look at the report from him you didn't  
receive that?---No, didn't receive the report, no.

And you didn't receive the report. But the second one I showed you from  
Dr - - -?---Dr Barclay, yeah.

Dr Barclay?---Yes, that's right.

20

So in terms of knowledge about the allegations at the time you had the  
counselling session you knew what was set out in the document that you  
received the one page document?---That's correct.

What you previously been told - - -?---Told that the - - -

- - - by - - -?---By, by Robert Kelly and, and I was not told anything by in  
fact Peter Mulhall only asked to actually provide him some documents, yes.

30

Okay. Now when Mr Faysal returned to work after that counselling session  
up to that point had you been given any particular advice about how you  
might go about managing his conduct on his return?---No, no.

Were you given any particular support or assistance in terms of managing  
his conduct on his return to work?---No. We, we - it's the first one we've  
had, yeah.

40

Were you told anything or given any advice about how his involvement in  
procurement activities might be managed on an ongoing basis?---One, one  
of, one of the things that had changed as I mentioned earlier was that due to,  
to just a course of in fact actually appointing a new manager for projects  
Nabil had gone back to his substantial position which actually had no  
capacity for procurement, sorry no capacity for in fact, no delegation rather  
in it and, and it was predominately providing advice so the - we were sort of  
in some way sort of, sort of, sort of confident that the issues that were, were  
identified in the counselling in regard wouldn't be issues that were in regard  
to - to become a policy wouldn't be continued because he never had that  
delegation in his new PD.

Well, and you told us he didn't have a new, any financial delegation in that position?---That's correct.

But he still, and I think correct me if this is not right, he still had some involvement in the procurement process in terms of being involved in the quotes, tenders - - -?---That's what PMO, yes.

- - - providing advice about particular quotes and tenders?---Yes.

10 Were you told anything about matters that you should look out for or manage in respect of his involvement in that process on an ongoing basis?  
---No.

Can I ask you to have a look at a document, do you see that that's a letter of 29 June 2010 to Mr Faysal from the vice chancellor Professor Ross Milbourne?---Yes.

Do you recall if you received a copy of that at the time of the counselling session?---No.

20

Commissioner, I tender that.

ASSISTANT COMMISSIONER: Yes, that letter will be Exhibit 24.

**#EXHIBIT 24 - LETTER FROM VICE CHANCELLOR  
MILBOURNE TO NABIL FAYSAL DATED 29 JUNE 2010**

30 MR DOWNING: Were you told anything about whether Mr Faysal on an ongoing basis should be someone who would sit on tender panels after his return to work?---No we never, we never discussed that issue.

Were you told anything about restrictions that might be placed on Mr Faysal in terms of his involvement with procurement?---No, no.

40 Now can I ask you whether, I asked you previously whether Mr Faysal had ever told you about the fact that he was doing work or intending to do work for various contractors, remember I asked you about Cady, KB Electrics, Hood, Rega and Webster Wagner?---Yes.

And you told me that he'd never told you that he had worked for them or was intending to work for them?---That's correct.

Did anyone from any of those organisations ever inform you in any way that Mr Faysal was doing work for them?---No.

Now you're aware that Mr Faysal each year would take holidays?---He took regular holidays, yes, yes.

Can I ask you did he ever tell you that he had an intention to take an overseas trip where that trip would be paid for by one of the UTS contractors?---No. No.

Did, and I'm asking you specifically to think about Rega Controls which you've told me about?---Sure.

10

Sorry, that I've asked you about before?---Mmm. Yeah.

Targetti and you're familiar with them as a lighting supplier?---Yep, yep.

Were you also familiar with Wilkhahn Wilkening, an office furniture supplier?---I'm aware of them yes.

And they were also a company that provided some office furniture to the University?---Correct.

20

And you were aware of that between 2006 and 2011?---I'm just aware of the name, I'm not quite sure how much involvement he had in it.

But you were aware of them as a name - - -?---Yeah.

- - - in the context of being contracted to the University?---Yes.

So did Mr Faysal ever ask you about or tell you about his intention to go on a trip paid for by Rega Controls overseas?---No.

30

Did he ever tell you about his intention to go on a trip paid for by Targetti overseas?---No.

Did he ever tell you about an intention to go on a trip that was to be paid for by Wilkhahn Wilkening overseas?---No.

Did anyone from those companies ever inform you of the fact that they were paying for or intending to pay for a trip for Mr Faysal?---No.

40

Did he ever tell you anything about an intention to have other family members travel at the cost of those companies?---No.

Well, can I ask you, thinking again about the period of 2006 to 2011 if Mr Faysal had come to you and told you that he intended to take a trip overseas where it would be paid for by one of those companies, Rega, Targetti or Wilkhahn, what would you have said to him?---I would have said in fact that it wouldn't be appropriate, it'd be a conflict of interest and I wouldn't approve it.

Would it have been the same response if he'd said that it was an intention that he and family members were going on a trip to be paid for by - - -?  
---It'd be the same, yeah, more so.

And is that something that you would have regarded as not permissible at the University, consistent with the University's policies and procedures in respect of gifts and benefits?---Correct.

10 Can I ask you if Mr Faysal had come to you and said that it was a trip that he was proposing to go to a trade fair overseas to be paid for by one of those companies that I've mentioned, first of all, do you recall him ever mentioning to you his intention to go on such a trip, to travel to a trade fair or a factory visit for one of the companies overseas to be paid for by those companies?---I'm aware in fact that he had told me he had visited a trade fair on, on one holiday he'd been on but, but he, there was no intention or no mention of, of anyone ever paying for that other than in fact he was going on his own accord.

20 Do you recall when that was, doing your best?---It would be several years ago, yeah.

And do you recall where the trade fair was?---It'd be Europe, yeah, but somewhere in Europe, yeah.

Do you recall what the nature of the fair was, whether it related to particular products or - - -?---No.

30 If he had said - you've said that he didn't mention to you the fact that it was to be paid for by one of the contractors. If he told you that he intended to go to one of these trade fairs or even to a factory visit to be paid for by one of the contractors, what would you have said to him?---Definitely not, yeah. He had one example where in fact actually Nabil did travel overseas.

When was that?---That was back in 2004.

And can I ask you, what was the, what was the purpose of that trip?---That was to do some witness testing on a chiller plant.

40 Excuse my ignorance but is chiller plant, does that mean, is that something to do with air conditioning?---Oh, okay. A chiller plant is, it's an air conditioning plant, yeah, a very, very large piece of, of mechanical plant.

And was that plant plant that was intended to be installed at the University?  
---That's correct, yes.

So was there a trip, I think you said in 2004?---2004, that's correct.

And do you recall was that a trip where Mr Faysal did travel overseas at the cost of the contractor?---That's correct, yes, and that was approved by the University.

Do you recall who the contractor was?---McQuay, McQuay.

McQuay?---Yeah. M-c-q-u-a-y.

10 So in that instance it involved a trip that, well, we've been told a trip where Mr Faysal was to see some products that were to be installed at the University?---That's correct.

And McQuay, were they contractors who were to be involved in the installation of the chillers?---That's correct, yes.

20 Putting aside that instance of a trip where Mr Faysal was to travel overseas to see particular chillers that were to be installed at the University, do you recall him on any occasion ever seeking your approval or telling you of an intention to travel overseas for any form of trade visit or factory visit or trade fair?---No.

And you've said previously that if he had asked you for that permission and told you it was to be done at the cost of the company you wouldn't have approved it?---I would not approve it.

Can I ask you, were you aware at any time that Mr Faysal was working under you that he'd been given a gift of an iPad from a particular contractor at the University?---No.

30 Did he ever disclose that to you?---He never disclosed it, no.

If he'd said to you that Rega Controls or Mr Franjeh from Rega Controls has given me or wants to give me an iPad, what would you have said to him?---I would have disapproved it because we would have given him an iPad if he needed an iPad.

Do you mean for work purposes?---For work purposes, yes.

40 Assume that he's talking about an iPad not to be used at work but for his own personal purposes, if he said that Mr Franjeh wants to give me a gift of an iPad what would you have said?---I would have said that would be unacceptable.

Why would it be unacceptable?---It would probably put him in a difficult situation if in fact a paid contractor is giving him gifts like that, that - - -

Would you regard that as a conflict of interest?---Yes.

Would you regard that as contrary to the University's policies in respect of gifts and benefits?---Certainly if we didn't get, declare it and get the vice chancellor's approval and I suspect the vice chancellor's approval wouldn't be given for such a thing.

10 What about if Mr Faysal had come to you and said that (not transcribable) had given him or wanted to give him an expensive piece of office equipment, a chair, assume for the value of over a couple of thousand dollars? If he come to you and said that they wanted to give him that gift is that, can you tell us whether you would of approved or disapproved of that?--I wouldn't approve of that, no.

Why is that?---Again it would be a conflict of interest.

Can I ask you in the time that you were Mr Faysal's manager, was he someone that you would see regularly in the course of your work?---Yes.

Did you have meetings with him regularly?---Yes.

20 How frequently in the course of the time right up until his cessation of employment earlier this year would you say that you met with him? ---Probably as the various paces of his work transposed the meetings would be more intense and less intense. In the last three years when he was working predominantly when in fact actually the PMO (not transcribable) would be, it would be just every few weeks when in fact actually (not transcribable) to manage products so it would be virtually on a weekly basis just like every other one of my reports.

30 Thank you.

ASSISTANT COMMISSIONER: Thank you. Does anybody seek to cross examine this witness?

MR STITZ: I do.

ASSISTANT COMMISSIONER: Yes, Mr Stitz.

40 MR STITZ: Mr Rabbitt, my name is Stitz and I appear for Mr Faysal. Do you understand that?---Yes, Mr Stitz.

Okay. Now you were his, that's Mr Faysal's, direct supervisor from 1999 through to of April this year?---Correct.

He reported directly to you the whole time except for when he was suspended?---I was his supervisor for that period, yes.

You were responsible for him?---Correct.

Now leaving aside these issues of procurement and leaving aside these issues of outside work, can you just tell me about him as an employee? How did you regard him?---He was an excellent engineer, hard working engineer, and took pride in delivering his projects on time and on cost.

And particularly you reflected him hard working, he went and above and beyond the call of duty there didn't he?---Yes.

He put in big hours?---Yes.

10

And so in that regard he was a model employee?---Certainly in regard to his dedication to his tasks, yes.

And in terms of him carrying out his tasks under your supervision, he was very, very valuable to you, wasn't he?---Yes.

And he was a very valuable asset for UTS?---Yes.

20

Now in August 2009 Mr Kelly speaks to you about some concerns about procurement?---Correct.

In respect of building 1?---Yes.

Which you didn't regard terribly serious I take it because if the applicant, if the job had been presented holistically I think you said it would have been approved anyway?---The ability of in fact which I was making reference to in fact actually the procurement policy itself, not the issue that was actually brought to our attention. The issue that was brought to our attention was non compliance with the procurement policy.

30

Yeah. And then in February he got suspended, of 2010?---Correct.

Now were you made aware of his suspension, sorry his impending suspension?---No.

Nobody told you?---No.

40

So you turn up for work one day and there's no Nabil?---I was given a phone call by, by Robert Kelly that he was planning to suspend him that day.

Right. But you weren't told why?---Yes, it was a result of investigations.

Okay. Okay. So in the days and weeks that followed I take it you would have been concerned to know the specifics of the, of the allegations?---I understand in fact actually the, the, the suspension was in, was the result of in fact actually some allegations made in 2009 which would have been in

regard to a procurement and so I was aware of in fact what those allegations were.

But as his supervisor you would have been concerned to find the specific details wouldn't you rather than just the general nature of the allegation?---I was aware in fact actually what those allegations were in, in 2009, yeah.

And he comes back in July 2010 having served what a four month, four or five month suspension?---Yes.

10

And you say then that you were just contacted in the morning and handed a sheet of paper and told to go and counsel him?---With Patrick Woods.

With Patrick Woods. Might the witness be shown Exhibit 23, please. (not transcribable) haven't they're in - - -?---No worries.

Notes for the counselling - - -?---Yeah.

- - - document there?---Yeah, yeah, I have, yes.

20

Now that was more than a one page document was it not?---I think there was a, there was an introduction page to it, yeah.

Right. So a page preceding it?---Yes, yeah.

And look at paragraph 7, sir, it doesn't seem to be finished does it?---No full stop, no.

No?---Mmm.

30

So I'd suggest to you that the document continued, can you recall that?---I don't, I don't, don't recall if there was anything of any significance on the, on the second page but I can't recall.

Okay. Now just dealing with paragraph 7. You see it says advising that this is a serious matter and that a copy of the (not transcribable) from the Vice Chancellor will be placed on his personnel file?---Yeah.

A copy of the notes from this meeting will also be placed on this, on his file?---Yeah.

40

That being the notes from your counselling session with him with Mr Wood?---That's these notes here, yes.

These notes or the - - -?---Yeah.

- - - or the notes that you would take of the counsel?---No, these notes.

These notes?---Yes.

A copy of the notes from this meeting will also be placed on his file. Do you say that's this document do you?---That's correct.

Are you seriously suggesting that?---Yes.

You, you read that caution didn't you?---Yes.

10 And you thought that's what it meant?---Correct.

How do you describe your own performance? Do you regard yourself as being competent?---Yes.

MR DOWNING: I object.

ASSISTANT COMMISSIONER: Sorry, I don't see the relevance of that.

MR STITZ: It'll become relevant, it will certainly become relevant,  
20 Commissioner.

ASSISTANT COMMISSIONER: Well, I don't see how, Mr Stitz.

MR STITZ: All right. Well, I'll leave it till later and then it will become apparent.

So no notes were made during this meeting?---No, because we, we, we worked through these, these notes here.

30 Okay. And you read paragraph 2, didn't you?---Yes.

And you saw that it referred to outside work, as did paragraph 1?---Yes.

Which is entered outside work?---Yes.

So the first item on the agenda is outside work?---Correct.

Okay. And then paragraph 3 refers to outside work at Gosford, do you see that?---I see it refers to in fact actually work being done at Gosford, I don't  
40 see in fact it making reference to, to outside work at Gosford.

Well, read that to yourself, sir, and see if you're going to repeat that answer? ---The issue there was, was in regard to in fact actually one of Nabil's subordinates and in fact actually taking time off in lieu to be doing some sort of inappropriate and work contrary to our guidelines. It doesn't say what that was.

No, no, it didn't say what it was but it did say it was outside work, didn't it or are you having trouble reading?---(No Audible Reply)

And just to be fair to you, sir, we're talking about paragraph 3?---Yeah, yeah, it's outside work, yes, yeah.

Right?---Yeah.

10 But you didn't know what it was, did you?---The, the, the reference was in regard, no, I didn't know what type of work it was.

So you're there to counsel him about outside work at Gosford and you didn't even know what it was?---I'm not quite sure what work he was doing at Gosford, correct.

Well, how were you going to counsel him (not transcribable) if you didn't know what it was?---(No Audible Reply)

20 I'm waiting?---The, the counselling was in fact actually, it was in fact actually the supervision of staff, that's what the heading was, it wasn't referring to in fact outside work. We were confident that that, that in fact actually in, in Nabil's new PD that he no longer had staff working for him.

Oh, I see, because his role had changed you didn't care, it didn't matter? ---We counselled him in regard to in fact the staff supervision issue.

30 Which wasn't going to be relevant now because he wasn't supervising staff, is that what you're saying?---I stated we in fact actually counselled him in regard to in fact the issue about sort of time off in lieu and, and, and the use of staff to, to, to do that work contrary to the UTS guidelines.

You knew that he'd been doing outside work for years didn't you?---No.

You know the expression turning a blind eye?---I've heard that, yes.

And you know what it means?---Yes.

What's it mean?---Disregarding what's going on.

40 Yeah. And that's what you've been doing for years, haven't you?---No.

But of course you can't come along here and say that, can you? You don't want to say that now, do you?---I, I tell the truth here.

It could get you into trouble with your employer wouldn't you, wouldn't it?--At the moment in fact I'm telling you the facts as, as they are.

I see. Are you seriously telling this Commission that at the time of counselling Mr Faysal on 2 July, 2010 you had never seen Exhibit 4, being Mr Mulhall's report of January 2010?---That's correct, yeah.

Which predates the suspension?---Correct.

Are you saying you never saw it?---I never seen it.

You, his direct supervisor, never saw it?---Never seen it.

10

And Exhibit 5 being the Barclay Report of 7 May 2010, you're seriously suggesting to us that you'd never seen that prior to the counselling session on 2 July 2010?---Correct.

You his direct supervisor?---That's correct.

Or was it the case that you'd seen it and you didn't care about it?---I hadn't seen it.

20

Can I suggest sir that you turned a blind eye to the Mulhall report and the Barclay report?---Not correct. I mentioned previously that I had provided information to Peter Mulhall.

Can you turn to page 911 of the folder please, sir? That's (not transcribable). Okay. Can you just turn to page 911 of the - - -?---I've got it on the screen, I haven't got it.

I'd prefer you to turn over to page 911?---I haven't got 911.

30

Can I be provided with that? I'm sorry, sir, I thought that's what was in front of you?---Sure.

Yeah, sorry, just before you do that Mr Rabbitt, you got along well with Mr Faysal, didn't you?---Correct.

You saw each other a lot in the course of your work?---Correct.

Did you occasionally have coffee with him?---I may have, yeah.

40

Yeah. And you talk about, you know, life outside work?---I've certainly probably talked about things outside of work on occasion, yes.

Yeah. You talk about your families?---Yes.

You were aware where he lived?---Yes. Yeah, yeah.

Yeah?---Generally, yeah.

Generally?---Yeah.

What was his address?---I think it was down at [EDITED].

Yeah?---Yeah, yeah.

C[EDITED] ring a bell?---Sorry?

[EDITED]?---Not really, yeah, I just know he's out in [EDITED].

10

Okay. All right. Let's go to page 911?---Yep.

Okay. Now this was done, this application appears to have been signed by Mr Faysal on 9 August and signed by you on 9 August 2010?---Correct.

And that was after his return from suspension?---Correct.

And was it the case that he provided it to you out of the blue or did you ask him to do it?---I believe in fact actually we talked about this in the counselling, that he was going to submit an outside work application.

20

Yeah. Did you say something in effect, look Nabil, we better do one of these forms for this outside work that you've been doing?---As I mentioned Patrick and I just discussed the submission of this form during the counselling.

And so he supplied the form as the counsel assisting as pointed out, it's got an awful lot of blanks in it hasn't it?---Yes.

30

Well the majority of the document has not been filled out. Would that be fair?---Yes.

Well if you were taking your job seriously on 9 August 2010 why did you sign it with a document in that condition?---I was, I was confident that in fact the information that was provided and, and needed to be filled out in this form was sufficient.

Can I suggest to you, sir, you didn't care what was in that form?---Not correct.

40

And you were continuing to turn a blind eye?---Not correct.

If we go to page 917. The professional indemnity insurance, you told us you looked at that?---Correct.

Yeah. And you see a country, a country, a company NA & CW Investments Pty Limited?---Correct.

You noted that?---Yes.

So the person that was insuring him was that company? Yes?---I see that.

Yeah. Didn't ring any alarm bells for you?---We checked to make sure in fact that, that that company hadn't worked for UTS.

Yeah. But you knew that didn't you?---No, no.

10 In fact you knew of the existence of that company?---No, I didn't it's the first I'd seen it.

And the address [EDITED] didn't ring any bells?--- [EDITED] rung a bell that's being his home address, yes.

And certainly you thought on the face of that document that he had something to do with that company didn't you?---I assumed that this is, this was Nabil's indemnity insurance policy.

20 Yeah. In a company name?---I, I hadn't picked that up.

You didn't pick that up?---No.

Or you didn't care?---I just hadn't picked it up.

I see. And 2011 comes and goes and there's no application for outside work. Correct?---Correct.

30 Is that because, sir, you told him that he didn't need to?---No. We received no outside work applications in 2011.

Right. Didn't you say something to the effect look you did one late in 2010 don't worry about it?---No.

And at the beginning of 2012 did you require of him put in another outside application, outside work application?---Nabil put in an application in 2012.

I see. And you signed off on this one on the 15 March 2012 that you found at page 923?---Yeah.

40

Now I'll just go back and have a look at the document itself, sir. What do you notice about it in respect of blank spaces?---I was confident that in fact actually he'd met the criteria of our outside work one, the areas I was looking at was that was there any conflict of interest, he doesn't say that there's any conflict of interest, he identifies in fact that there was five or six hours a week of work, I was confident that five or six hours a week wasn't going to interfere with in fact his activities that, that he was performing for UTS.

What about the document at page 928, 928 that was attached to it?---Yes.

Didn't ring any alarm bells for you?---As, as you mentioned earlier today I, I hadn't sort of picked up that it was a time sheet 2011.

Sir, did you even read this document?---What I mentioned earlier was in fact I looked down those names or that list there and was comfortable that none of those in fact actually had anything to do with UTS.

10

So you didn't notice that it said "Timesheet 2011", is that what you're telling us?---That's correct.

Or is it the case you just didn't care?---I didn't pick that up.

No, and you didn't pick up the fact that it was full of blanks and require him to fill it out properly?---The, the areas where it was blank there was in fact actually, would be in fact is there any sort of conflict of interest, the fact that he hasn't filled it out would suggest that in fact there was no conflict of interest, that was the way I read it.

20

The fact that he's not positively affirming that there is no conflict of interest wasn't of concern to you?---(No Audible Reply)

He leaves it blank and that's not a concern?---We, we had previously had this discussion with Nabil in regard to what his outside work was in regard to and it was about in fact accreditation and, and in fact actually so doing accreditation to work, to activities that were, that were not involving in fact actually consultancies satisfied me. The obligation is also on Nabil to actually identify those ones, not on me.

30

Isn't there an obligation on you to make sure that that form is completely filled out before you sign off on it?---What, what I done on this form here was just to, to reassure ourselves, in fact actually I arranged a meeting with Nabil and I and in fact actually the, the Deputy Vice-Chancellor, Patrick Woods, to go through this, this document with him as a, as a matter of in fact actually prudence before it was signed off.

So are you you're saying you went through it with him?---Correct.

40

As you were going through it with him why didn't you get him to fill it out if that's what happened?---Oh - - -

Or why didn't you fill it out if that's what happened?---It's his form and as I said, there's the blanks there were, were in fact actually identify that in fact there was no conflict of interest.

So it would have been a very easy matter to put it in front of him and ask him to tick the box which said "no conflict", that would have covered your backside, wouldn't it?---Correct.

Or did you prefer that it wasn't filled in, sir, because you knew all about his outside work, didn't you?---No.

He kept you in the picture and you kept him in the loop?---No.

10 You knew about his overseas trips being funded by contractors, didn't you?  
---No.

You spoke about them, didn't you?---No.

And since this whole thing has blown up, sir, can I suggest you've adopted the approach I was completely in the dark, I knew nothing that way I can't get into trouble, that's your position, isn't it?---Not correct.

20 Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Stitz. Yes, does anyone else wish to examine the witness?

MR DEUTSCH: Just one brief question, line of questioning, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Deutsch.

30 MR DEUTSCH: Mr Rabbitt, if you could go back to page 911 please?  
---Yes.

You will recall that Mr Stitz asked you some questions and put it in a general way about blanks in the form?---Yes.

Can you have a look at page 911 at the top underneath the heading and it's about a quarter of the way down the page, "Outside work activity"?---Yes, that's correct.

40 Did you notice anything about what parts under that heading had been checked or which boxes had been checked?---Yeah. He'd, he'd identify in fact actually, he identified in fact actually that all those boxes had been filled in, yeah, under the outside work.

Did you notice anything about which of those options under the heading "Outside work activity" has been checked?---Yeah, predominantly professional practice.

And did that then give you a view as to which of other fields in the form needed to be completed?---Yes, it would suggest in fact that she, he would only just go in fact the actual professional practice component of that form to fill it in, he didn't have to fill out all of the other sections of that form.

Because the corresponding boxes on page 1 haven't been checked?---That's correct.

Nothing further.

10

ASSISTANT COMMISSIONER: Yes, thank you, Mr Deutsch. Yes. Well, that concludes your examination, Mr Rabbitt and you are now excused?  
---Thank you.

Thank you.

**THE WITNESS EXCUSED**

**[12.34pm]**

20

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Assuming that he's here, the next witness is Mr Phillips.

ASSISTANT COMMISSIONER: Is Mr Phillips here?

MR DOWNING: I understand he was outside earlier today.

30

ASSISTANT COMMISSIONER: All right, well, have a look. Yes, you're Mr Phillips?

MR PHILLIPS? Yes.

ASSISTANT COMMISSIONER: Are you legally represented Mr Phillips?

MR PHILLIPS: No.

40

ASSISTANT COMMISSIONER: Mr Phillips you have been called to give evidence and you are required to answer all of the questions asked of you. Witnesses before the Commission are entitled to seek a declaration under section 38 of our act, the effect of which is that none of your evidence would be admissible against you in any civil, criminal or disciplinary proceedings. Do you wish to seek a declaration in those terms?

MR PHILLIPS: Yes please.

ASSISTANT COMMISSIONER: I would point out that the only circumstances in which your evidence is not protected is if it is found that

you have breached the act by providing false or misleading evidence or in some other way. Do you understand that?

MR PHILLIPS: Yes.

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

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

ASSISTANT COMMISSIONER: Mr Phillips, you're required to take an oath on the bible or make an affirmation to tell the truth. Do you have a preference?

MR PHILLIPS: No.

ASSISTANT COMMISSIONER: Do you want to take an oath on the bible?

MR PHILLIPS: Sure.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Downing.

MR DOWNING: Thank you. Mr Phillips, if you could just tell us your full name?---Scott Arthur Brett Phillips.

And your date of birth?---29/04/59, thank you.

10

And your address?---[EDITED].

Now it's the case isn't it that you've previously attended the Commission and gave some evidence on 4 July 2012?---Yes.

Okay. Commissioner, I intend to tender transcript of that for examination and I ask that there be a variation of the section 112 order in respect of it.

20

ASSISTANT COMMISSIONER: Yes. In respect of the compulsory examination of this witness, I remove the non publication order and it will be admitted and marked as Exhibit 25.

**THE NON-PUBLICATION ORDER PREVIOUSLY MADE IN RESPECT OF THE TRANSCRIPT OF THE COMPULSORY EXAMINATION OF MR PHILLIPS IS REMOVED**

30

**#EXHIBIT 25 - COMPULSORY EXAMINATION TRANSCRIPT OF SCOTT PHILLIPS DATED 4 JULY 2012**

MR DOWNING: And Mr Phillips, you told the Commission on the last occasion you are the general manager of Targetti Australia?---Yes.

And Targetti Australia is a company that provides lighting products?---Yes.

40

And Targetti is a company that has sold those lighting products to UTS over a period of some years now?---Yes.

And - - ?---Directly and indirectly.

I'm sorry?---Directly and indirectly.

So there was some direct sales by your company?---Yes.

And are there other wholesalers - - ?---Yes.

- - - that sell Targetti products?---Most of the sales would've been through the wholesaler.

And is Rexel one of the wholesalers that sells your products?---Yes.

Are there a number of wholesalers in Australia - - -?---Yes.

10 - - - that sell them? Now is it fair to say that thinking about the period 2006 through to about, well through to this year, that UTS was regarded as an important client for Targetti?---Yes.

And on the last occasion when you gave some evidence you were asked specifically about travel for Mr Faysal on one occasion or two occasions his wife that Targetti had paid for for him? You recall being asked some questions about that?---Yes. Yes.

20 Now I'm happy to take you to documents if you need them to remind you but do you recall that from 24 April 2006 to 8 May 2006, Targetti paid for Mr Faysal to go on a trip to Europe?---Yes.

And you recall that that involved travelling from Sydney to Vienna to Frankfurt?---Yes.

Also to Pisa?---Yes.

Then Frankfurt to Beirut?---That'd be the return trip.

30 And then Beirut, Frankfurt, Vienna, Sydney. Do you recall that?---Well those details are not - I know Nabil was at Frankfurt but the actual route he took I - - -

Well you understand Mr - you know Mr Faysal?---Yes, yeah.

And you know he's of Lebanese origin?---Yes.

Do you understand that on that trip he had a side trip to Beirut?---I didn't recall that, no.

40 Could I ask you to have a look at page 351 of the first volume of the exhibits. It should come up on the screen in front of you I hope. There's a paper copy there as well if, if that's easier to read?---Right.

Do you see that's a booking document from MP Travel to Targetti Australia to Mr Karpel?---Yeah.

If you go to the next page. Sorry, I'll just stop there. Mr Karpel is another one of the directors at, at - - -?---Yes.

- - - Targetti?---Yes.

And is he the sales manager?---Yes.

And do you recall that he travelled on this trip in April, May 2006?---Yes.

If you go to the next page 352 you'll see that there's a record there again from MP Travel to Targetti of, well it's a tax invoice in respect of travel for Mr Faysal. Do you see that?---Yes, yes.

10

Showing travel from Sydney Vienna, Vienna Frankfurt, Frankfurt Vienna, Vienna Sydney?---Yes.

And it's business class travel that was paid for by Targetti?---Yes.

If you go to the next page you see there's also travel that was paid for Frankfurt Beirut, Beirut Frankfurt between 29 April and 4 May?---And you're saying we paid for that?

20

Well look at the document. You see it's a record for MP Travel to Targetti - - -?---Okay.

- - - tax invoice?---I was not aware we paid for that.

Looking at the document though you accept that you did don't you?---Well I'm just saying I wasn't aware we paid for it. But if, if that's - if you know we did, we did.

30

Well have a look at the page before 352. Do you see there's a reference there that the cost for that travel for Mr Faysal that was the part Sydney Vienna, Vienna Frankfurt, Frankfurt Vienna, Vienna Sydney was paid for on a particular credit card ending in 72834?---Right.

Are you aware of whose that was?---No.

It's not your credit card number?---Well if it is I don't recognise it. But clearly the company - well I'm disputing the payment I'm just saying I don't, I'm not aware we paid for that side trip.

40

Well were you not aware that Mr Faysal had had a side trip during the course of that overseas trip that Mr Karpel went - - -?---No, I was not.

- - - on as well to Beirut?---No. Don't have any recollection of that. I'm not saying it didn't happen I just don't remember it. You're saying it was a side trip, it wasn't a trip, it wasn't a detour on the way home.

Well the trip went, it covered the period 24 April to 8 May 2006 and the documents I've shown you suggest that there was a flight to Beirut on the

29 April for Mr Faysal not Mr Karpel and then a flight from Beirut back to Frankfurt on 4 May?---Yeah, back to Frankfurt. So it was a side trip. No, I wasn't aware of that.

And can I ask you to have a look, there's a statement at tab 10 page 286 of the volume of statements in this matter. Hopefully it'll come up on the screen in front of you?---It's blank at the moment.

10 See 286 it's a statement from Mr Fleischmann who is a person that works at MP Travel?---Right.

And are you familiar with MP Travel as someone that does travel arrangements for Targetti or is that not something you're concerned with? ---Yeah, I don't get involved in it but I do know the name, yes.

Okay. If I could ask that you go ahead to page 291, at the bottom of the page at paragraph 26 Mr Fleischmann indicates that the charges on that card that end with 7-2-8-3-4, the card of Amanda Cohen at Targetti Australia? ---Right. So why did you ask me if it was my card?

20

Accept that it does appear from these documents - - -?---Why did you ask me if it was my card?

Mr Phillips, I'll ask you some questions about the documents if that's all right?---Well, it's Amanda Cohen's card, why would you ask me if it was my card?

30 Is Amanda Cohen someone that works at Targetti Australia?---Yeah, she's an account manager (not transcribable) you clearly knew whose card it was.

30

What I'm asking you is in relation to that trip you accept that Targetti paid for the entire trip?---Yes. Well, I don't know if we were reimbursed for that but clearly we paid for the entire trip.

And if it's suggested by the Mr Fleischmann from the travel agency that the total cost was \$9,208, would that sound about right for the business travel involved?---I guess.

40 Now, do you recall what the purpose of that trip was?---If it was Frankfurt it would have been the Light and Build Fair.

And is that a fair at which some of the Targetti products are displayed? ---Yes.

Amongst other products?---Yes, there would be roughly 2,000 exhibitors at that fair. It's the premium lighting and innovation building fair in the world.

And you gave some evidence about this on the last occasion, I take it that on each of these trips that Mr Faysal went on it was the result of an invitation from someone at Targetti?---Yes.

And normally Mr Karpel would have been that person?---Well, initially, well, Mr Karpel would be the one that would talk to Nabil, but it would be myself or Leon and Amanda which would make the final joint decision.

10 Now, if you could - thinking ahead from 2006 do you recall between 18 April, 2007 and 30 April, 2007 Targetti paying for a trip for Mr Faysal to go from Sydney to Bangkok to Vienna to Milan and then back from London, Vienna, Bangkok and Sydney?---Sorry, what was the end, the end destination?

Sydney, back to Sydney?---Yeah, no, sorry, the, the - - -

Oh, Sydney, Bangkok then to Vienna to Milan?---Milan, yes.

20 And then flights from London to Vienna, Bangkok and then back to Sydney?---Yeah, Milan, yeah.

And do you recall in respect of that trip that, was that to a particular training centre or - - -?---That was, if it was Milan it would have been to the EuroLuce Fair.

And is that a lighting fair as well?---It's a lighting and furniture fair.

30 And again, a fair at which a number of exhibitors have their products including Targetti?---Correct.

And to your recollection, if you don't know about this tell me, but was it your understanding that ordinarily that when Mr Faysal was taken on overseas trips he was given business class fares?---Yes.

That he was normally put up in a good standard of hotel?---The same hotel that Leon would have been at.

40 Right. And that his meals and incidental expenses like breakfast, lunch, dinner, that would normally be paid?---Yes.

Now, in April 2008 do you recall that there was a particular trip that was paid for by Targetti for Mr Faysal and on this occasion his wife as well to go to Europe?---Yes.

And was that for the purposes of a particular anniversary date for the Targetti head company in Europe?---Yes, it was to Frankfurt again, was it not?

Well, the flight seems to suggest Sydney, Abu Dhabi, Frankfurt?  
---Frankfurt so it would have been to the Light and Build Fair again, the premium fair that we discussed a moment ago.

And then?---And then on to the Targetti 80<sup>th</sup> anniversary which was a special invitation from Targetti.

And where was that held?---Milan I think, somewhere in Italy.

10 Do you recall also that in the course of this trip with Mr Faysal and his wife attending that they had a period in Florence and then in, in Venice?---No, I don't know anything about Venice, Florence for sure, that's where Targetti's based.

Do you recall that for the purposes of that trip that Targetti paid for the cost of the airfares for Mr and Mrs Faysal?---Yes.

Obviously the hotel accommodation in respect of the particular events that they were going over for that - - -?---Yes.

20 - - - Targetti was involved in?---Yes.

Do you recall whether Targetti also paid for, for instance, train travel from Florence to Venice?---No, I don't, I didn't know he went to Venice, so - - -

Well I can show you some documents in respect of this but would you accept from me that Targetti met the cost of the train travel from Florence to Venice and a hotel in Venice for Mr and Mrs Faysal?---I'll accept if you're saying it's true but I'm surprised.

30 If I could ask that you go to page 386 of the first volume. Do you see that page is Mr Faysal's travel documents again from MP Travel and again billed to Targetti?---Yes.

The next page 387, the same travel or the airfares in respect of Mrs Faysal?--Yes.

40 Do you see the next page billed to Targetti from MP Travel in respect of first class travel from Florence to Venice for Nabil Faysal?---\$235, yes I did.

Then the following page, flights for Mr Faysal in respect of travel from Frankfurt to Florence, Vienna and Frankfurt?---Which is return, yeah.

The next page 390 billed to Targetti from MP Travel in respect of Venice, Vienna travel - - -?---Yes.

- - - for Mr Faysal. And then the following page 391 is the Frankfurt, Florence, Vienna, Frankfurt travel for Mrs Faysal?---Yes.

The following page Venice, Vienna travel for Mrs Faysal. You can go to 393, that's your travel arrangements in respect of the same trip?---Yes.

If you could go ahead to page 397, do you see that seems to be a payment through Targetti for travel insurance for Mr Faysal?---Yes.

10 Then the next page 398, a hotel, hotel Vittori in Florence for Mr Faysal?---Yes.

And the following page 399, the Hotel de France, accommodation for Mr Faysal in Vienna?---Which was (not transcribable) yeah.

And then the following page 400, accommodation for Mr Faysal at the Grand, Carlton and Grand Hotel in Venice in Mr Faysal's name?---Mmm. Okay.

20 You're on that trip?---Yeah.

It's your recollection isn't it that Mrs Faysal was travelling with Mr Faysal?---It is.

So do you assume that Mrs Faysal travelled with him and stayed with him at the various hotels?---I guess.

30 So were you aware that in the course of that trip that it would appear that Mr and Mrs Faysal had a side trip to Venice which was paid for by Targetti?---No, I was not.

So do I take it from what you've said that in respect of the first trip that I took you to, the side trip to Beirut isn't something that you would think that Targetti would normally pay for?---No I would not expect us to pay for that.

And you wouldn't normally expect that in this trip that there would be a side trip to Venice?---No I would not expect us to pay for that either.

40 So you're surprised that it seems that payment was made for those things?---Absolutely.

If I could ask you then, do you recall in 2009, that is from 26 to 29 June 2009 there was a trip arranged for Mr and Mrs Faysal to New Zealand?---Yes.

And was that to visit New Zealand and stay in a particular, I think an apartment or a house that you have in New Zealand?---That was a personal trip.

But the company paid for Mr Faysal and his wife?---Did they?

Well, sorry, do you understand that either the company or one of its staff members paid for the cost of the airfares?---No. That trip to New Zealand was a personal trip, that should have been to my personal account. It had nothing to do with business.

10 So what your understanding is that that should have been paid for by you personally?---Absolutely, 100 per cent.

Just excuse me for one moment. Are you aware of whether, Amanda Cohen later married and became is it Amanda Hinothroza?---Yes.

Are you aware of whether she paid for the cost of that trip to New Zealand? ---No, I, no, I'm not aware she paid for it.

On her - - -?---I would have thought I would have paid for it.

20 Would it surprise you if it was paid for by her on her visa card?---Yeah, it would be, it would surprise me.

Because that was a trip that had nothing to do with business is that what - - - ?---Absolutely nothing to do with business it was a personal trip.

All right. Thinking ahead from that day do you recall in from 9 to 13 November 2010 that Targetti paid for a trip for Mr Faysal to China?---Yes.

30 And the Targetti company has a factory in China, that's correct isn't it? ---yes.

And you recall that that was a trip that involved Mr Faysal and Mr Karpel going to China and visiting the factory?---Yes.

And Targetti would have paid for the cost of all of that travel?---I would hope so.

So airfares and accommodation?---Yes.

40 In 2011 do you recall Mr Faysal travelling, travelling to Europe to Milan at the cost of Targetti?---So again that would be the EuroLuce Fair being on the odd year and yes.

And travelling with Mr Karpel?---Yes.

And Targetti paying for that trip?---Yes.

And in April of this year do you recall that there was actually a booking made for Mr Faysal to travel to Europe to Copenhagen and Mr Faysal also to fly from Frankfurt to Beirut and back to Frankfurt, there was a booking made for that travel at the cost of Targetti?---No, I'm not aware of the details of the route that he was going to take, I was aware that he offered for him to take him to the Light and Build Fair in Frankfurt.

And you're aware that that travel was ultimately cancelled?---Yes.

10 Again if the booking suggested that there was to be a side trip to Beirut would that be something that would be surprising to you that Targetti would be paying - - -?---Absolutely but, but if, if he was coming back through Beirut I wouldn't be surprised by that. If there was no impact in cost on the company on them going through, coming through Beirut or coming back through wherever we were going to send them through I had no issue with that but if it was a side, side trip I would have anticipated we did not pay for that.

20 Well accept from me that consistent with the other examples I've given you that it was a side trip that is it was intended that Mr Faysal was due to fly back to Sydney on 26 April after departing Sydney on 10 April but there was to be a side trip from Frankfurt to Beirut and back to Frankfurt from the 17 to 22 of April?---Well the same applies.

30 Now adding the figures that travel agents provide in respect of those six trips excluding the cancelled one this year there's a total of about \$61,500 in travel seems to have been paid for, for Mr Faysal and on a couple of occasions his wife by Targetti. Does that figure six trips sound about right to you?---A couple of occasions. One occasion, one occasion for, for (not transcribable)

There was a trip to your 75<sup>th</sup> anniversary in 2008?---That's the only trip.

MR DOWNING: Mrs Faysal also went to New Zealand didn't she?---But that was a personal trip.

40 But I've suggested to you that I think you indicated you thought you'd paid for it but the evidence suggests - - -?---Well, if I hadn't paid for it I'll, I'll, I'll have to sort, I'll have to correct that in our accounts because it's incorrect that the company, if you're saying the company's paid for it, that's incorrect.

Well, Ms Hinostrza's Visa card seems to have been charged for it?---Yeah, well, okay, so I don't know what's been put through the books but if it's been put through the books as company business we'll have to make a correction because that's incorrect. So there's one trip involving Chafica which was the invitation from Targettit to the 80<sup>th</sup> anniversary, that's the only time.

ASSISTANT COMMISSIONER: Yes. But it doesn't matter whether it was personal, it's who paid for it and whether it was a gift to him. He didn't pay did he, his wife didn't pay, that's, you know - - -?---Well, if it's personal it's personal.

Yes.

MR DOWNING: Ms Hinostroza is not married to you?---No.

10

There'd be no reason for her personally to pay for Mr and Mrs Faysal to fly to New Zealand, would there, other than the fact that it could be something to do with the company?---No, no, I'm suggesting that's an error. She's put it through, if she's put it through on her card like she has the other and therefore its gone through the books of the company, that is an error.

20

Well, can I ask you just in respect of the travel that Targetti's paid for for Mr Faysal, in that period 2006 through to 2011 and the booking that was cancelled this year, you gave some evidence about it on the last occasion and said that the purpose of the travel was education and I think you agreed on the last occasion that you're not an educational institution, you're a business?---Well, no, carry on.

Sorry, do you say you are an educational institution?---We do a lot of education as a business.

But you're a private company?---One of the principles of Targetti is education.

30

ASSISTANT COMMISSIONER: Sorry, look, I think we better adjourn at this time. It's all getting a bit too much for me and it's lunchtime so we'll resume at 2 o'clock. Thank you.

**LUNCHEON ADJOURNMENT**

**[1.02pm]**