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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 2 FEBRUARY 2012

AT 10.00AM

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

ASSISTANT COMMISSIONER: Thank you. Please be seated. Yes, now we had Mr Ipkendanz I believe. Could you come back, sir. Yes, now you're still under oath, Mr Ipkendanz?---Yes.

<CHRISTOPHER JOHN IPKENDANZ, on former oath [10:03am]

10 MR LEWIS: And the objection continues, Commissioner, the declaration.

ASSISTANT COMMISSIONER: Oh, yes, and the declaration continues to apply to your evidence. Yes, Ms Williams.

MS WILLIAMS: Thank you, Commissioner. Mr Ipkendanz, I was starting to ask you some questions yesterday about the 2009 cleaning contract tender. The FMS tender evaluation committee comprised Mr Munro, Mr McCallum, Ms Slade and yourself. Is that right?---That's correct.

20 And Mr Ross Williams was also involved in that committee as an observer. Is that correct?---He was, yes.

And he was not actively participating in the committee. Is that right?---Not that I can recall, no.

All right. Ms Slade prepared some benchmark figures in terms of the hours per week that it would take to clean each building. Is that correct?---Yes, she did.

30 And who was it who asked her to do, to prepare those benchmarks?---I believe it was Mr McCallum.

Right. And can you recall when the benchmarks were prepared during the tender process?---Not specifically, no.

All right. Was it something that you were given a copy of once they were completed?---Once they were completed, I was given access to them and from those benchmarks I then assessed the submissions from the tenders.

40 All right. Do you know who else received a copy of the benchmarks?---I believe Mr McCallum had a copy, Ms Slade and then from the first evaluation committee meeting I believe the other members would have had access to this.

All right. And you prepared an assessment of the tenders as against those benchmarks by yourself in the first instance?---That's correct.

And was there then a discussion about that assessment with the other members of the committee?---There was the assessment that I conducted,

the qualitative, sorry, quantitative portion of the assessment made up part of the discussions from the evaluation committee meetings, yes.

Could Mr Ipkendanz be shown volume CP3 at page 1, please. Mr Ipkendanz, have you seen that document before?---I have, yes.

Do you know who wrote it?---I believe it was myself.

10 All right. And do you recall at what stage this was written during the tender process?---It would have been after the submissions were received, as that's an assessment of those submissions.

Do you remember whether it was before or after the shortlisted tenderers were interviewed?---I believe it would have been before.

20 It was apparent to you wasn't it from preparing your quantitative assessment and in particular preparing the table that appears on page 2 of that report that there were a number of instances in which the hours per week tendered by Quad Services were exactly the same as the hours per week estimated in the FMS benchmarks?---That's correct.

Right. Was that something that struck you as unusual at the time?---The precise nature of the comparison was, yes, the fact that it was to decimal points of zero, point zero zero per cent, yes.

Did it cause you any concern?--- I believe I may have raised the issue with Mr McCallum and the evaluation committee. Whether or not I pursued it further I can't recall.

30 All right. Do you think you raised it in the course of a committee meeting or discussions informally?---I believe it may have been both.

Can you recall what was said first of all in the informal discussions?---No, not specifically, sorry.

And can you recall what was said on the occasion when you raised it in the committee?---Again not specifically, no.

40 Do you recall whether anybody else on the committee indicated surprise or concern about the figures being identical in those instances?---I can't recall specifically, no.

Do you know whether anybody else on the committee investigated the issue further or whether it was simply left?---I'm not aware of anyone investigating it further. I believe the fact that the figures aligned so closely to the benchmark were the ones provided by the incumbent that they were accepted on that basis.

All right. So in other words the committee accepted that the likely explanation was the fact that Quad was the existing cleaner?---I believe so, yes.

One of the, the figures, and it's the first one in the table on page 2 relates to the Bellevue sports grandstand?---Yes.

10 The Commission has heard evidence that the figure that had been included in the FMS benchmark was in fact an error because the figure that was given as a weekly figure should have in fact been fortnightly. Is that something, is that a matter that you were made of aware of during the tender process?---I may have been, I can't recall specifically, no.

So far as you're aware did Quad Services receive a copy of the FMS benchmark hours per week?---Not that I'm aware of, no.

20 I just want to ask you some questions briefly about your, the way in which you carry out your role as Campus Service Manager currently, because you are in that position currently. That's right isn't it?---That's correct, yes.

When tender processes are under way currently within, that fall within your area, do you write the tender specifications?---I do at the moment, yes.

30 Do you set the assessment and – the assessment criteria and the weightings?---No that's, the two tender processes that I've involved with in my secondment since March of last year, March 2011, Portland Procurement Services have been engaged and it's been that external body that have set the criteria around the qualitative and quantitative assessments of the tenders.

And before you even write the tender specification there needs now to be a procurement plan, is that right?---That's correct, yes.

And who writes the procurement plan?---It's usually the person that's responsible for the services so the line manager from FMS.

40 All right. So if you're responsible you would write the procurement plan and then the specification?---Correct, yes, and submit a request to the Financial Services Directorate for raising of a tender number.

And who - I withdraw that. What happens to the procurement plan after you've written it? Does anybody review it or comment on it?---I believe it's reviewed by Financial Services and if there's any concerns that they have as part of that procurement plan then they'll be discussions around the best way to proceed.

Have you had an occasion where they've raised concerns or issues for discussion with you?---Not in my existing secondment, no. In 2010 the

procurement plan for tender 2010-11 which was the subsequent tender once 2009-33 was withdrawn. There was quite a discussion around the procurement plan.

And what were the issues that were the subject of that discussion if you can recall?---I believe they were mainly about probity.

10 Once you've written the tender specification Portland have set the assessment criteria and the weightings, the tender is, Request for Tender is issued?---Once I've written specifications they'll be referred to our legal office for review and once they're happy with the form of the documents they'll provide advice back to me. I'll then provide those documents to Portland and from there they'll construct their, what they call their bid sheet which is essentially the quantitative assessment schedule and at that point they'll also use the content of the tender document to establish the qualitative assessment portion.

20 And the tender is, the Request for Tender is then issued and submissions are received?---Correct.

Is that correct? And what role if any does Portland play in looking at the submissions that are received?---Portland will assess the submissions on a quantitative basis and they'll provide it to people within the institution, within the University to evaluate on a qualitative basis.

Does that mean then that your evaluation as the relevant line manager is limited to qualitative issues?---That's correct, yes.

30 And do you do that alone or with other staff members of FMS?---The, the determination of who will conduct the qualitative assessment is usually done in conjunction between Portland and the line manager tendering the works and the Financial Services Directorate and one tender that I've assessed by that means, it was done by myself and one of my team members who is a specialist in the area.

A tender assessment report is prepared, is that right?---That's correct, yes.

40 And is that prepared by you in conjunction with Portland?---No, that's provided solely by Portland.

All right. And the assessment report makes a recommendation?---That's correct, yes.

And that recommendation is then approved by whom?---That recommendation will be passed to myself if it's, if it's me that's, that's running the tender. That will then be discussed with my supervisor, in this case Mr Munro and then that will be referred to Financial Services.

And after it's referred to Financial Services if they approve it then goes to the University's tender committee or - - -?---If the total value of the tender is under \$2 million I believe it goes to the Chief Operating Officer, if it's over \$2 million it will then go to a Tender Advisory Committee.

And that final decision-maker determines whether or not the contract in fact proceeds, is that correct?---Yes, I believe so.

10 If a contract does proceed are you as the line manager then responsible for administering that contract on a day to day basis?---That's correct.

So you for example authorise any invoices for payment?---Yes.

Make decisions about any variations to the contract?---Yes.

20 Do you in some circumstances need approval from Mr Munro in relation to those variations?---It would depend on the terms tendered to either the Tender Advisory Committee for their approval or to the Chief Operating Officer for their approval. It would be either a monetary value or a percentage portion of the total value.

Is that because the terms submitted to either the Chief Operating Officer or the tender committee include typically a contingency amount that FMS is authorised to administer?---Correct, yes.

30 You make decisions about whether or not the contract term is to be extended beyond the initial three years?---I believe so. I don't believe in my current secondment that I've done that or in my previous secondment that I've actually actioned either of those mechanisms.

Do you have an understanding about whether it's your decision to make or whether you need to make a recommendation that is then approved by Mr Munro?---The way I would manage it at the moment, I would memo Mr Munro recommending a course of action and then leave it to them or Mr Munro to either make the decision relative to his delegation or to escalate that to someone in the senior executive.

40 Thank you. Excuse me, Commissioner. Mr Ipkendanz, I asked you about approval of invoices for payment. Does financial or does Finance have any role in cross-checking your approval for payment or do they simply process invoices once you've approved them?---I'm unsure of their internal processes. The process from my point of view is that an invoice is submitted by the supplier, I review that against the conditions of contract and the specifications and the performance mechanisms that may exist and if satisfied that those have been met, I'll then approve that for payment and pass that on to Finance. I can't comment really on their internal processes because I'm not aware of them.

Have you ever had an occasion when Finance has queried an invoice that you've approved for payment?---I have done, yes.

You have. And what was the nature of the query they raised on that occasion?---The nature of the query was to do with the timing of the invoice and the payment terms.

Thank you. Commissioner, I have nothing further for Mr Ipkendanz.

10 ASSISTANT COMMISSIONER: Thank you. Yes, does anybody seek to question Mr Ipkendanz? Mr Watson?

MR WATSON: Thank you, Commissioner. Mr Ipkendanz, you took over the role of Acting Campus Service Manager in February 2009 and continued in that role until I think December 2009?---That's correct, yes.

And you indicated a moment ago that you're the current Campus Service Manager?---That's correct.

20 When did you again take up that position?---My current secondment began in March of 2011.

During the period that you were the Acting Campus Service Manager you were aware I take it that the University of New England has a contract with Quad Services?---In, this was in acting in 2009?

Yes, 2009?---Yes, of course, yes.

30 All right. And I think a moment ago you said that your practice when invoices came in from contractors was to review the invoices against the contract and performance and if you were satisfied, you'd approve them for payment?---Correct.

All right. Do you recall that in 2009 Quad Services was providing invoices to the University for what was described as external cleaning of buildings? ---I can't specifically recall the invoices but I believe it was the nature of the contract and that may well have occurred, yes.

40 Could I ask the witness be shown volume, Exhibit 3 page 290. You'll see there that there's an invoice from Quad Education Cleaning Services Pty Limited number 1-6-0-3-2-4, appears to be dated 29 May, 2009?---Yes, that's correct.

And was received on 4 June, I'm sorry, on 2 June and booked on 4 June it appears?---Yep, that appears correct.

Down in the description under the, below the line where tax invoice appears, you'll see the reference to external clean of buildings, May 2009,

and a stamp which has been placed on that right-hand side of the page which seems to read as best I can, "This account has been checked and approved for payment. The estimated total project cost is, is not over \$10,000", and then there appears to be a signature, what appears to be Rhonda Slade's signature and the date 3/9, I take it 3/9/09?---Rochelle Slade's signature, yes, I believe it is.

Yes. And it is also stamped as having been received by the Financial Services Directorate on 3 June?---Correct.

10

Do you recall, this being in the mid period when you were Acting Campus Services Manager, whether you checked this invoice and satisfied yourself that this was in fact in line with the contractual arrangements?---I don't believe I would have checked this invoice, no. The reason I say that is because Rochelle was responsible for the day to day I guess immediate supervision of the work tasking for additional services, external cleaning of buildings which by my interpretation is cobwebbing, window cleaning, pressure washing. Rochelle would have been responsible for following those processes and those jobs through from inception to completion.

20

You're aware that external cleaning extended beyond those types as well, didn't it?---I can accept that external cleaning may do but the way that it would be interpreted by myself would be that external cleaning would be the cobwebbing, window cleaning or pressure washing of buildings.

Well, I'd ask you just to look at the following page if you would, please, it is page 291, there is another invoice from Quad in relation to cleaning services, again dated 29 May, 2009 which appears to have been processed by the University, it has similar stamps but this one appears to have been signed off by Rochelle Slade on 11 June?---Correct.

30

And received by Financial Services on 11 June. Do you see there that there's a charge for vehicle lease and running costs as per variation and below that is November 2008?---Ah hmm.

Are you able to assist the Commission as to why it was that as at that date there was a change in the description of the charge being made by Quad Services in respect of vehicle lease and running costs?---I'm sorry, I don't quite follow your question. Are you saying there's a change in services but one's stating external cleaning of buildings for \$304.45 and the other one's for \$901.09.

40

You take those to be - I suggest to you that as and from that date, although we haven't been provided with it by the Commission, that the University was billed by Quad Services for vehicle leasing and that arrangement then continued up until February 2011 when it ceased to be the contractor and the new contractor (not transcribable)?---Without reviewing prior invoices for that service, I, I couldn't comment whether that was when it was, when that



service commenced or, or what the nature of that was?---So you're not able to assist us as to whether there was in fact a change in the middle of 2009 in the invoicing arrangements in respect of vehicles?---From the examples - - -

(not transcribable)?--- - - - that I've been shown here, no, I'm not.

And you don't have any other recollection as to whether there was a change?---No, I don't.

10 MS WILLIAMS: Commissioner, I hesitate to interrupt but I did say in opening that it was during the period from February 2007 to May 2009 that the invoices were described as external cleaning. The Commission - I do not make any submission that that continued beyond May 2009, it may assist my learned friend.

MR WATSON: I'm seeking to clarify if there was some reason why this witness (not transcribable)

20 ASSISTANT COMMISSIONER: Yes, I understood Mr Watson was trying to get from this witness did he know why the description changed to actually referring to a motor vehicle at that time but I gather you don't really know anything about that?---No.

MR WATSON: Do you know that thereafter, that is as from mid-2009 the arrangement that continued with Quad Services in respect of the vehicle was that Quad Services would re-invoice the University for the cost of the vehicle as invoiced by the University plus five per cent?---I am not aware that there would be an addition margin to it, the five per cent you mentioned. If the invoices were coming in listed as they are on the invoice  
30 you've shown me on page 291 then if there's subsequent invoices to that effect then I could agree that there are.

(not transcribable) is that your evidence?---Yes, that's correct.

Thank you.

ASSISTANT COMMISSIONER: Thank you.

40 MR NEIL: Commissioner, if I may briefly?

ASSISTANT COMMISSIONER: Yes, yes, Mr Neil.

MR NEIL: I represent the University of New England. I wonder if you could tell me please when you took up your employment with the University you received a letter of appointment, is that correct?---I believe I would have, yes.

And do you recall that that letter of appointment referred specifically to the Code of Conduct?---It may have, I can't recall specifically.

You've just got no recollection one way or the other. Is that right?---That's correct, yeah.

Could I clarify one aspect of your evidence about the induction?---Yes.

10 Is it the case that you can't remember again one way or the other whether you actually intended, actually attended an induction?---I didn't attend the induction run by Human Resource Services.

You did not?---I did not, no.

Thank you. If it please the Commissioner.

ASSISTANT COMMISSIONER: Thank you Mr Neil.

20 MR BOURKE: I just have a (not transcribable) matter.

ASSISTANT COMMISSIONER: Yes, Mr Bourke.

MR BOURKE: Mr Ipkendanz, I appear for Mr Martin McLean of Sydney Night Patrol. Sydney Night Patrol still provide security services at the University?---Currently they are, yes.

And on the campus presently they, amongst other things use a Toyota Yaris vehicle?---They do, yes.

30 And that vehicle is used by an audio visual technician at times?---No, that's incorrect.

Did it used to be used by the audio visual technician to your knowledge?---I believe it may have been used at points by the audio visual technician when the audio visual technician position was still part of the contract.

40 Right. And when the audio visual technician needed to get around campus and the distance was too far to walk that person would use either the Yaris or perhaps the van if that was available. Is that correct?---I can't comment specifically on the use of the vehicle by the technician because I wasn't I guess engaged in the day to day operations of that technician's role.

Were you at the University in 2007?---2007, I was not, no.

Yes thank you, nothing further.

ASSISTANT COMMISSIONER: Thank you.

MR BOURKE: Just one more thing, Commissioner, could I just note transcription error both yesterday concerning my client and for whom I appear, page 395 line 31 where it records myself saying, Mr Quinlan, I appear for Mr McLean and for Sydney Night Patrol, I didn't say that, I said for Mr McLean of Sydney Night Patrol, if that could just be corrected, please.

10 ASSISTANT COMMISSIONER: Yes, that's noted. Thank you. Yes, well if there's nothing else Mr Ipkendanz, you may be excused now. You're free to leave?---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[10:27am]**

ASSISTANT COMMISSIONER: Thank you. Yes, Ms Williams.

MS WILLIAMS: Yes, Commissioner, I call Mr Neville Magi.

20 ASSISTANT COMMISSIONER: Yes, Mr Magi, take a seat. Mr Magi, you've been called here to give evidence. You are required to answer all of the questions asked of you. You may seek a declaration. Mr Steirn, is your client - - -

MR STEIRN: We seek a declaration, Commissioner.

30 ASSISTANT COMMISSIONER: Thank you. Yes, the declaration I'm about to make means that nothing you say here can be used against you in any future criminal, civil or disciplinary proceedings. And the only exception to that is if it's found you've breached the Act, for example by providing false or misleading information. Do you understand the effect of that order?

MR MAGI: Yes, I do.

40 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 been 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 BEEN 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.**

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

MR MAGI: An oath.

ASSISTANT COMMISSIONER: Yes, could the witness be sworn, please.

ASSISTANT COMMISSIONER: Thank you. Yes, Ms Williams.

MS WILLIAMS: Mr Magi, could you state your full name and address for the record, please?---Neville John Magi, XXXXX

10 Thank you. You are a director of Prosys Services Pty Limited?---Yes, I am.

And Prosys carries out work for the University of New England in relation to the installation and maintenance of its Cardax access control system. Is that right?---That's correct.

In carrying out that work Prosys issues a quotation for each job that it's asked to perform. Correct?---That's correct.

20 It doesn't have to participate in a formal tender process, you are simply asked to provide a quote?---That's correct.

And once the quote's been provided, the University, if it accepts the quote, issues a purchase order. Is that correct?---That's correct.

Prosys carries out work at a number of other universities. Is that right?  
---Yes, we do.

And at those universities you typically have to participate in a formal tender process for that work. Is that right?---Generally, yes.

30 Mr McCallum has been Prosys' main contact at The University of New England. Is that correct?---That's correct.

And that's throughout the whole of the period from about 2000 until March 2011 when Prosys has carried out work at the university?---Yes.

40 During the period 2007 to 2011, could you identify please the name of Prosys' employees who carried out the work at The University of New England. Is Mr Todd Anley one of them?---Yes. Todd, Imran Cuttilan, I'm not sure, there are a number of other techs that would have gone up but I can't specifically say which ones.

All right. So principally Mr Anley and Mr Cuttilan. Is that right?---Yes.

And Mr Cuttilan, is he the gentleman who has the nickname The Professor?  
---Yes.

Prosys also engaged subcontractors during that 2011, sorry, 2007 to 2011 period. Is that right?---That's correct.

Initially a Mr Mark Smith of a company known as Tritech Security. Is that right?---That's correct.

And subsequently Mr Mick Martin. Is that right?---That's correct.

Now, each quotation that Prosys issued to the University had a particular number allocated to it by Prosys- - -?---Yes.

10 - - -for the purpose of your recordkeeping system?---Yes.

If the University accepted the quote and issued a purchase order, the University would assign a purchase order number. Correct?---Yes.

And Prosys would wait for the purchase order until starting work. Correct? ---Normally, unless there was some rush.

20 Some emergency?---Urgent job or an emergency where we would say that, the University would say the order's coming next week or something but we have to get this door or this alarm done.

Yes?---Yeah.

But otherwise typically you'd want to see the purchase order so you would know there would be no issue about payment?---That's how we'd make the job follow-up, yes.

30 Yes. And once you get the purchase order, Prosys then allocates a job number within its recordkeeping system for the job. Correct?---That's correct, yes.

And that job number is different to your quote number and the purchase order number but the three numbers are linked within your system so you can track them. Is that right?---That's correct, yes.

And Prosys employees who carried out work on the particular job, they would record their time by reference to the job number. Is that right? ---That's how they should do it, yes.

40 And they would have timesheets that they would fill in by hand. Is that right?---That's correct.

They'd do that on the site?---They're supposed to but it doesn't always happen that way.

But at some stage they have to hand in to- - -?---They have to hand that to - - -

- - -an administrative staff number---?- - -the accounts people to do it, yes.

Right. And the accounts people then enter those time records into a computerised system?---That's correct.

And those records are entered against the particular job number within that computerised system?---That's correct.

10 When Prosys came to issue an invoice for the job, the invoice would refer to the job number. Is that correct?---Yes.

And how are the invoices created, is it a manual process or an automatic computer-generated process?---It's a manual project. The site supervisors will tell the Project Manager that the job's complete, the Project Manager will then make up a pre-invoice, put that in the job file and that job file goes up to Accounts and they then issue the tax invoice.

20 All right. Could Mr Magi be shown volume 9 please at pages 140 and 141. Now, at page 140 that's an example of the form of invoice that Prosys would send to the University. Is that correct?---That's correct.

And at page 141, is that what you refer to as a pre-invoice?---Yes.

So that's made up by the Project Manager. Is that correct?---That's correct.

And the Project Manager creates that invoice by reviewing the time records in relation to the job. Is that right?---No, no.

30 How does the Project Manager determine the amount to be included on the invoice?---Oh, the amount's made up from the order or from the quote.

I see. For what purpose then do the, do you keep the time records of the employees?---Simply so that we log their overtime or any special information that needs to be on it and we can also allocate their time to a job.

I see. So that's for Prosys to track its costs of doing particular jobs as against revenue?---That's correct.

40 It's not because the clients are charged by reference to time charging? ---Not necessarily. There are some times where they may be doing a charged job, but that would be handled differently.

All right. And the Project Manager is required to include a statement in the pre-invoice as to whether or not the work is complete. Is that correct? ---Well, the fact that that invoice is created- - -

MR STEIRN: I object, I object to that. Is that normally or in relation to this particular invoice?

MS WILLIAMS: I'm asking Mr Magi questions about the procedures generally. So generally speaking is a Project Manager required to include on the pre-invoice a statement as to whether or not the work is complete?  
---No.

10 Did Prosys maintain an account or a tab at the bar of the St Kilda Hotel in Armidale?---We had an account for our staff, yes.

And it was for your staff to use when they were working and staying in Armidale for University of New England work. Is that right?---That's correct, yes.

20 And were you content for them to use that account to shout Mr McCallum drinks or dinner from time to time?---From time to time if they needed to discuss work matters or in the University assisting our staff with ladders and tools and equipment, so sometimes they'd be talking about getting those things or in gratitude for the University giving them those things and helping them out.

Do you recall that towards the end of 2008 the bills for the bar tab got a bit out of hand?---No, I don't.

No. Could you go to page 43 of the volume you have there, Exhibit 9?  
---Page 43, one- - -

30 Page 43?---Yep.

Do you recall receiving that account for just over \$1,600 in November 2008?---No, I, I haven't seen that account, no.

Could you go to page 41, please?---Yes.

Do you recall receiving that email from Mr McCallum on 27 November, 2008?---Yes.

40 And when you received that email you were aware, weren't you, of the amount of the St Kilda Hotel bill for November 2008 was going to be in the region of Mr McCallum refers to, \$1,800?---Yes.

Having refreshed your memory do you now recall that in November 2008 the bills for the St Kilda bar tab became quite high?---I don't specifically recall it but this indicates that Col let me know, but we did have three or four technicians up there so we don't really restrict our staff on, on their expenses.



How long had the technicians been up there during November 2008?  
---I don't recall. I'd have to have a look at the timesheets.

Ah hmm. Mr McCallum refers in his email to three guys being there for a week?---Ah hmm.

Is that likely to be correct or you simply have no recollection?---No, that could be correct, if they were doing maintenance or something there would be three or four, yeah,

10

Were you aware when, you were aware when you received this email weren't you, from reading it, that Mr McCallum had been enjoying the Prosys St Kilda bar tab every night, at least during that week?---After receiving this email, yes.

Yes. And you were content for him to do that?---Sorry?

You were content for him to do that?---If the guys were discussing work and stuff, yes.

20

ASSISTANT COMMISSIONER: Is it seriously your evidence you thought they were going to the St Kilda Hotel to discuss work and run up the bar tab?---Well I don't know how much was our guys or whatever, but often they would go somewhere to just discuss what had happened during the day and what they needed to do the next day.

And to have a drink?---Yes, and to have a drink.

30

Well I mean, look we're in the real world here Mr Magi, it's not good saying you thought they were having business meetings at the St Kilda Hotel.

MR STEIRN: I object to that, with respect.

ASSISTANT COMMISSIONER: Well I'm sorry - - -

MR STEIRN: I object, in the real world that's precisely what people would do.

40

ASSISTANT COMMISSIONER: No, well I'm sorry I don't - - -

MR STEIRN: That's precisely what people would do, talk business, whether you're a lawyer - - -

ASSISTANT COMMISSIONER: And socialise.

MR STEIRN: And talk business.

ASSISTANT COMMISSIONER: And have a drink.

MR STEIRN: Lawyers always talk business when they're having a drink. There's other examples in the real world.

ASSISTANT COMMISSIONER: Mr Magi, I don't think you'd shy away from the proposition would you that as part of your business you thought providing hospitality to people like Mr McCallum was good for business? ---It's part of what you do in business, yeah.

10

So even if work wasn't discussed you wouldn't object to his being provided with some hospitality would you?---Well no, generally if we do take a client out we discuss work or future work.

That's not my question.

MR STEIRN: Please let him finish. I object to you - - -

20

ASSISTANT COMMISSIONER: Well he's not answering, excuse me Mr Steirn, he is not answering my question.

MR STEIRN: Well he should be allowed to finish.

ASSISTANT COMMISSIONER: So it is not, no, he should not be allowed to finish an answer that is not answering my question. I would like him to answer my question.

30

MR STEIRN: Commissioner, with respect he was giving an explanation. He should have been allowed to finish that explanation. Then, then you should rule.

ASSISTANT COMMISSIONER: He was giving an explanation about something entirely different from the question I asked him. He was saying, yes, normally when we go out we do discuss business. That was not my question. Do you understand? My question is even if business wasn't discussed you would not object to your staff providing hospitality to someone in Mr McCallum's position?---If it was in part of doing the work, that would be okay. If they're up there to do work and the, you know, it could be just in gratitude for - - -

40

ASSISTANT COMMISSIONER: Yes?--- - - - the University helping him out on a project or something.

That's right. And if it was just in gratitude to give him some hospitality you wouldn't object to that?---No.

Thank you. Ms Williams.

MS WILLIAMS: Do you recall whether or not Mr McCallum made a financial contribution to the St Kilda bar tab bill for November 2008?---I don't believe so.

Could you go to page 57 of Exhibit 9, please. Did you see this email in March 2009, these two emails I should say?---I don't recall seeing this one, no.

10 Do you recall whether in about March 2009 Mr Anley raised any concerns with you about the amounts of the St Kilda Hotel bar tab bills?---Not that I recall.

Do you recall whether you became aware in about March 2009 that persons other than Mr McCallum at FMS may be using the St Kilda bar tab bill? ---Not that I recall.

Do you recall becoming aware of that at any stage?---Only when this began, this investigation began.

20 Do you recall that the St Kilda bar tab bills were in the order of 1200 and \$1500 for February and January respectively in 2009?---No, I don't recall that, no.

Would you turn to page 59, please. Did you see that email from Mr McCallum to Mr Anley in March 2009?---Not that I recall, no.

30 Did Mr Anley tell you in March 2009 that Mr McCallum had said that he would cover \$1200 on the next quotation to cover some part of the St Kilda Hotel bill?---Not that I recall.

So far as you're aware did Prosys ever increase a quotation that was being made to the University by an additional amount at Mr McCallum's suggestion?---No.

Could you go to page 69 of Exhibit 9, please. Did you see that email from Mr McCallum to Mr Anley in June 2009?---No, not that I recall.

40 Do you recall being aware in June 2009 that there was an ongoing problem with FMS staff other than Mr McCallum using the St Kilda bar tab?---Not that I recall, no.

Did Mr Anley tell you or were you otherwise aware that Mr McCallum was asking Mr Anley to resolve that problem of the other FMS staff using the St Kilda bar tab?---If Todd discussed it with me I don't recall a conversation about it.

When Mr Anley and your other staff first started travelling to Armidale to carry out the University of New England work they stayed at a place called the Sandstock Motor Inn. Do you recall that?---Yes, I believe so.

And do you remember that they moved their accommodation to a place called the Deer Park Inn in about mid-2009?---No, I only actually found out about the Deer Park when this investigation began. I didn't really take any notice of where they were staying.

10 You don't recall Mr Anley discussing with you his wanting to move the accommodation from the Sandstock to the Deer Park?---If Todd did, I don't recall.

Could your staff stay wherever they chose or would someone else at Prosys have to approve that?---No, they could stay wherever they chose. If they had a preference for a place they could stay where they chose.

And Mr Anley paid for the accommodation himself and then get reimbursed or did he have a corporate account?---I'm not sure. A lot of that is done by  
20 Accounts, but normally we, we'd pay it by one of the company credit cards or something. It saves the guys having to use their own personal money and stuff.

Just going back to 2008, do you recall giving Mr McCallum an expensive bottle of wine as a Christmas gift in that year?---I recall giving Col a bottle of wine, yes.

And I was a reasonably expensive bottle of wine wasn't it?---I don't really recall. I would have just purchased, I purchased a number of bottles of wine  
30 and some other gifts for many clients at the same time so I don't really recall the prices of anything that I purchased.

Do you recall Mr Anley, sorry I'll withdraw that. Were you aware that Mr Anley paid for dinner for Mr McCallum on a number of occasions at the Deer Park Inn from mid-2009?---No, I actually didn't get the Deer Park Inn invoices through me. They were handed upstairs on a corporate card, in the Accounts Department.

40 So you say do you that when Mr Anley went to Armidale it was up to him where he stayed. Correct?---That's correct.

It was up to him whether or not he entertained Mr McCallum and in what circumstances?---That's correct.

It was up to him what that entertainment cost?---That's correct.

And all the invoices and bills for that would bypass you as a Director and go straight to Accounts and be paid?---No, not all. Some bills came to me for

payment if they were associated with my corporate card or with an account. But the Deer Park ones were actually done by a corporate card up in the Accounts Department.

I want to suggest to you that some of the dinners at the Deer Park Inn cost several hundred dollars. Do you have any recollection of being aware of such dinners being paid for by Prosys?---No, I didn't.

10 Could you go to page 82, please, of Exhibit 9 that you have there. Do you recall seeing that invoice before?---No, I do not.

Do you see there it includes an item for dinner with Col McCallum on 22 January, 2010 at a cost of \$866 excluding GST?---Yes.

Do you agree that that's a very expensive dinner?---I, I can't really comment, I don't know who was there, if there was other people other than Col there, I, I don't really know. I would have to find out a bit more.

20 An invoice - take this invoice for example, it would have been provided by Mr Anley to your accounts department, is that right, as you understand the process?---This invoice here?

Yes?---Yes.

At page 82?---Yes.

30 And your accounts department would have arranged for Mr Anley to be reimbursed would they?---If it was Todd's credit card I would imagine so, yes.

It appears that it's been, the bill has been paid by Visa card?---Yes.

Do you know whether or not Mr Anley had a corporate card or whether that would have been his personal card?---No, Todd doesn't have a corporate card.

So it's fair to assume, is it, that he would, Mr Anley would have paid this from his personal credit card?---Or it was the company Visa card.

40 I'm sorry, I thought you said Mr Anley doesn't have, didn't have a corporate card?---No, but the accounts people have a corporate card that they pay some of these accommodation and going away bills with so I'm pretty sure that's a Visa card so it could have been that or Todd's personal Visa.

And would the accounts people provide this Visa card to staff who were travelling, would they?---No, no, no, usually what happens is the, where they stay, those people will ring up or a lot of time we book it on Wotif to

get the, the - 'cause a lot of the time we don't get a lot of notice when we have to go somewhere so we'll book it on Wotif and then use the, our corporate credit card to pay for it.

So in this instance where the Deer Park Inn had issued Mr Anley an invoice is it fair to say there are two possibilities, one is that Mr Anley had paid it with his own Visa card and then sought reimbursement from Prosys?--- Yes.

Is that correct?---Yeah.

10

The second possibility is that the accounts people had rung Deer Park Inn and provided them with a credit card number which was the corporate card, is that correct?---That's correct, yes.

And whichever of those two things happened, Mr Anley provided the invoice to the accounts departments as in the normal course of things? ---Normally if, if we've seen one of these invoices it's got our stamps and everything on it so I, I can't say that anyone's actually ever seen it.

20

Is it your evidence that you were unaware of the amount of the bills received from the Deer Park Inn from mid 2009 onwards for dinners? ---Yeah, I don't recall seeing any of the Deer Park Inn invoices.

Is it your evidence that you were not aware of the amounts that were being spent at the St Kilda Hotel and at the Deer Park Inn by your staff when travelling to Armidale to perform the UNE work?

MR STEIRN: I object to that. When?

30

MS WILLIAMS: Mr Magi, during the period from late 2008 to January 2010 do you say you were not aware of the amounts being spent at the St Kilda Hotel and at the Deer Park Inn by your staff when they travelled to UNE?

MR STEIRN: I object on the basis, is it, is it positive that he knew at the time or knew at a later stage?

ASSISTANT COMMISSIONER: He's been asked whether he knew between the dates put by Ms Williams as I understand it.

40

MR STEIRN: Yes, but, but there's, there's a number of bills. Now is the question put on the basis that at the time the bill was paid he was aware of the amount or did he become aware of it at a later stage in relation to his bill because there's already evidence before the Commission that just looking at the bill doesn't always tell the full story because as he said in his evidence sometimes there could be other technicians there, there could be accommodation, things like that.

ASSISTANT COMMISSIONER: He's only being asked about the amounts. It's got nothing to do with who was there. At this stage he's just being asked was he aware of the amounts on these bills between those dates and I would take it as it could at any time between those dates.

THE WITNESS: Yes, Commissioner, I, I only know the ones that I've signed off so bills could have been signed off by Todd himself, by the accounts people who were paying their Visa card or by myself so I, I'd have to look at every individual bill to see which ones I had signed off to know  
10 which ones I actually saw the amounts.

ASSISTANT COMMISSIONER: Can I ask you, Mr Magi, the St Kilda Hotel invoices all have "Attention Neville Magi" on them?---Ah hmm.

But does that mean that they would have been brought to your attention or not necessarily?---Not necessarily, some of them would be signed off by Todd himself or if I'm not available someone else would make the inquiry and pay them off, sign them off.

20 So was he down in Hornsby too? These were sent to the address in Hornsby?---That's correct.

Yes, Ms Williams.

MS WILLIAMS: Mr Magi, you were aware that during the period from November 2008 to January 2010 your staff incurred expenses at the St Kilda Hotel and at the Deer Park Inn when they travelled to Armidale?---At the St Kilda, yes. I became aware of the Deer Park later on, yes.

30 All right. You were aware that costs were being incurred in relation to accommodation, correct?---Yes.

And food, correct?---Yes.

And drinks?---Or meals or dinners, yes.

And you were aware that in some instances those food and, and meal costs related to entertaining Mr McCallum, is that fair?---Or other people from UNE, yes.

40 Yes. At any stage during the period November 2008 to January 2010 did you take steps to find out what the amount of those costs were?---No, I did not.

Was it not relevant to you as a director of Prosys to know what that aspect of the cost of travelling to UNE and performing the work there was?---No. As I said previously we don't restrict our people in, you know, what they do when they go away.

Prosys needs to make a profit on any jobs it performs, correct?---That's correct.

And it needed to make a profit on the work it was doing for New England, correct?---That's correct.

10 For that purpose it needed to know, did it not, what the costs of the travel, accommodation and meals and drinks were for the staff travelling up there to do the work, correct?---I don't analyse the projects that much.

Do you say you never took steps to find out the costs of the travel, accommodation, food and drinks in order to understand the cost base so that you could price works for UNE accurately?---No.

So whatever those costs were they had to be paid by Prosys, correct? ---That's correct.

20 And that simply wasn't factored into the equation when you priced jobs for UNE?---Well, that's part of your mark up on the materials and the labour when they go away.

But don't you need to know what the costs actually are in order to determine the appropriate mark up?---We don't, I don't break our business down that, to that sort of level.

Does somebody else within Prosys find out what costs actually are in order to determine the appropriate mark up?---I don't believe so.

30 ASSISTANT COMMISSIONER: So your accounts department has no instructions about, for example, invoices of this kind? If somebody, if a salesman put up an invoice for dinner for two for \$1,000 or something they would just pay it if that person had certified it?---If, if that, if that salesperson, you know, said it was down for two or three or, and this is where we went and that's what it was, that's what we would pay.

So there's no limit on it at all?---No.

40 Could you answer, please, for the recording?---No.

Thank you. Yes, Ms Williams?

MS WILLIAMS: But in any event you were content for those food and meal costs paid by Prosys to include the cost of providing food and alcohol for Mr McCallum and other FMS staff. Correct?---(NO AUDIBLE REPLY)



MR STEIRN: I object to that. That's the third time that question has been put and answered.

ASSISTANT COMMISSIONER: Well, I don't know that it has been answered clearly.

MS WILLIAMS: Can you answer the question, Mr Magi?---If in my staff's view that them having a meal or drinks with one of the staff members from UNE was going to assist them in doing their job better, that's okay, I feel that that's okay.

And it was going to assist them, wasn't it, in maintaining a good relationship on the ground with Mr McCallum as the key contact person at the university?---Yeah. A lot of business relies on your relationship and that's why people do jobs and work well together on a site, particularly being UNE where we're, we're in Sydney and, and, you know, UNE's over in Armidale, we don't get that day-to-day contact with the clients up there so because there's that disconnect I think it's important that the guys do work things out even for the next visit or what went wrong with the last visit or what's going on with this one to try and make the job go better.

It was important to Prosys wasn't it to maintain a good relationship with Mr McCallum because the, the value, the work was valuable to Prosys. That's right, isn't it?---All clients are valuable to Prosys, yes.

In August 2008 Mr McCallum asked you to contribute to a fundraising dinner for the New England Rugby Union. Is that correct?---That's correct.

And you agreed to make a contribution of \$3,000. Is that correct?---Yes, that was for the speaker, a part of the price for the person who was going to speak at the dinner, yeah.

Right. And in agreeing to make that contribution you were agreeing in effect that Prosys would make the contribution. Is that right?---That's correct.

And you were issued an invoice for that contribution which is at page 32 of Exhibit 9. Could you turn to page 32, please. Do you recognise that as the invoice that you received?---Yes, I do.

And the description there, "Ground advertising signage for 2008 season" - - - ---Yes.

- - -was that a description placed on the invoice at your request?---Not at my request, no.

Right. The description is incorrect, isn't it?---Well, I don't believe that any ground signage went up or anything, no.

You have no doubt, do you, that the invoice was in fact for the contribution to the fundraising dinner?---Yes, that's correct.

That's correct.

ASSISTANT COMMISSIONER: Well, at whose request was that description put on the invoice?---I don't recall.

10 Well, you were, you were the person who was asked to arrange the donation, were you not?---Yes.

I presume you had some, you took some action to get this invoice issued or you told somebody to do something?---No, I, I, I don't recall. I, I believe there was an email somewhere about this but I don't recall what the content was.

So you didn't discuss with Mr McCallum that this would be put on the invoice?---I did not, no.

20

Yes, Ms Williams?

MS WILLIAMS: Do you recall Mr McCallum asking you what you wanted to put on the invoice?---I, I recall there was an email about that but I don't recall what was on it.

Right. You don't recall responding to that email in any way?---I may have asked Accounts what they wanted to put on it but that's all, I, I'm not 100 per cent sure what I did with that email.

30

And given that you may have asked Accounts what they wanted put on it, you may have then conveyed or asked them to convey that information to Mr McCallum. Is that fair?---That's possible, yes.

You see the account approval stamp at the bottom of the invoice. Are they your initials- -?---That's correct, yes.

- - -and signature?---Yes.

40 And so you saw the invoice when it came it. Correct?---Yes, I did.

The function was ultimately held on 6 November, 2008. Do you recall that date?---Yes.

And shortly before that date, Mr McCallum asked you to make a further payment of \$7,000. Is that correct?---That's correct.

And he asked you to make that payment directly to the St Kilda Hotel?

---That's correct.

And that payment was a further contribution by Prosys to the cost of the function. Is that correct?---That's correct.

Now, did Mr McCallum ask you this in a verbal conversation?---Yes, I believe so.

10 And in the course of that conversation did Mr McCallum tell you that if Prosys would make that payment to the St Kilda Hotel then he would arrange for the same amount to be paid by the University to Prosys?  
---No, that's not- - -

20 Well, could you tell the Commission, please, in your words what was said during that conversation?---I don't recall exactly the conversation but there were a couple of conversations that we had over it. The initial conversation was more about supporting the rugby club dinner. I think we then had another, I said I don't know, I'd have to check with everybody. We had a discussion about it at the office, about we're wanting to grow our business up in the New England area and everything and this would be a good idea to forward the business through sponsorship and we decided yes because there would be businesspeople and executives there at the dinner that we could meet and talk to. So I then had another conversation with Col where I said, yeah, okay, we'll support the rugby club dinner. And I think after that Col then, we had a conversation where he said, "Well, for your support of the rugby club I'll pay you to do the site plans at the University."

30 So you say, do you, that you had agreed to pay the \$7,000 amount to the St Kilda Hotel and Mr McCallum then offered that in return he would pay Prosys to prepare site plans?---That's correct.

You accepted Mr McCallum's offer. Correct?---Yes.

And when Mr McCallum made that offer to you, he indicated, didn't he, that the amount he would pay you to do the site plans was \$7,000?  
---I don't recall actually Col ever saying that.

40 Sorry, can you repeat that answer?---I don't recall Col ever saying that's what I pay you, he just said, I would pay you to do the site plans.

All right. And do you say you had no understanding from him as to the amount that he would pay you to do the site plans at that stage?---No. I had a, I assumed myself that that would, around the \$7,000 would be an appropriate figure.

And why did you assume that \$7,000 would be the appropriate figure?  
---I just felt that that would be what Col would accept.

And you felt that Col would accept that, didn't you, because it would in effect, I withdraw that. You felt that Col would accept that, didn't you, because it was the same amount that you were agreeing at his request to pay to the St Kilda Hotel?---After I'd done the calculations for the project it came out pretty much to that price.

When did you do the calculations for the project?---When Col asked for the quotation.

10 When did he ask for the quotation?---I don't recall the date. It was not long after, it was sometime in November.

How many site plans were there that needed to be - - ?---I have absolutely no idea.

Just to be clear, can you describe for the Commission what was the work relating to the site plans that you understood from this conversation Mr McCallum was offering to pay Prosys for?---The work needed to be done in three parts, the first part was to get the University site plans from the  
20 University, get them into a format that was acceptable to the system and then get that format into a file size that would fit onto the system. Then there was, the second part was to log all the equipment that is there at the University now and that is works that we had done and works that had been done by others and previous to us being at UNE, and the third part was to continue to keep those site plans up-to-date.

And the system you refer to that's the Cardax computer system. Is that right?---That's correct.

30 And I'll ask you again how many site plans were there?---I have no idea.

At the time that you had this conversation with Mr McCallum did you know how many site plans there were?---No.

At the time you prepared the calculations for the quotation did you know how many site plans there were?---The number of site plans doesn't really come into it. When I did the quotation I asked Todd how much time he'd already spent on the project and how much time he'd need to complete, which are the hours that were allocated to it. So it's only a matter, it's only  
40 time that actually mattered, not how many site plans needed to be done.

All right. And do you recall now how many hours Mr Anley told you in that conversation he had already spent?---Only because I looked at it, it's 44 hours.

44 hours had already been spent at the time you had this conversation with Mr McCallum. Is that right?---No, I don't know how many hours had been spent at that time. When I did the quotation I asked Todd to tell me how

many hours it would take to complete the project and he'd already done some hours and that it'd take X amount to do after, which totalled 44 hours.

So you recall now from looking at your records that you calculated 44 hours. Correct?---That's correct.

And do you recall the conversation with Mr Anley or do you assume from looking at that record that Mr Anley told you 44 hours?---No, that's, that's my recollection is that Todd gave me the 44 hours.

10

All right.

ASSISTANT COMMISSIONER: Sorry, just so I'm clear, he gave you 44 hours as what he done to that time, the date of the conversation and what he - - -?---Estimated - - -

- - - intended to in the future?---And what he estimated it would take, yes, to complete.

20 To complete the project?---That's correct.

Yes?---Although the project will never be completed because we did agree with Col to keep site plans up to date as part of projects as we were doing them.

So what was the future component in the 44 hours, to reach what stage? ---To get to the point where everything that was stalled on the UNE system was on those site plans.

30 Yes?---Up to that point in time.

Yes, thank you Ms Williams.

MS WILLIAMS: Sorry up to what point in time did you refer to in your last answer?---Well once he got all the site plans on I don't know when exactly that was fully completed, but from 11 November, we had to keep everything up to date.

40 So the work, the work that Mr Anley told you would take 44 hours, was to get all the site plans on to the Cardax computer system. Is that correct? ---That's correct.

And to in effect modify those plans so as to record the Cardax equipment on them. Is that right?---That's correct.

And then keep them up to date thereafter?---Yeah. As part of the projects we were doing.

So the keeping up to date would be something that would be done incidentally to future projects. Is that right?---As part of a future project, yeah.

Yes. But there was work to be done in getting the plans on to the system and getting them up to date as at the time that work was done?---That's correct. Yes.

10 I understand. And that was going to take 44 hours and that was the basis on which you calculated \$7,000. (NO AUDIBLE REPLY)

MR STEIRN: He's got to answer. I think he just nodded his head then.

THE WITNESS: Oh sorry, yes.

20 MS WILLIAMS: And when was that work done, getting all the existing site plans on to the system and modifying them?---I don't know exactly because I don't do the work, but I think Todd started finding out from the UNE drawing office where he could get the site plans from and what format they would get them in and that was around May or June. He'd done most of that work up until around November and that's when he started to do the rest of the plans because we got the order for the works.

All right. So just to be clear May or June 2008 you're referring to are you? ---Yes.

And when you say he done most of that work, that is most of the work in involved in a actually obtaining the site plans. Is that right?---Obtaining the site plans and getting them in a correct format to get them on to the system.

30 And you say that from 11 November, 2008 Mr Anley started actually incorporating the plans into the Cardax system and modifying them. Is that correct?---He may have started doing that earlier, I'm not sure. But he certainly, that's when he started to get most of the work done.

And how long after 11 November, 2008 did it take Mr Anley to complete that work of putting the site plans into the Cardax system and modifying them?---I don't know.

40 ASSISTANT COMMISSIONER: How did the 44 hours translate to \$7,000? Is that because you had a set hourly rate you charge for Mr Anley?---On that project normally - - -

MR STEIRN: Ms Commissioner, I - - -

MS WILLIAMS: .....

MR STEIRN: Commissioner, I raised, the objection I raised last time (not transcribable) 112, as to how this could be kept confidential. There are

competitors in this hearing and in my respectful submission is that this is commercial information which could not be disseminated and could, could in effect prejudice the company on an ongoing basis.

ASSISTANT COMMISSIONER: Yes, well I'm happy to make a suppression order in respect of your evidence about the calculation of this cost.

10 MR STEIRN: The difficulty is there are other competitors in this hearing who no doubt could take either a written note or a mental note of what's being said. Now in my submission if this is going to be ventilated, and I understand why it should be, then it should be done in a private hearing.

ASSISTANT COMMISSIONER: I really don't see what is commercially in confidence about how he, what hourly rate for example they charge for Mr Anley in this particular case. It could vary in other cases. How is that commercially in confidence?

20 MR STEIRN: That may be, but it gives competitors a commercial advantage to know what a particular rate is and come in underneath. It gives an unfair advantage in any future tendering process on an ongoing basis which would prejudice the company on a commercial basis. It is, that's the reason you have a tender process where the figures are not known to your competitors. What's happening here is if the figures become known to competitors then that gives them an unfair advantage merely by underquoting and coming in underneath a particular amount and therefore winning the contract unfairly.

30 ASSISTANT COMMISSIONER: I don't even, who is here who's, they're not still here are they any of the competitors? I don't think there's anyone here from other security companies. What other security companies are here?

MR STEIRN: Can I just take some instructions on that?

ASSISTANT COMMISSIONER: Certainly.

40 MR STEIRN: I understand for example that representatives of Sydney Night Patrol are in court and coincidentally they're currently doing the same work that Prosys used to do before the inquiry commenced.

MR BOURKE: I can solve that - - -

ASSISTANT COMMISSIONER: When you say, you don't mean legal representatives do you?

MR BOURKE: - - - I can solve the problem we're happy to outside.

ASSISTANT COMMISSIONER: Yes.

MR BOURKE: I don't think it's Sydney Night Patrol but Mr McLean, however my instructing solicitor had done some work from time to time for that company. So we don't need to be here for this evidence and we're happy to leave while the evidence is given.

10 ASSISTANT COMMISSIONER: Yes, I think the only thing is we'll have to then cut out the stream, I don't know if it is streaming outside, it normally does?---Commissioner, if I may? Could I try and answer it without actually saying any amounts.

Well you've been, I won't comment. You have been doing a good job so far, Mr Magi. Yes, if you feel you can answer it despite your counsel's objections?---I'll try.

MS WILLIAMS: Commissioner, I appreciate Mr Magi's offer, but I think we will come to a point where we do get into a lot of detail.

20 ASSISTANT COMMISSIONER: Yes, I think we do, we do need to know the details and I just think perhaps we can, I am just a bit concerned though as to whether it is streaming outside. So perhaps we can leave this topic till after the morning tea break at which time we'll return to it. Is there something else we can go on to or would you rather have an early morning tea so we can fix this issue up.

MS WILLIAMS: No, I can go on for a couple of moments, Commissioner and then we'll see how we go.

30 ASSISTANT COMMISSIONER: Yes. Yes.

MS WILLIAMS: Mr Magi, who did the work after 11 November, 2008 in uploading the plans on to the Cardax system and modifying them?---That would be Todd and a couple of the other technicians.

Do you know the names of the other technicians?---No, it doesn't, I don't recall.

40 Commissioner, at this point I apply for the order made under section 112 in relation to the transcript of 18 January, 2012 that is at pages 185 to 195 of volume 14 to be revoked.

ASSISTANT COMMISSIONER: Yes. Well, I remove the suppression order in respect of pages 185 to 195 of volume - - -

**I REMOVE THE SUPPRESSION ORDER IN RESPECT OF PAGES  
185 TO 195 OF VOLUME 14**



MS WILLIAMS: 14, Commissioner.

ASSISTANT COMMISSIONER: - - - 14, yes.

MS WILLIAMS: I provide Mr Steirn with a copy and perhaps if Mr Magi might be provided with a copy, also a copy for the Commission.

10 Mr Magi, do you recall giving evidence before the Commission on 18 January this year?---Yes, I do.

And do you recall being asked on that occasion - and if you need to refresh your memory I'll provide you with the pages but do you recall being asked on that occasion whether you were willing to produce Prosys records which would show when the work relating to the site plans was done?---Yes.

20 The reference for the record is at pages 192 to 193 of the transcript in volume 14. And you recall that you then provided some records to your instructing, sorry, to your solicitors?---Yes, I did.

And you understand that they forwarded those to the Commission, correct? ---That's correct.

I think you still have Exhibit 9 there, is that right?---The book, yes.

30 Volume 9, yes. Could you turn to page 139 and just take a moment please to flick through 139 to 168 and when you've done that could you confirm that those are the records that you provided to your instructing solicitors on that occasion?---Yes, that's correct.

And those records from pages 139 to 168 are the records that you were able to locate at Prosys as demonstrating that the site plan work was done at the University, is that correct?---That's correct.

All right. Could you please indicate the particular pages or items within those pages that you say show the site plan work having been done by process?---That would be page 147.

40 Is that the page which is a printout of a computer screen?---That's correct, yes.

With the title "Job Tracker"?---Yes.

What's Job Tracker, is that a particular system that Prosys runs?---That's correct.

All right. And where on this page do we see the job number allocated by Prosys to the site plan work for the University of New England?---The, that job number doesn't appear on there. In asking my staff they didn't use the job number at that time.

Right. So what if anything does page 147 tell us about work done in relation to job number 82960 being the site plan work for the University of New England?---In speaking with my staff it's the, the time, 25<sup>th</sup> of the - sorry, 27/10 through to I think its 30/10 or 31/10.

10

So it's your understanding, is it, after speaking with your staff that the work recorded between the dated 27 October, 2010 and 31 October, 2010 relates to the, sorry, the uploading of site plans into the Cardax system at the University of New England and the modification of those site plans?---Part of that time, yes. It wasn't the three of them, I think there's three, working on that all the time.

20

All right. So part of the time recorded between those dates I've mentioned by Mr Anley, Mr Cuttilan and Mr Lorenz related to the University site plan work, is that correct?---That's correct.

But not all of the time?---That's correct.

And is it your evidence then that after speaking with your staff you understand that all of the site plan work was done during those dated 27 October to 31 October, 2008?---No, no. There was a lot of work done previous which those emails between Todd and Cameron Marshall indicate so Todd was doing work to get them ready back in, oh, I don't know when the first one was, June or July of 2008.

30

Is that the email at page 148 you're referring to? Is that the first one?---Yes, that's correct. So Todd had already started doing some of the preliminary work, the works that were in that week of the 27<sup>th</sup> were works of putting the icons actually onto the site plans and some of our staff in the field as they were going around through the buildings marking up where equipment or locations that we didn't know about.

40

So you say, do you, that some of the work was done from July 2008 - - -?  
---Yes.

- - - and, and further work was done as recorded at page 147 between 27 and 31 October, 2008?

MR STEIRN: Well, I object to that because his previous oral evidence was he thought some of the work started way back in May. If anything this piece of evidence refers to emails which evidence what is, what was obvious occurred in, in July so the question is an unfair one because it doesn't

incorporate his previous evidence that work commenced as far back as May as I understood his evidence, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MR STEIRN: I'm not saying it's - it's unfair in the sense that it's ambiguous.

10 MS WILLIAMS: It's not ambiguous at all, Commissioner, and the question was giving the witness the opportunity to clarify what his evidence was. Now that he's been prompted he may like to clarify - - -

MR STEIRN: (not transcribable) I object to that because pursuant to section 17(2) of this Act these are not adversarial proceedings and he is not charged with anything. He is merely a witness giving evidence to assist this inquiry.

20 ASSISTANT COMMISSIONER: Yes. Well, his evidence - well, I don't think - for a start I don't think the question was unfair given the evidence that he's just given and the documents he produced so Ms Williams, carry on.

MS WILLIAMS: I do simply want to clarify, Mr Magi, what your evidence is about when the work was done and I don't wish to be unfair to you in any way but having regard to the documents you've referred to and your earlier evidence, is this the position: you say some work was done from as early as May 2008 in obtaining site plans?---That's correct.

30 And further work was done through the period from May 2008 to October 2008, that work also related to obtaining the site plans, is that correct? ---That's correct.

And then from 27 to 31 October, 2008 work was done by the three gentlemen whose names appear on page 147 in uploading the site plans into the Cardax system, correct?---That's correct.

And in modifying those site plans to record the Cardax equipment, that's correct?---That's correct.

40 Is there any other item that you say work was done in relation to the site plans at the University of New England?---I believe the final lot of work to get the site plans up to date was done early to mid in 2009.

And is there any other period of time apart from that additional one you've just mentioned where you say that work was done in relation to the University of New England's site plans?---It may have been done, I can't really answer that because I wasn't there doing the work. I'm not sure if

other work was done in between that time. The only people that would know that were the guys that were doing the work.

All right. But in response to the Commission's request on 18 January for you to obtain records did you seek to find any records relating to the work that you say was done in I think early to mid January 2009?---No, I didn't because I only found that out after we'd given our legal team these documents.

10 ASSISTANT COMMISSIONER: Is there any record of the work that was done between May and July?---On time, no, no, it's just the work that Todd did as part of - - -

So there's no, no record of it at all except this email exchange?---I believe so. I, I didn't do the work so I don't know if it was put to, what we were doing was Col asked us to investigate getting the site plans onto the system first and that's the work that we proceeded to - - -

20 Well, is it fair to assume that because no records were kept prior to it appears October you weren't intending to charge for that work?  
---No, we were always intending to charge for the work.

Why weren't you keeping records of it then?---We didn't actually, we only allocate things a job number when we get an order. So we, we were doing this for the University in preparation for getting the site plans on the system.

30 Well, if you didn't have an order and you weren't keeping any record of it, that would indicate you, you didn't intend to charge for it, doesn't it?  
---No, we always intended to charge for it. I don't know what Col's position was on that but- - -

So you just had that in your mind you would, but he didn't know?---I can't tell you what was Col- - -

Yes.

MS WILLIAMS: Commissioner, I'll pursue a couple of further matters just before the morning adjournment.

40 ASSISTANT COMMISSIONER: Yes.

MS WILLIAMS: Mr Magi, you gave evidence earlier this morning that except in an unusual or emergency situation Prosys would not do work until the University had issued a purchase order?---That's correct.

Do you recall giving that evidence?---That's correct.

The obtaining the site plans and uploading them onto the system was not an unusual or emergency situation of that kind, was it?---No, but we saw this as just something to do for the University, for a client, as, as a goodwill gesture to get it, because we, it may have ended up we couldn't get their site plans onto the system anyway so it was just part of doing goodwill for a client.

10 So does that mean that you did not expect to be paid necessarily?---If the, if we couldn't get the site plans on or something like that we would have probably gone, we can't do it, Col, unless you can get them in a different format, and just leave it at that.

Do you recall on 18 January you were asked, you gave, I withdraw that. Do you recall on 18 January you gave evidence to the effect that it took the guys just over two weeks to do the work? And I refer you to page 192 of the transcript that you have, point 3?---Sorry, what page was it?

Page 192 of the transcript which is the separate stapled document?---Right.

20 192. Do you have that reference, Mr Magi?---No. Where is it on 192?

Page 192?---Oh, I see, up the top bit.

The third line?---Yep.

Yes?---That was my recollection of it, yes.

And you now say, do you, that that's incorrect and the work was done during the periods of time you've referred to today?---That's correct.

30 And what was the basis on which you recalled on 18 January that it took just over two weeks?---Oh, they were the two maintenance visits the guys did, the one in, what was it, October and the one in early to mid 2009. So they were the two two-week periods where they spent most of the time doing it.

Could you turn to page 190 using the pages in the top right-hand corner of the transcript?---Yes.

40 And I'd like you to read, please, from the first line of the page down to line 25?---Sorry, line twenty- - -

The question and answer that reads, "But you came up with the amount of \$7,000 not based on what Prosys would charge to do the work but based on recouping the \$7,000 that had to be paid to the St Kilda Hotel, didn't you?" Your answer, "That's correct."?---Hmm, I don't think I really meant it that way but that's what's written there.

Well, what do you say you meant by that answer?---Well, that, that's the figure that I felt Col would pay, as I said, I felt that that was around the figure that Col wanted, not more.

It wasn't a figure calculated based on 44 hours or any other period of time that you thought it would take to do the work, was it?---Yes, it was. It, it, the, the calculation for the 44 hours was 9 thousand and something dollars and we discounted that price down.

10 See, I want to suggest to you that you simply came up with a figure of \$7,000 because that was the amount that you were having to pay the St Kilda Hotel?---No, I actually costed it out and then discounted the price down to that figure, down to the \$7,000.

See, I want to suggest to you that the \$7,000 had nothing to do with any costings or calculations?---Well, the cost, that's how I did it and the calculations came out at 9 thousand something and I discounted the price because of the different staff that we had doing the job.

20 Commissioner, if we take the morning adjournment now and the confidentiality issue I imagine will arise immediately after we resume.

ASSISTANT COMMISSIONER: Yes, all right. Well, we will resume in 15 minutes.

MS WILLIAMS: Thank you.

### SHORT ADJOURNMENT

[11.36am]

30

ASSISTANT COMMISSIONER: Thank you, please be seated.

MR STEIRN: Commissioner, I renew my application that this evidence be held in closed session or whatever the application should be based on what I said before. The reason I say that, I now understand the figures I've been shown, the specific figures will be put as part of the inquiry and I accept the relevance of that but that doesn't mean that Mr Magi or his company should as a consequence of that prejudice the ongoing, his ongoing business through no fault of his own.

40

ASSISTANT COMMISSIONER: Yes. Well, I don't think it needs to be in closed session. I think it would be adequate to address your needs to take up the offer Mr Bourke made for he and his clients to leave and then I will make a suppression order in respect of anybody else here that they're not allowed to publish anything they hear. So, I mean, if we went into closed session we'd have to take everybody out, make everybody leave.

MR STEIRN: Well, my application is it should be in closed session - - -

ASSISTANT COMMISSIONER: Yes.

MR STEIRN: - - - or certainly on a need to know basis if that assists you.

ASSISTANT COMMISSIONER: Yes. Well, I'm sure that only - well, look this is a public inquiry and we should - - -

10 MR STEIRN: I understand that.

ASSISTANT COMMISSIONER: - - - only go into closed session if it's absolutely necessary. In view of what we're going to be asking your client, in view of the age of this tender and its decreasing relevance to their recent activities I think it is sufficient protection to act in the way that I have suggested, that is, that everybody here will be under an order not to publish any of the information about the figures and the persons involved in SNP and their legal representatives will leave the room during this evidence. I believe that will sufficiently protect the interests that we're talking about.

20

MR STEIRN: May it please the inquiry, Commissioner.

ASSISTANT COMMISSIONER: Thank you. So, thank you. Yes, Mr Bourke.

MR BOURKE: Commissioner, Mr McLean isn't here, he hasn't been here this week, he was excused this week but my instructing solicitor and I will now depart.

30 ASSISTANT COMMISSIONER: Yes.

MR BOURKE: I understand from discussions with Counsel Assisting that the next witness to be called would be Mr Williams and Mr Enlund from the University who I have no questions for on my understanding of their evidence and Mr Anley who I have no questions for. However, I understand that Mr McCallum may be recalled - - -

ASSISTANT COMMISSIONER: Yes.

40 MR BOURKE: - - - and I understand (not transcribable) when that's to happen and that we will return to hear that evidence.

ASSISTANT COMMISSIONER: All right.

MR BOURKE: So if we could be excused?

ASSISTANT COMMISSIONER: Yes, you're excused now. Thank you for that. Now, I understand that evidence will now be led in respect of certain

issues relating to the pricing and the calculation of pricing for UNE jobs by Prosys and in respect of any evidence in relation to the pricing and the calculations used to obtain pricings for the job quoted to UNE which will be the subject of this part of the examination, I make an order that no information in relation to the figures or calculations so given in evidence shall be published or otherwise communicated by anybody and it is an offence for any person to do so.

10 **IN RESPECT OF ANY EVIDENCE IN RELATION TO THE PRICING AND THE CALCULATIONS USED TO OBTAIN PRICINGS FOR THE JOB QUOTED TO UNE WHICH WILL BE THE SUBJECT OF THIS PART OF THE EXAMINATION, I MAKE AN ORDER THAT NO INFORMATION IN RELATION TO THE FIGURES OR CALCULATIONS SO GIVEN IN EVIDENCE SHALL BE PUBLISHED OR OTHERWISE COMMUNICATED BY ANYBODY AND IT IS AN OFFENCE FOR ANY PERSON TO DO SO**

20

ASSISTANT COMMISSIONER: Yes. Thank you, Ms Williams.

MS WILLIAMS: Mr Magi, could you turn to page 145 of Exhibit 9, the folder that you have there. Is that your handwriting on that document?  
---Yes, it is.

All right. And is that the calculation that you have been referring to in giving your evidence this morning?---That's correct.

30 And that calculation comes to a total of \$7,000, do you agree?---I do agree, yes.

And there's no reference there to the higher figure you referred to earlier this morning of \$9,000 is there?---No, there's not.

40 Mr Magi, I want to suggest to you that that figure of \$7,000 was one calculated not with a view to how many hours it would take to perform the work but with a view to arriving at an amount equivalent to the amount that Prosys was to pay the St Kilda Hotel?---No. When I did the, the mark up sheet our normal engineering rate is XXXXX an hour. Because Todd was using other technicians on the project, not him doing it himself, I discounted the rate to equal to XXXXX and that's how that was calculated so I just - - -

ASSISTANT COMMISSIONER: I'm sorry, just so I understand it. And was the purpose of that discount to bring the figure down to the \$7,000?  
---Well, initially the purpose, the purpose of the discount was because we usually charge - for that type of work we charge engineering rates which is XXXXX but because Todd was actually, he was, he was doing most of the



work on the computer but he had just technicians doing the work in the field I just brought that, I discounted the hourly rate down to XXXXX and that's where it came out.

So you're saying you decided to bring it, to discount the rate and it just happened that by doing that discount it worked out to be \$7,000?---Well, I wanted the discount to reflect the pricing that I felt Colin was prepared to pay.

- 10 Yes. Well, that's not answering the question I asked. Are you saying it's just a coincidence that the discount you chose to apply led to the amount being exactly the amount that had been donated to the St Kilda function?

MR STEIRN: I object to that question because his answer was I discounted that amount to the amount Col was prepared to pay, prepared to pay being \$7,000.

- 20 ASSISTANT COMMISSIONER: All right. Sorry, I think that you're right, I didn't hear the last part of that. So it's not a coincidence, you discounted because you wanted to bring the amount to the amount that Col was prepared to pay?---That's correct. What I felt Col was prepared to pay.

That you felt he was prepared to pay?---Yes.

Because it was the same amount that you'd donated?---Yeah, well, I - - -

That's why you thought he'd be prepared to pay that, is that correct?---Well, it was because I felt that's what Col was going to pay, yes.

- 30 Yes. Yes, Ms Williams.

MS WILLIAMS: Mr Magi, I want to suggest to you that during the period for the whole of 2008 and 2009 the total number of hours work done in adding site plans to the Cardax computer system and modifying site plans came to approximately eight and half hours?---I can't really comment, how did you arrive at those figures?

I'm sorry, I didn't hear that?---How did you arrive at those figures?

- 40 Well, I'm suggesting to you that your, suggesting to you that nothing like 44 hours worth of work was done by Prosys during the period for the whole of 2008 and 2009 in relation to the site plans. Do you agree or disagree with that proposition?---I disagree with that because my staff- - -

MR STEIRN: I object, I object.

- - -are the ones who tell me.

MR STEIRN: It's abundantly clear on the objective evidence that before there was ongoing maintenance all this material had to be put in a digestible form on the various computers. That, as I understand the evidence, that was the bulk of the work done in that period. What took place or what I understand takes place now, given his evidence, they then maintain the material, in other words the hardest part of the work was done in that particular period between say May or June right through to November, after that Prosys maintains it by adding icons as new equipment or new factors come into it on an ongoing basis. That's why it's unfair to suggest and  
10 make a distinction between eight hours after this and 44 hours prior to that.

MS WILLIAMS: My learned friend has misunderstood the question, with respect, Commissioner. I was asking Mr Magi about the whole of the period 2008 and 2009, which is in fact a longer period than the period during which Mr Magi says the work was done. As I understood his evidence, the period he has nominated is from May 2008 to the end of January 2009 and he has referred to the possibility of some ongoing work being done in the course of maintenance after January 2009.

20 ASSISTANT COMMISSIONER: Yes, well, I believe that is the period that Mr Magi has nominated as the basis for the hours that he was given by Mr Anley, that it was to cover a preceding period and a reasonable estimate of what would be done in 2009?---That's correct, yes.

So I think on that basis it is fair because that was actually Mr Magi's evidence, that the 44 hours related to what had been done and what was to be done within a reasonable period. I don't think he purported to say that was what was going to be done forever on it for all maintenance in the future?---No, no, no.

30 You asked him to estimate up to a certain period?---That's correct, which was- - -

Yes. Which I understood to be early- - -?--- - - -mid 2009, yeah.

Yes. So yes, I think the question is fair in those circumstances because- - -

MR STEIRN: But I thought my friend said all of 2009?

40 ASSISTANT COMMISSIONER: Yes.

MR STEIRN: Which is, which is a further six months after mid 2009.

ASSISTANT COMMISSIONER: Well, that may be what she intends to put, that there was no- - -

MR STEIRN: And therefore that's the unfair part of it because it's not what Mr Magi said earlier. Let's be, let's be, let's go back to what as I

understand the evidence to be. The relevant evidence, the relevant time period as I understand it is between May or June, it doesn't matter, right through to some period around about mid 2009, the estimation is 44 hours to get it up and running. That's what I understand. Now it's been put for the whole of that time there was a further I think eight hours for all of 2009. But if it's just maintenance after mid 2009 then of course that's precisely what it is and it didn't require much more work.

10 ASSISTANT COMMISSIONER: Yes, but what's been put is that that's the entire, that is all that was done over the entire period so it's actually more advantageous to your client to put it over the entire period because- - -

MR STEIRN: It's put in a pejorative way and in an adversarial way which, which give it a different gloss to what the truth is.

20 ASSISTANT COMMISSIONER: I think he's just being given an opportunity to respond to the suggestion that it wasn't the amount of hours he says, it was a much smaller amount of hours and I'm sure he's quite capable of responding to that suggestion. Ms Williams, perhaps you can just put it again.

30 MS WILLIAMS: Mr Magi, I think you did respond but I've lost it in what's followed, so perhaps if I ask the question again and ask you to respond again if you don't mind. What I'm suggesting to you is that during the whole of the period, the whole year 2008 and the whole of year 2009, the total amount of work done in adding site plans to the Cardax System and modifying those site plans came to approximately eight and a half hours and I'm asking whether you agree or disagree with that proposition?---Well, I'd have to disagree because my staff have told me the hours that they say that they had done and the hours that they estimate it would take to complete the work so- - -

And you staff have said that to you recently or at the time when you prepared the calculation based on 44 hours?---The 44 hours was what Todd indicated. He might not have said exactly 44 hours, he might have said five days or six days or something. And also subsequent to that when we went looking for the information.

40 All right. And what information were you given by your staff subsequently that leads you to disagree with the proposition that the total amount of work done was approximately eight and a half hours?---Because I trust my staff and that's what they tell me that they took and they said they've done the work and I believe them.

They said they've done the work did they stipulate how long it took them to do the work?---No, not, not exactly.

Did they tell you it took in the order of 44 hours or do you assume that it

took that amount of time because that was the estimate Mr Anley gave you in 2008?---You'd have to ask my staff. I can only go by what I've been told.

All right. What I'm trying to ask you is what have you been told? Have you been told recently the period of time that the work took?---Yeah, Todd said that that's about right.

10 Todd said recently that that amount of 44 hours was about right as an estimate of how long the work took?---Yes.

Thank you. And I also want to suggest to you that the total number of site plans added to the Cardax system during the whole of the year 2008 and the whole of the year 2009 were approximately 36 site plans out of a total of 110 site plans at the University. Do you agree or disagree with that proposition?---I have no idea. I have no way of knowing how many site plans were done because I don't do the work. I'm just going on what my staff told me.

20 Commissioner, I have nothing further for Mr Magi.

ASSISTANT COMMISSIONER: Thank you. Yes.

MR STEIRN: Can I, I have some questions by way of re-examination.

ASSISTANT COMMISSIONER: Yes, you certainly may Mr Steirn, but we might let others go first, if you can be last.

30 MR NEIL: I wonder if I may lead (not transcribable)

ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: I'll just come forward a little bit. Mr Magi, I represent the interests of the University of New England. When was the very first time that you can recall that you were told by anyone that the work in relation to the site plans took or would take 44 hours?---It would have been around the time that I did the quotation which was 11 November.

40 Who gave you that information on that occasion?---Todd.

Can you just speak up a little, please?---Todd.

Very well. And when he gave you that information was it in response to a question that you put to him?---Yes.

What was that question?---The question would have been how much time have you spent doing the site plans and how long do you estimate it will take to complete them.

Now is it the practice at Prosys for staff who are carrying out chargeable work to keep some record of time that they spend on that work?---As we've indicated, yes they do do timesheets.

Yes. And what form do those timesheets take?---Just a handwritten - - -

And - but what is there a printed form or something of that kind that they're required to fill out?---Yeah, there's a standard, a standard form they use and then they fill in their days and what they do.

10

And staff are issued by Prosys with those standard forms. Is that correct?  
---That's correct.

And what, what instructions accompany the printed standard form?---As in?

What are staff told to do in completing their form?---They just fill in their hours and what work they were performing.

20 And, and is it the expectation with Prosys that staff will fill out that form as the work is done?---They should but they don't.

And just concentrating on what they should do for the moment, is it the expectation of Prosys that as a particular task is done the task will be by a Prosys staff member that that staff member will complete the timesheet indicating what the task was and the time that was spent doing it?---That's correct.

30 So that at the end of a working day there will be a number of entries relating to what work that staff member has done during the day?---Yeah, if they've done the same job, it'll just be, you know, 9.00-5.00 or something, UNE, and a job number. They may not, they don't need to say exactly what they say, just what site they were on.

And when a staff member has completed that form in that way, what is the staff member expected to do with it?---They either email it or send it up to the office to the Accounts people.

At the end of the working day?---No, at the end of the week.

40 At the end of the week in - by one of those two methods the staff member will provide a bundle of timesheets - - -?---That's correct.

- - - to Prosys head office. That's correct?---That's correct.

And who do they go to in the Prosys head office?---They go to Karen.

And what is Karen's position?---She's like office assistant.

What is Karen instructed to do with those documents?---She's enters the times on to the system for their pay.

Now do the timesheets include reference to or are they expected to include reference to the – with a job number in relation to which the work is done? ---That's how they should be done, yes.

But I imagine well that's not always so. Is that correct?---That's correct. That's correct.

10

Indeed in the illustration that you gave of the way in which a timesheet might be completed you didn't mention the job number, is it more or less common for timesheets complete by a Prosys staff member to include a reference to the job number?---It's, no, mostly they do put the job numbers.

All right. Now if a completed timesheet doesn't include a job number what does Karen do by way of deciding which job the work described in the timesheet should be indicated?---Well she would ask the relevant staff member what the job was and she would then put the job number on it.

20

And I'm sorry, you did mention this a little earlier, could you tell me what's the system into which Karen enters that information?---It's MYOB I think.

And is she, is it her practice so far as you're aware to make those entries at the end of each week when the timesheets are received?---Yes, or the pays couldn't get done.

How long does it generally take her to complete the task of entering a weeks worth of timesheets?---I have no idea.

30

What does she do with the timesheets when she's made those entries?---I believe they get filed away.

Where are they filed?---At the office somewhere, yeah.

Is there, so far as you're aware, a designated place where complete timesheets of that kind are kept?---I think they're kept around Karen's office until they're, whatever age that they have to keep. Like I don't do that stuff so I don't really know.

40

You have no idea what age - - -?---I don't know how long they keep records, those records for.

Now you asked Todd how many hours he had spent on the project - - -? ---Yes.

- - - and how many hours he estimated he would spend on that project d you remember whether he referred to, to any timesheets?---I don't believe so.

Of course there would have been timesheets wouldn't there at that time?---  
That's correct for that period, yes.

They would have been filed away in the office?---That's correct.

And the contents of those timesheets so far as the work was concerned  
would have been entered in Karen, by Karen in the MYOB system. Is that  
right?---That's correct.

10 Did you have regard to any of those sources of information?---To MYOB?

Yes?---I didn't use it, no.

Is it your recollection that, that when Todd gave you his estimate of the time  
he had spent and the time that he would spend, that he did so in hours or  
days?---I don't recall. It could have just been, you know it'll take five days  
or six days or something. I'm not sure there would have been hours.

20 What's a working day at Prosys for billing purposes?---Eight hours.

I'm sorry?---Eight hours.

Eight hours. Eight doesn't really go into 44 does it?---No.

At least not evenly?---No.

30 That would suggest to that you that the estimate that Todd gave you was a  
very precise one would it not?---As I said he may have said days, like five  
or six days or something like that and I've just, that's the amount of time  
I've allocated to it.

Is Karen still employed at Prosys?---Yes.

Now, once the information is entered by her into the MYOB system, what's  
done with it then?---That's how they make the pays.

I'm sorry?---That's how the pays get done.

40 That is the staff's pay?---Yes.

They get paid per hour that they spend on particular jobs. Is that correct?  
---No, they get paid a weekly wage.

Well, then how does the, how do the timesheets relate to the pays?---Well, if  
they only work four hours in a week or something that will come up or their  
sick leave or overtime.

So if, sorry, I withdraw that, I'll start again. When staff are paid do they, are their pays accompanied or calculated by reference to a breakdown of the number of hours they worked in a particular week?---I don't really know. I would assume so but I don't do the pays so I don't really have any- - -

Well, somewhere or other that calculation must exist, mustn't it, if staff are paid in the way that you suggest?---How many hours they work a week?

Yes?---Yes.

10

And, and the place where they do that work, would that also be recorded somewhere in Prosys' pay system?---No, that would go, that's on that other Job Tracker system.

Yes. And records of the way in which Todd's pay is calculated for the weeks in which you say this work was done, they would still exist within Prosys' system somewhere, would they?---They should do, yes.

And where would they be found?---Filed away somewhere.

20

Sorry?---They'd be filed away somewhere.

Yes. And by reference to those one would be able to see that it, how many hours Todd actually worked in the weeks in which you say this site plan work was conducted by him. Is that right?---If they have filled in their timesheets correctly, but I can't guarantee that.

Well, if pay is related to timesheets then one would expect that, that Todd for example- - -?---No, no, pay is related to hours- - -

30

Yes---?- - -on the timesheets.

Yes. Well, then one would expect that Todd would have a pretty keen interest when he got paid in ensuring that he was paid for the correct number of hours?---That's correct.

Yes. So there's a high degree of reliability in those records, would you not think?---Of hours worked, yes.

40

Yes. So you'd agree, wouldn't you, that there's a fairly reliable record somewhere within Prosys' systems of the hours in which Todd actually worked in the weeks in which you say he performed the site plan work? ---Yes.

Is that correct?---That's correct.

Now, now when he did that work, is it your understanding that he worked alone?---No. Oh, in some of it, yes.



And in relation to the rest of it, with whom did he work so far as you're aware?---With Imran and Carl.

MR STEIRN: Might the record show that the witness looked at a record in front of him and might he identify that record for the transcript?

ASSISTANT COMMISSIONER: Yes. What document were you looking at then?---I was in schedule 2, page 147.

10

So you're looking at that computer printout?---That's that job record, yes.

MR NEIL: Now, if more than one Prosys staff member works on a particular job at a particular time are they each expected to complete a timesheet of their own?---Yes.

And to provide that timesheet to Karen in just the same way that you described?---That's correct.

20

And they are paid again in, or their pay is calculated again in just the same way that you described in relation to Todd?---That's correct.

Has Todd been present when you've been giving your evidence today?  
---Yes, he has.

Is he in the court, in the room now?---He's here, yes.

Could you just indicate him to me? There he is in the blue shirt. Is that right?---That's correct.

30

And he's been here so far as you've observed throughout the whole time you've given evidence. Is that- - -

MR STEIRN: I object to this. That, that is the usual situation in these inquiries and nothing of any, no, nothing should be made of it in any, any  
- - -

ASSISTANT COMMISSIONER: Yes, I don't understand Mr Neil to be suggesting anything inappropriate.

40

MR NEIL: I've asked the question and I have the answer. May I continue, Commissioner?

ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: Now, I just want to, could I ask you, have you yourself seen any of these site plans?---No.

Never looked at them?---No.

Never yourself done so for the purpose of considering whether Todd's estimate of 44 hours was correct or incorrect?---No, there would be no need for me to do it.

Now, could I just go back to the conversation that you had with Mr McCallum about the prospect of Prosys making a payment to the St Kilda Hotel on account of the New England Rugby Union?---Yes.

10

Now, where did that conversation occur so far as you can recall?---I think it was over the telephone.

Where were you when the conversation took place?---In my office.

Who initiated the telephone call?---I believe it would have been Col.

20 So far as you can recall it was this prospect, that is that Prosys would make a payment to the St Kilda Hotel on account of expenses relation to the New England Rugby Union. Was that the only topic of conversation during that telephone call?---I don't, don't recall.

ASSISTANT COMMISSIONER: Could you keep your voice up, please, Mr Magi?---Sorry, Commissioner. I don't recall.

MR NEIL: But you can recall that part of the conversation which related to that topic. Is that right?---Yes.

30 And is that because it was a fairly, or that subject was a fairly unusual one in your experience?---As in?

That you had not often been asked on behalf of Prosys to make such a payment or contribution?---No, we've made contributions to different charities and associations and things in the past yes.

If it wasn't that, then what was it about that part of the conversation that has caused it to stay in your mind?---I don't know, probably because of all these proceedings I've had to remember things.

40 When you were first asked about it did you have a clear recollection of it? ---Of the conversations?

Yes?---Not really, it's probably come to me over, over the last six months or so.

As you've reflected on what was said?---Yes.

Well, so far as you can now remember, what was the very first thing that Mr McCallum said to you on that topic during the telephone conversation?

---I have no idea.

Well, you must be able to recall, you must be able to tell me, what is the first thing you can recall him having said?---No, I, I could not think of what he was, he might have said, hi, Nev, how are you? I don't know.

10 I'm sorry, you're not with me. Looking in your recollection now, what are the first words that you can recall him having said?---I can't recall what the first words he said were, I- - -

Well, let me just, let me just maybe get in this way. Can you recall any words that he said?---No, I don't have a full recollection of the conversation, I only know- - -

But in your best recollection of the conversation?

20 MR STEIRN: Let him, let him finish, please.

MR NEIL: And did you have anything more to say?---No, I just, I can only tell you what I recall of a phone call.

Well, I've been trying to break it up but, but let's not do it that way. What can you recall, your whole recollection of that telephone conversation? ---I remember Col saying that would we be interested in, in supporting the dinner for the rugby club but I think it was along the lines of they were short on some of the sponsors or something.

30 Continue. I've asked for your whole recollection of the conversation? ---And I said I'd check it out and get back to him.

Anything else?---No.

Does it follow from that that you can recall another conversation- - -?  
---Yes.

- - -relating to the same topic?---Yes.

40 And when did that conversation occur?---It was probably a few days later.

And where were you when that conversation took place?---In my office.

Was it over the telephone?---I believe so, yes.

Who initiated the second conversation?---It possibly was me.

And can you give your whole recollection of that conversation?---I think I just rang up and said, Col, I've spoken to the guys and yep, we're prepared to support the club and pay for the, a part of the dinner.

Anything else?---No.

Well, you told the Commissioner a little earlier that at some point Mr McCallum had said to you that he would pay you for doing the site plans?  
---Ah hmm.

10

Well, when did he say those words to you?---It was either in the second phone call or subsequently some other conversation after that, but I don't specifically recall.

Before the second conversation had you in fact spoken to the guys?  
---Yep, upstairs, yep.

Who did you speak to?---Arnold and Max.

20 What position did he hold?---Arnold?

Yes?---Arnold's a fellow director.

Is he still there?---Yes.

And what was the substance of your conversation with him?---It was along the lines of, you know, Col's asked if we could sponsor the dinner and I said it might be a good thing to get our name around in the community, there'd be business people and executives there and I think it'd be a good idea.

30

So in your conversation with, with Mr - sorry I didn't catch that surname?  
---Arnold, Arnold.

Arnold's surname?---Teuben. Teuben.

Teuben, thank you. Your recollection is that in your conversation with Mr Teuben you supported the idea of agreeing to Mr McCallum's request?  
---That's correct.

40 Correct. Now, one of your reasons, at least one of your reasons for doing so was that as you recall it is that you saw a benefit for Prosys - - -?---That's correct.

- - - in agreeing with Mr McCallum's request, correct?---Yes, correct.

And, and the benefit that you saw for Prosys was that agreeing to Mr McCallum's request in supporting New England Rugby would help to

promote Prosys and its name in the region, correct?---Yeah, through meeting people at the dinner and stuff, yes.

And although you may or may not have turned your mind to this, it would have been obvious to you if you had that agreeing, Prosys' agreement to Mr McCallum's request would carry with it a benefit to the New England Rugby, do you agree?---Yes.

10 Yes. Because it would have its costs paid for by Prosys. It would have been clear to you at that time no doubt, tell me if I am wrong, that if Prosys agreed to Mr McCallum's request it would carry absolutely no benefit of any kind to the University of New England, do you agree?---I would agree, yes.

Now, whether it was in the second or some telephone conversation or in some subsequent conversation, your recollection is that Mr McCallum said to you I will pay for you to do the site plans?---Mmm.

20 Or words to that effect?---Or words to that effect, yes.

Now, it was clear to you when he said those words that he did so in response to your agreement that Prosys would meet the costs of the New England Rugby at the St Kilda Hotel, correct?---Well, if that's what Colin intended.

Well, it was clear to you that his statement was a direct and immediate response to Prosys' agreement to meet the costs of the New England Rugby Union at the St Kilda Hotel, do you agree?---If that's what Col meant, yes.

30 No, no, I'm asking about your state your mind. It was clear to you at that time that Mr McCallum's statement was a direct and immediate response to Prosys' agreement to pay the costs of the New England Rugby Union at the St Kilda Hotel, is that correct?---Well, yes, I, I would imagine so, yes.

When you say I would imagine is that because you don't have any, an actual memory of drawing that connection in your mind?---Well, no, I don't know, I mean it really didn't occur to me.

40 Did you imagine at the time that it was a - I withdraw that. Do you have an actual recollection of thinking at the time that Mr McCallum's statement came out of the blue?---Oh, no, no.

All right. It was part of a transaction between or made during the course of conversation or conversations between you which dealt with the subject of Prosys paying the costs of the New England Rugby Union at the St Kilda Hotel, do you agree?---And conversations relating to the site plans if we can get them on the system and, you know, what do you want to, where do you want to go from from there.

But do you agree with what I put to you, that his statement was made in the course of conversations between you about the subject of Prosys paying the costs of the New England Rugby Union at the St Kilda Hotel?---Yes.

So could I suggest to you that it was obvious to you at the time that Mr McCallum's statement was a direct and immediate response to Prosys' agreeing to his suggesting that (not transcribable) meet those costs?---That and our discussions about the site plans and our requirement to be paid.

10 Now, when Mr McCallum made that statement it was clear to you, wasn't it, that he did not himself intend to pay Prosys anything?---No.

Did you imagine at the time that he was going to dig into his pocket and pay you his own money - - -?---No, no.

- - - for doing the site plans at the University of New England?---No.

20 Right. So it was obvious to you when he made the statement that you have recounted I will pay you to do the site plans, it was obvious to you that what he was talking about was not that, not the prospect that he would make those payments himself but that he would arrange for the University of New England to do so?---That's correct, yes.

And so assuming that your recollection of these conversations is correct, the substance of it was that so far as you understood that Mr McCallum was agreeing to arrange that the University of New England retain Prosys for doing the site plans in connection with Prosys' agreement to meet the New England Rugby Union's costs at the St Kilda Hotel, do you agree?

30 MR STEIRN: I object to that. What my friend is seeking to do is put the two issues together but we know on the evidence the first issue discussed - - -

MR NEIL: Well, just a moment. I just wonder whether this so-called objection might be made in the absence of the witness.

MR STEIRN: I've got no problem with that. I don't have a problem with that.

40 ASSISTANT COMMISSIONER: Yes. Yes. Would you mind just going outside, Mr Magi.

**THE WITNESS STOOD DOWN**

**[12.37pm]**

MR STEIRN: The evidence by Mr Magi as I understand it is on the first occasion he was asked by Mr McCallum to contribute, donate, whatever

word you choose, the amount of \$7,000 to the New England Rugby Club. Mr Magi's evidence was to the effect that he would discuss it with those he needed to discuss and discussed it with a fellow director and they agreed in principle for the reasons given. Either on the second conversation or a subsequent conversation, we don't know precisely when that was, there was a suggestion or an offer if you like, again call it what you will, by Mr McCallum that he would okay an amount, an equivalent amount if you like for payment in relation to the University site plans. What my friend is now seeking to do by his last question is put the two together as if they  
10 happened simultaneously which is not his evidence. So to put that question in those terms is unfair.

ASSISTANT COMMISSIONER: Yes. Well, what do you say, Mr Neil?

MR NEIL: I'm not sure that I understand what's being said. The language of - - -

MR STEIRN: Do you want me to say it all again?

20 MR NEIL: The language of the last question that I put was all language to which the witness had (not transcribable)

ASSISTANT COMMISSIONER: So what do you want? Sorry, can you just repeat again, what do you want to put to the witness?

MR NEIL: What I want to put to him is that - ultimately what I want to put to the witness is that it was clear to him that Mr McCallum's statement that he, the statement which he understood to be that Mr McCallum would  
30 arrange for the University to pay Prosys for doing the site plans was made in direct and immediate, as a direct and immediate response to Prosys' agreement to meet the costs of the New England Rugby Union. Ultimately the submission that I wish to make, I'll make, make my position entirely clear, ultimately the submission I wish to make is that even on Mr Magi's version of events he was participating in a transaction with Mr McCallum whereby Mr McCallum agreed to award work to Prosys which was no doubt valuable to it in return for making a contribution to the University, to the New England Rugby Union costs in circumstances where he also knew that by contributing to the New England Rugby Union's costs Prosys was  
40 benefitting itself (not transcribable) not the University of New England.

ASSISTANT COMMISSIONER: Yes.

MR NEIL: That's the submission I wish to make ultimately - - -

ASSISTANT COMMISSIONER: Okay.

MR NEIL: - - - and I want to give Mr Magi every opportunity to confront that.

ASSISTANT COMMISSIONER: Yes. Well, I think it's the immediate, the direct and immediate response is what has caused Mr Steirn's objection because - - -

MR NEIL: Perhaps I can - - -

10 ASSISTANT COMMISSIONER: - - - he would say it wasn't immediate because it wasn't in the same conversation so I would see objection to your putting to him that it was a direct response or related to the offer to pay for the St Kilda, it's probably the immediate that's causing the problem so perhaps you can - - -

MR NEIL: I'll withdraw the question and perhaps go and lay a little more groundwork.

20 ASSISTANT COMMISSIONER: Yes. Although I must say look we've spent some time on this issue. As I understand it Mr Magi has never denied that the suggestion that the Uni could be invoiced for this work was not related to the suggestion of the donation. I don't think he actually denies that. He says the work was done, but he doesn't deny that it was, that that offer was made because they'd offered to pay the St Kilda Hotel. So I mean you're welcome to put whatever you want to, but I, I don't think there is any dispute that there was a connection in that sense.

MR NEIL: I will press on for a little while if I may.

30 ASSISTANT COMMISSIONER: Yes. Could, could the witness come back in, please.



ASSISTANT COMMISSIONER: Yes, thank you Mr Magi.

MR STEIRN: Might the witness be told that last question, the objection was upheld in that form, so - - -

10 ASSISTANT COMMISSIONER: Yes, the last question, the objection was upheld in part as to the form of the question. So Mr Neil is now going to ask you some other questions?---Thank you, Commissioner.

MR NEIL: I'm going to start again, don't worry about the last question I'll start again. Now Mr McCallum's statement so far as you can recall these conversations, Mr McCallum's statement that he would pay the, for Prosys to do the site plans - - -?---Yes.

20 - - - was made after you had told him that Prosys would agree to pay the costs of the New England Rugby Union at the St Kilda Hotel?---That's correct.

Either in the very telephone conversation in which that was communicated to him. Correct?---Correct or one subsequent to that.

Or in a subsequent conversation which took place so far as you can recall soon thereafter. Is that right?---That's correct.

30 Now that was the – when Mr McCallum made that statement that was the very first time that he had told you that the work of doing the site plans would be awarded to Prosys. Is that correct?---I can't really recall. He had asked us to get the site plans prepared and see if we can get them on the system and everything, so I wouldn't assume it was going to be done by anyone else.

Yes, but can I just ask you was that the first time that he told you that the University would, that Prosys I'm sorry would be awarded that work?---I don't recall.

40 Well there would have been no point in him mentioning the statement a second time would there?---Most likely yes. Most likely, but I don't recall if there was a time where Col had said anything other than that.

It was obvious to you when Mr McCallum made that statement that there was a direct connection between it and Prosys' agreement to meet the costs of the New England Rugby Union?---For Col it was, yes.

Yes. And in effect the statement was made in return for Prosys' agreement to do so. Do you accept that?---That's what he said, yes.

And that's the way in which you understood it. Do you agree?---I agree.

10 Could I turn to another subject, please. Entertainment expenses incurred by Prosys staff on their visits to the University of New England. It's implicit in all that you said a little earlier, but I wondered if I could just confirm that meals and entertainment and other expenses incurred by Prosys' staff were all absorbed by Prosys. Is that correct?---I believe so, yes.

And not passed on to the client?---No.

Is that right?---(NO AUDIBLE REPLY)

MR STEIRN: Well I object to that because it's an unfair question. (not transcribable) what you said earlier, and I don't mind if he goes outside again - - -

20 MR NEIL: Well I think he's already given the answer. We're moving on to the next question.

MR STEIRN: Well, well it has to be remembered that it's part of the profit costs.

ASSISTANT COMMISSIONER: I think it's fair Mr Neil. I think he may have misunderstood your question.

30 MR NEIL: (not transcribable)

ASSISTANT COMMISSIONER: I think it is absorbed, but there is a margin built in to their quote to cover these types of things.

MR NEIL: I'll be more (not transcribable). Yes, the expenses were for meals and entertainment and so on were not passed on directly as such to the client but were absorbed by Prosys and recovered by it as part of its agreement?---By margins or whatever, yeah, that's correct.

40 Now – and it's also your evidence is it that you were not concerned yourself to verify claims for such expenses?---No, that's correct.

Was there somebody within Prosys' establishment who had the task of verifying claims of that kind?---No.

No requirement for the production of receipts or anything of that kind? ---Usually there's an invoice or a receipt or something that comes along with it, yes.

And you had no concern at all about the amount or level of expenses of that kind that your staff claimed. Is that right?---No.

Was it the case that on visits to the University of New England entertainment provided or paid for by Prosys staff could be as lavish as Mr McCallum wanted it to be?

10 MR STEIRN: I object to that. By introduction of the word entertainment, that's inconsistent with the evidence. What the evidence is that, that whilst Prosys staff was up there and if Mr McCallum was present then they would pay for his liquor bill, his dinner bill whilst they were discussing business. So use the word entertainment is not the evidence.

MR NEIL: The amount of – I'll withdraw the question. The amount of such expenditure didn't concern you, it could be as large as Mr McCallum wanted so far as you were concerned. Do you agree with that?---Well, no, it wouldn't have anything to do with Colin, it would have to do with what my staff were doing and what they were prepared to do.

20 Well let's have a look at one example. Do you remember you were shown an email that referred to a, a bill at the St Kilda Hotel for a week of \$1,830. Do you remember seeing that?---Yes. Yes.

And that email referred to three of your staff being present in Armidale at that time?---That's correct.

For a week?---Yes.

30 Do you remember that?---Yes.

So let's assume that a week is five days. Would that be a reasonable assumption?---It could be six, but yeah, five or six days. It depends whether they did overtime or - - -

Well that's well over \$300 a night?---Ah hmm.

At a pub, for three people and Mr McCallum?---Yes.

40 And that didn't concern you?---No.

That seemed a reasonable level of expenditure referable so far as you were concerned to discussion about business?---Well if they were having lunch there and dinner there and whatever else then that's what the guys did.

If it please.

ASSISTANT COMMISSIONER: Thank you, yes, Mr Neil. If there's nobody else who wishes to examine, Mr Steirn, do you wish to re-examine at all?

MR STEIRN: If I may.

ASSISTANT COMMISSIONER: Yes, you may.

10 MR STEIRN: Just on a couple, a couple of matters. Mr McCallum, just on that point, might we have access to that email that Mr Neil referred to. It should be volume 9, page 41, Commissioner.

ASSISTANT COMMISSIONER: Do you have that there Mr Magi?---Yes, I do.

MR STEIRN: Just read that to yourself Mr Magi and tell the court or tell the inquiry rather when you have read it?---Yes, I've read it.

20 And a question was put on the basis of that email because the amount of 1,830, but you'll see in the paragraph itself where it says, Harley wanted to check before he sent that night on the, what's the word, on the tiles with the professor was nearly figures, so you did have three guys here for a week. Mr Neil never introduced the words either check or through or the qualification that Mr McCallum himself gave it. Do you see that?---Yes.

Having re-read that email what do you understand Mr McCallum was saying to you?---(NO AUDIBLE REPLY)

30 Sorry, yes, it was sent to you, yes, to you?---Yep, yep.

What, what did you understand the purpose of what he was putting?  
---That he was prepared to put in for that night of whatever he was partaking.

Right. But did you, did you understand he was qualifying his generous offer by pointing out to you that Prosys had three guys there for the week- - -?  
---Yes.

40 - - -and that could account for the large amount?---Oh, that's right, yeah.  
Yeah?---Yeah.

And I take it did you reply to that email?---I don't think so, I don't believe so.

All right. Thank you. I'll take you to some other topics now. And you were asked some questions by Counsel Assisting as to you gave Mr McCallum a bottle of wine or the company gave Mr McCallum a bottle of

wine at Christmastime by reason of the company's or on a personal level your gratitude to Mr McCallum?---Yes.

Could you give, first of all, how long had you known Mr McCallum at the time that you had given him the bottle of wine?---That was in 2008.

Pardon?---That was in 2008 so it would be eight or nine years.

10 Yes. And in that eight or nine years doing the best you can now can you, can you tell the inquiry what sort of factors you are talking about when you talked about his, your gratitude to him?---When, particularly when I went up to UNE Col would, or one of the staff at FMS would always pick me up from the airport, if I had to go and see off-campus sites or things around the campus they'd always drive me around and anywhere I had to go they would always make sure that someone would get me there and they'd get me back to the airport.

20 Did, just stop there for a moment. Did that mean therefore that when you got, or how many, how far out of town is the airport?---Oh, fifteen minutes, ten, fifteen.

If I said about six K's or- -?---Yeah, something like that.

Yeah. If you weren't given that assistance would that mean you would have had to arrange your own transport?---That's correct?

And pay for it?---That's correct.

30 So that was a gratitude, one of the gratitude's, was it?---Yes.

At the end of the day he would take you back to the airport?---That's correct.

And was, was that something, did you see that as an assistance to you? ---It certainly was.

And what would have happened if he hadn't have done that?---I would have had to have hired a car or got cabs or yeah, something like that.

40 And when he picked you up from the plane, did you talk about the football or did you talk about business?---Business, what was on for the day and Col would say if he had a busy day or not and, you know, I'd have to, I'd usually have a Project Manager or a sales guy or an engineer with me as well, we had things to go and look at and do and he'd make arrangements for us to have a meeting.

And you gave some examples where the problems in the past, problems at the time, problems in the future?---Well, things that were happening in the future, of course and- - -

Yes---?- - -things with, particularly with their enrolments and their photo ID systems and everything.

10 And given, and I think you said before, you're back at Sydney so there's a tyranny of distance involved in going to the, going to Armidale or to the region?---That's correct.

Is that right?---Yes.

So did you see that as a commercial assistance in being able to discuss with Colin McCallum those sort of issues at the time he was picking you up?  
---Yes.

20 And I take it the same place, same thing took place when you had dinner with him at night- - -?---That's correct.

- - -if you stayed overnight- - -?---Yes.

- - -or lunch during the day?---That's correct.

30 In addition to those examples, what other practical examples can you give us in relation to how Mr McCallum would assist Prosys in their work?  
---Whenever the guys were up there doing work sometimes they might not have brought big ladders or big drills or something like that, the FMS guys would always make something available to them if they had it. If there were problems in them doing a job that could be fixed by the carpenters or the electricians they would always or most of the time make sure that those repairs were done really quickly so the guys could get on and finish the works.

And did you see that as a commercial advantage on behalf of Prosys?  
---Yes.

40 You were asked some questions both by Counsel Assisting and by Mr Neil on behalf of the University in relation to meals and accommodation. During the course of this inquiry at least I think there were some emails were Mr Todd Annay expressed some concern as to the cost?

MS WILLIAMS: Anley.

MR STEIRN: Sorry?

MS WILLIAMS: Anley.

MR STEIRN: Anley, I'm sorry. Do you recall seeing those emails?---No, I don't recall.

Is Mr Anley a, how long has he been with the company?---Probably about six or eight years but he's, he's left and come back- - -

All right---?- - -in that time.

10 And I take it you had no personal knowledge of the accounts being paid by head office 'cause somebody else did that. Is that right?---On some of them, yes.

Except as you say where you personally paid yourself- - -?---Signed them off, yes.

- - -and you then were reimbursed by the company?---Oh, no, it would be on my card.

20 On your, your company card?---Company card, yes.

Thank you. Can I take you to an email dated 2 July, 2008, which should be volume 9, page 12. Could that be brought up on the screen, Commissioner?

ASSISTANT COMMISSIONER: Yes.

30 MR STEIRN: Could you just read that to yourself. You'll notice an email dated 2 July, 2008, from Mr McCallum to Mr Todd Anley in relation to a complaint by Mr McCallum. Just read that to yourself and indicate to the inquiry when you finish reading it?---Yes, I've read it.

That on the face of it appears to be a complaint against your company- - -? ---That's correct.

- - -by Mr McCallum on behalf of the University?---That's correct.

Was it a proper complaint?---Yes.

40 Was it, was it, what Mr McCallum was saying, was that, was that true as you saw it?---Yes.

And was it addressed?---Yes, it was.

Even though it was, it was addressed to Mr Anley, did you become aware of it?---Yes, because Todd's fix for the problem was to get a new contractor onsite but also to, what we'd been doing previously is allowing the contractor to do the work and do some of the final commissioning and stuff prior to our guys coming up. What Todd put in place after this email was he got a new contractor which was Mick Martin and Mick would get

everything ready to make the final connection and Todd would go up and make the final connections and do the final program.

And, you see, according to the subject, it's a complaint in relation to the provision of services provided by your company, is that right?---That's correct.

10 Now, from what you said you rectified that complaint?---Yes.

And do I take it it cost the company money to do that, Prosys to do that? ---Yes.

And is that an example as you saw it of Mr McCallum doing his job on behalf of the University?---Yes.

And is it also clear to you that at least at 2 July, 2008 he wasn't showing your or your company any preferential treatment?---No, he - - -

20 Notwithstanding you discussed business with him at various lunches and dinners, is that right?---That's correct.

Over those preceding years?---Yes. Col was never short in telling us when we were going wrong.

Oh, that's tendered isn't it?

ASSISTANT COMMISSIONER: Yes, that's, that's already in evidence.

30 MR STEIRN: Just to put the bottle of wine in perspective, was it a company policy at that stage at least to give gifts to various entities during the course of the year?---Yes.

And at the time was that done by way of some sort of promotional sports bag for gym gear or something like that?---That's correct.

And depending on the type of gift the gift would go in the bag?---That's correct.

40 The bag itself had Prosys written all over it?---Yes.

For advertising purposes?---That's correct.

And it was either beer or wine?---Correct.

Were there any sorts of gifts?---I don't know. Sometimes there was like a bottle opener or a pen or something but I don't know which years that were and that was it.



All right. But just dealing with the liquor, are you able to say now how many gifts the company would have given?---Approximately 80 to 100.

And I take it it wasn't just the University of New England?---No, no.

Who, just indicate at random if you like who the gifts went to and on what basis?---Just different clients of ours and depending on who we had the contact with.

10

In a similar fashion to, for, for the reason, for the reasons you gave earlier, other Mr McCallum's in business along the way?---Yes.

Did that include other universities?---Yes.

Could you name the university where you might have given gifts to people who you came in contact with at Christmas time?---I'd have to really look the lists, I wouldn't like to say exactly which ones.

20

All right. So it wasn't just en mass it was for specific purposes?---Specific purposes, yes.

Based on your gratitude on a personal level and on a commercial level?  
---For the assistance we'd been given, yes.

Did you know it was \$160 at the time that was purchased?---I don't recall knowing it because I just went out and bought different bottles of wine for different people and you know, cases of beer and stuff.

30

Thank you. Now you were asked some questions, a number of questions in relation to the amount of \$7,000 which, on the face of it, which you accept equated with the, your donation to the rugby club \$7,700.---That's correct.

Now at the time you made up the bill you made – is it true to say you made sure it came aroundabout the \$7,000.---Yes, that's correct.

And was there a reason for that?---It was my believe of what Col was prepared to pay and would accept.

40

On behalf of The University for the work done?---That's correct.

If it had been – did you say you discounted the amount?---I may have said so but I don't recall.

Well, could we just go back to the figures you first told the inquiry about, I think you said the, is it the professional rate or the engineering rate?---Yes.

XXXXX per hour?--- XXXXX, that's correct.

And what rate did you ascribe to the bill?--- XXXXX an hour.

And if you do the sums, the difference is XXXXX.---Yes, that would be about right.

So if they had been invoiced for the correct amount they would have paid somewhere in the vicinity - - -

10 MS WILLIAMS: I object. This mis-states the evidence. The witness' evidence was that he took those matters into account when making up the quote, the bill was issued for the amount of the quote as I understood his evidence.

MR STEIRN: Yes. In making up the quote did you determine which rate to use?---Yes.

What rate did you in fact use?--- XXXXX an hour.

20 What rate was the normal rate at the time?--- XXXXX.

If you were charged at the normal rate, what would have been the bill to University of New England?---Over \$9,000 the - - -

Pardon.---Over \$9,000 the figure you said.

So Mr McCallum saved the University some XXXXX odd dollars. Is that right?---Yes.

30 Thank you.

ASSISTANT COMMISSIONER: Thank you Mr Steirn. All right, if there's nothing else, you may now be excused Mr Magi.

THE WITNESS: Thank you Commissioner.

THE WITNESS EXCUSED

[1.03PM]

40

ASSISTANT COMMISSIONER: I might indicate, I think we have three witnesses to go. Is that correct, and possibly one to be recalled.

MS WILLIAMS: Yes.

ASSISTANT COMMISSIONER: I was hoping to finish today, it may be a vain hope but I might just foreshadow that I'm certainly willing to sit a little

bit later this evening if we can finish. Is that going to cause anybody any problems?

MR STEIRN: I would hope Mr Annay is - - -

MS WILLIAMS: Mr Anley.

MR STEIRN: Mr Anley sorry, who is aligned with Mr Magi, he could also be done today.

10

ASSISTANT COMMISSIONER: Yes, well I'm hoping to do everybody today.

MR STEIRN: Oh I see, thank you.

ASSISTANT COMMISSIONER: I am hoping to finish today and in order to do so I would be willing to sit a little bit later this evening. Yes Mr McIlwaine.

20 MR McILWAINE: Regarding MR McILWAINE: Regarding Mr Williams, if he could be heard today, he's been here all day yesterday he comes from Armidale regional, he's not an employee of the University, he's a private business person (not transcribable)

ASSISTANT COMMISSIONER: That's noted. And with a little bit of co-operation I think we can do everybody today, that is my hope. So we will resume at 2 o'clock. Thank you.

30 **LUNCHEON ADJOURNMENT**

**[1.04PM]**