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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 25 JANUARY 2012

AT 2.03 PM

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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, Ms Williams.

<MARTIN JOHN McLEAN, on former oath

[2.03pm]

10 MS WILLIAMS: Thank you, Commissioner. Could Mr McLean be provided with volume 13 please opened at page 50. Mr McLean, is that an invoice the document at page 50 of volume 13 an invoice issued by SNP Security to the University in respect of security services?---Yes.

And do you see from the document that it's issued in respect of the period February 2007?---Yes.

And could you look at page 51 please. Is that an itemised description of the services and an amount for those services which make up the total shown on the invoice at page 50?---Yes.

20 And is the document at page 51 a document that was prepared manually to accompany each invoice in the form of page 50 to the University under the security contract?---Yes, the summary sheet is produced in Newcastle, the invoice, corresponding invoice to that summary sheet is prepared in Sydney.

Right. And the summary sheet is the document, is the kind you're referring to at page 51, correct?---Correct.

30 The summary sheet was prepared typically by Ms Lyndall Austin at SNP, is that right?---Yes.

She was the billing and payroll officer, is that correct?---And other duties but, yes, principal.

And she would prepare the summary sheets based on information provided by you, is that correct?---Myself and the site supervisor. Anything, anything relating to man power as in rosters et cetera would be supplied by the sites, anything additional or outside of that in regards to different roles or additional projects I would supply that information.

40 And the man power item is what's referred to on the summary sheet as security guards as per contract, is that right?---That's a portion of it, yes. Anything they can do with a roster, for example, the AV technician, he would have a roster and that would be reported through and also I think later on there's a communications officer, their roster would also be reported through by the site supervisor.

Now, I understand from your evidence given before the lunch break that you consider the arrangements between University and SNP about the AV

technician to have been separate from the security contract, correct?---It's, it wasn't part of the original tender, it was an additional duty that we took on after the additional tender.

And once you took it on you invoiced the fees for the AV technician in the same invoice as was issued under the security contract, do you agree?---I think I'm aware all services were contained within the summary sheet, any services that we produced were contained within the summary, on the one summary sheet which the corresponding invoice was generated as one item.

10

Right. And after you started performing the mail services was there a separate invoice for the mail services that was provided to the University as far as you can recall?---I can't recall, sorry.

Right. But in any event it was your or SNP's practice to provide this summary sheet separating out the man power security guard charge?---It's a result of the inability of our systems to do otherwise. The principal billing system which is managed by Sydney can't separate things within a lump sum contract, it can only produce the one line with the lump sum figure therefore any – the content of that invoice has to be manually generated from the local areas. That was the case back then, sorry.

20

By producing this summary sheet you would separate out for the University which part of the charges related to security guards, correct? Which part related to each of the matters referred to on page 51, correct?---Yes.

Including the particular amount that related to the seven-seater vehicle, correct?---Yes.

30

And the amount that related to the AV technician, is that right?---Yes.

In your evidence prior to lunch you referred to some email correspondence that you had seen between yourself and Mr McCallum concerning how the seven-seater vehicle was going to be used for both security and mail services, do you remember referring to that email correspondence?---Yes, yes, I do, I believe it was – I responded in regards to a question of how we were going to transition that.

40

Yes. And I think I asked you if you had a copy and you indicated you weren't able to produce a copy but you had seen it on your screen, correct? ---That's correct.

Do you agree with me that during the luncheon adjournment in the presence of your solicitor you showed me on your computer screen two emails one dated 7 May 2007 from Mr McCallum to you?---Yes.

And a response from you to Mr McCallum dated 8 May 2007?---That's correct.

And Mr McCallum's email to you on 7 May 2007 requested some information about how you were going to use the seven-seater vehicle for both mail and security?---Yeah, he wanted us to clarify of how we were going to do that.

And you responded to that explaining how you thought as at May 2007 that would work in your email of 8 May 2007, do you agree?---Correct.

- 10 And it remains the case that you can't at present print a copy of those emails, is that right?---Not easily.

Commissioner, I'm making attempts to obtain a copy of the emails from elsewhere and if that can be done they will be added to the tender bundle for identification purposes in due course. That correspondence between you on 7 and 8 May 2007 was some time before you actually started proving the mail services on 23 July 2007?---Yes.

- 20 I want to suggest to you that at some time between that date and 23 July 2007 it was decided by you that the one vehicle would not be capable of performing both security and mail services?---I can't recall what discussions occurred in regards to an additional vehicle being on site, any reference I can make to that is only off sighting correspondence, internal correspondence that I've seen since.

All right. Can I show you some of that internal correspondence. If you turn to page 87, please of volume 13. Can I ask you to note the date of that email being 17 July, 2007?---Yes.

- 30 Do you agree that's the date?---Yep.

And could you look at page 88, please and identify whether that's the attachment, the purchase order attachment referred to in your email at page 87?---Yes.

And do you see in the first line of that email which is from you to Ms Austin, you say this will be for 23 July, 2007 to 31 December, 2007. Do you see those words?---Yes.

- 40 That's because you knew at that stage didn't you that the mail services would commence – I'll withdraw that. You knew at that stage that the SNP would commence providing the mail services on 23 July, 2007. Correct? ---Yes.

And do you see there you then give some instructions to Ms Austin about the billing arrangements?---Yes.

Do you agree with that?---Yes.

And you've instructed her have you not to create a manual invoice for about \$900 a month. Do you agree you've given that instruction?---Yes, yes.

And words in the email from ie Col wants, that's your explanation isn't to Ms Austin of the reason that that manual invoice is required?---Sorry?

Well I'm directing your attention to the words, Col wants the mail vehicle hidden in a manual invoice?---Yep.

10

Do you see that?---Yes.

And that was the reason why you were asking Ms Austin to create a manual invoice for about \$900 a month isn't it?---Yes.

And Mr McCallum had discussed with you had he not at some stage prior to 17 July, 2007 the provision by SNP of an additional vehicle to perform the mail services?---I can't recall the discussion but the email suggests that.

20

And the reason that additional vehicle was required was to enable SNP to perform both the mail services and the security and AV services that it was already performing. That's correct isn't it?---Again I have no recollection of, of those discussions, but I can only refer to other documentation that I've, that I've viewed which, which is from me to internal parties including the site, that I always refer to as the AV technicians vehicle.

30

All right. I accept that you might have referred to that in some internal correspondence, Mr McLean, but prior to the date of this email, 17 July, 2007, SNP were providing security services and the AV services using the seven seater vehicle. That's right isn't it?---That's correct.

It was the commencement of SNP providing the mail services that brought about the need for an additional vehicle. That's right isn't it?---I think so. Again I can't be certain. I think there's some clarity within my email that states, the one I referred to that we've viewed on the computer, it states that the, the reason we could make the transition of the van to the mail services as well because it's under utilised during the day.

40

The additional vehicle that was acquired was a Toyota Yaris. Is that right? ---Yes.

And once that additional vehicle came on site the seven seater vehicle was used for mail services during the day. Correct?---Yes.

And the Toyota Yaris was used for transporting the security guards around the campus if necessary during the day?---Perhaps. I'm not on the site. Again I can only refer to the internal correspondence I've viewed which is -- my reference to it is the AV technician using it.

All right. Do you have any understanding of the purpose for which the Toyota Yaris was used other than having looked at your internal correspondence?---No, I can't remember why it was brought to site. The specific reasons discussed I can't remember.

But you do know don't you that what happened was that the seven seater vehicle was used for the mail delivery run during the day. Correct?---Yes.

10 So that – and it follows doesn't it that that seven seater vehicle was no longer available for the security services (not transcribable)?---Well again referring to my explanation within that email it states that a radio fitted to the mail van and the mail officers becoming security officers as well enables them to respond so the mail vehicle could actually be utilised for security purposes as well.

Yes, but your email that you're referring to is an email in May 2007. Correct?---Yes.

20 And at that time you were seeking to explain to Mr McCallum how you could get by with the seven-seater vehicle performing both the mail and the security services?---Correct.

The Toyota Yaris I'm suggesting to you was brought on site to perform both the security service and AV functions during the daytime hours when the seven-seater van was taken up doing the mail delivery run, do you agree with that?---Again I can only refer to my internal correspondence which refers to that vehicle being allocated to the AV technician. It could potentially have been used by security guards and in security functions but I
30 can't answer that.

Well, the charge of \$900 per month or thereabouts related to the Toyota Yaris, didn't it?---Yes.

The amount for the seven-seater van was quite a bit more than correct, that was (not transcribable) a month?---I, I remember the annual price being in excess of 22,000 or something like that.

40 In this piece of internal correspondence at page 87 of volume 13 you're referring to the additional vehicle that was going to cost \$900 a month as the mail vehicle, aren't you?---Yes.

Right. And that's because it was the introduction of the mail services contract that brought about the need for the Toyota Yaris, that's right, isn't it?---The reference to the mail vehicle I, I think is a mistake. Again, I can't recall back in this period but the reference doesn't make sense because in every other correspondence I've referred to it's referred to AV technician's vehicle.

Now you say in this email Mr McCallum, was the mail vehicle hidden in a manual invoice listed as alarm service work?---Yes.

That's what Mr McCallum told you, is it, on or about 17 July, 2007?---It seems that way, yes.

Right. But wanted to ensure that it was coded to guards, being security guards, correct?---The email suggests that, yes.

10

And from the time that SNP started performing the mail services on 23 July, 2007 it invoiced the University for a monthly amount of approximately \$900 described as alarm service work, didn't it?---Yes.

And those charges in fact reflected the Toyota Yaris, correct?---Yes.

And the description alarm service work was false, wasn't it?---Again, I think I've answered this previously, that how people code their various work I'm not privy to but if you look at it plain text here, yes, it seems that way.

20

ASSISTANT COMMISSIONER: Well, the use of the word hidden suggests - - -?---Yes, it does.

- - - it's false doesn't it and this, this is an email that you wrote - - -?---Yes.

- - - yourself, isn't it?---Yes.

30

You seem to not have much memory about it at all?---Well, the, the only, I can only recall about the information that I've seen. I don't recall those specific incidents.

Well, were you told anything about why did the vehicle have to be hidden? ---No, I'd only be speculating. I, I can't remember.

I'm asking were you told anything?---I can't recall, sorry.

40

Weren't you curious as to why you were being asked to produce an invoice with a false descriptor on it?---I, I can't recall back to then, Commissioner. I, I would suggest that I was abiding by the client's wishes.

And can you give us any assistance at all as to what changed, whose decision it was having proceeded on the basis you wouldn't need an extra vehicle, when did that change and why did it change?---I, I, as I've said, I, I can't recall the discussions relating to why the vehicle ended on site, all as I can say is that I've viewed documentation since then that refers to the AV technician's vehicle so I can only make an assumption that we've under-estimated the use of the, of the HiAce van by the AV technician.

10 But nothing had happened, you hadn't even been - the decision to get the extra vehicle was made before you had even started doing the mail?---It's quite possible that there's meetings that have taken place that on the, on the way to transitioning the vehicle to mail that has identified some areas of concern and again I can only comment on what I've seen in documentation that refers to it as the AV technician's vehicle. I have not seen any other documentation that refers to it as a security vehicle or for doing security work and I'd be happy to submit or I'll admit to that being the case if I can see that but I can't recall it.

Yes, yes.

20 MS WILLIAMS: Mr McLean, could you go back to the invoice at page 50 of volume 13, please or in fact the summary sheet at page 51. Now if, as you suggest, the Toyota Yaris was to be used by the AV technician, do you agree with me as you sit here now that the logical way for the charge for that vehicle to be shown in the summary sheet would have been either as for the AV technician?---Yes.

Do you agree that would be one logical way?---Yes.

Because there was already a – there was typically a charge shown in these invoices for that technician. Do you agree with that?---Yes, yes.

An alternative logical way would be to show it as a vehicle charge. Do you agree with that?---Yes.

30 Because you were in the practice of showing the charge relating to the seven seater vehicle. Correct?---Yes.

It was apparent to you back in July 2007 wasn't it that those were the two logical ways to describe the charge for the Toyota Yaris on the invoices that SNP were issuing to the University?---Well not necessarily. The format of this invoice is usually determined by the client of how they wish to view their costs.

40 Right?---That's not applicable to UNE, but we ask all our clients how would they like to view their invoices.

If as you say the Toyota Yaris was for the AV technician there was – it was apparent to you in July 2007 wasn't it that there was no logical reason why the University would require that charge to be shown as alarm service work rather than AV technician or vehicle charges?---Again, I've acted upon the clients wishes. And I, I haven't made assumptions of what it was about.

See SNP had recently submitted a tender to provide the mail services on the basis that the seven seater vehicle would be adequate for both the security and the mail services subject to a \$3,000 modification. Correct?---Yes.

And the University, as you understood in July 2007, had no obligation to allow you to charge extra an additional vehicle if that turned out not to be the case. Correct?---Potentially so.

10 You were dealing with Mr McCallum at the University?---The majority of the time, yes.

And you knew didn't you that if the Toyota Yaris charges were shown on the invoice as alarm service work, as Mr McCallum requested, then it would not be apparent to anybody else in the University from looking at the invoices that SNP were charging for an additional vehicle?---I, I can't speculate over who Col McCallum informed within the University of what was on the invoice.

20 No, no, I'm not asking you to speculate about that. But - - -?---Well I can't, I can't confirm if anyone else in the University was aware of what was going on.

My question is this, somebody at the University simply reading the invoice would not know from that invoice that SNP were charging for an additional vehicle if the Toyota Yaris was shown as alarm service work would they? ---If they weren't informed of it, no they wouldn't.

30 See what I'm suggesting to you is that it must have been obvious to you in July 2007 that by asking you to invoice the Toyota Yaris charges under the description alarm service work, Mr McCallum was allowing SNP to charge for the cost of the additional vehicle without that charge being transparent on SNP's invoices?---That, that could be the case, yes.

That was obvious to you wasn't it in July 2007?---Well no. Again I don't know what has transpired internally at UNE.

40 All right. So is it your evidence that you thought that although Mr McCallum asked you to hide the charge for the additional vehicle as alarm service work he was going to inform the University that in fact it was for another vehicle?---No. I haven't said that he was going to do that at all. I was adhering to the clients wishes. I have no knowledge of what was happening internally at UNE.

And no interest in working out whether or not you were being asked to describe the Toyota Yaris charges as alarm service work to hide from the University the true nature of the charges?---If you're asking if it was our intent to deceive the University, no it wasn't.

That wasn't my question. My question was you had no interest in working out whether the University would in fact be deceived by that description?--- No, my primary interest was to look after the client in that instance.

Whether the University was going to - - -?---Well, my contact at the University was Mr McCallum.

10 Right. And whether the University as opposed to Mr McCallum was going to be deceived by this description on the invoices that was a matter for Mr McCallum to worry about?---Correct.

ASSISTANT COMMISSIONER: You did appreciate, didn't you, that this was not Mr McCallum's money?---Yes.

He was not paying you out of his own money was he?---No.

It was the University's money?---Yes.

20 Did you think they had some right to know what services they were being charged for?---Yes, but the vehicle was placed on site at the request of the University.

Of McCallum?---But he's representing the University as far as I'm concerned.

30 Yes. Well, I've asked you whether you appreciate that the University's interest and Mr McCallum's may not be entirely the same?---But being the contact for this contract I don't believe I've got the right to determine the difference. If I've been asked by the University or the contact to do certain things - - -

So you'd put any description in the invoice that you're asked?---Back then potentially so.

Yes. Even if it was false?---Again, I can't, I don't want to speculate on what can be described or for whatever different services, I can only comment on what's transpired in this instance.

40 Yes. Well, you were willing to put a false description?---Again, I've put the description that the client wished to appear on the invoice.

You have no doubt that it was false do you?---Again, I think previously I've commented that I'm not privy to how people code things internally within budgets - - -

That's not - - -?--- - - - but I can see there's a - - -

That's not an answer in any way. You've referred in your email to the fact that this was done to hide the vehicle charges?---Yes.

You have no doubt in those circumstances that describing it as alarm services was false, a false description of what was being provided?---Yes.

Yes. Thank you, Ms Williams.

10 MS WILLIAMS: Mr McLean, you referred to the vehicle having been put on the campus at Mr McCallum's request, when was that request made?---I can't remember the period, sorry.

Because you've been asked some questions about how the decision came to be made that this additional vehicle was required and it was my understanding of your evidence that you couldn't recall?---Yes, that's correct.

20 Do you now say you can recall that Mr McCallum requested the additional vehicle?---No, I can only recall referring to the documentation I've been shown which says that Col has asked me to code things as this. I would suggest that there would've been a meeting between Mr McCallum and myself in regards to this but I can't recall any meeting.

And so whilst you can recall the request about how to charge for the vehicle you can't recall Mr McCallum - - -?---No, I'm referring it to the email. The only reason I can recall any of this is via the correspondence I've viewed.

30 All right. By looking at this email at page 87 you are able to recall that Mr McCallum requested that the vehicle be charged for in a certain way? ---Well, the email states that Col has asked for this to be done this way.

But you have no recollection one way or the other whether Mr McCallum requested the vehicle as opposed to the two of you deciding it was going to be necessary?---No, I can't recall those conversations.

Thank you. I just want to take you back to May 2007. Mr McCallum attended a race and rugby day hosted by SNP on or about 26 May 2007? ---Yes.

40 And that was at your invitation, is that right?---I believe so.

And at that stage the University was still in the process of considering the tenders for the mail services, do you agree?---I think those dates are within that period, yes.

Did Mr McCallum indicate to you when he received the initial invitation that it would not be appropriate for him to attend - - -?---Yes.

- - - and the reason was because of the mail services tender process?---Yes.

He subsequently, however, accepted and did attend, is that correct?---Looks that way, yes.

Given his initial response was it of any concern to you about whether it was appropriate for him to attend?---We leave those decisions to our clients, their discretion.

- 10 Did Mr McCallum attend a rugby match, the Cowboys versus the Knights with you on 24 August, 2007?---I, there's been a lot of rugby games but I, I've seen correspondence that refers to that so I'd assume so.

All right. And to put it in context shortly - about a month after SNP commenced performing the mail services at the University?---I think so, yes.

- 20 Without taking you to every single instance do you agree that you extended on behalf of SNP hospitality to Mr McCallum from time to time during the period from at least May 2007 up to early 2011?---We, we have several events that we invite our clients to, yes.

And those events were races and rugby days of the kind that I've mentioned?---Yes.

SNP gala dinners?---Yes.

Dinners forming part of the ASIAL conference?---Yes.

- 30 And from to time in conjunction with some of these events SNP arranged by you would provide accommodation for Mr McCallum?---For any clients that had to travel for those events we'd extend that courtesy.

Including Mr McCallum?---Yes.

And you can recall him staying at Warners on the Bay on several occasions, can't you, at SNP's cost?---Yes.

- 40 And you can recall, can you, taking him out to, to dinner at a place by the name of Scratchleys on one or two occasions?---Yes.

And again, that was at SNP's cost?---Yes.

And of course the races and rugby days and other events hosted by SNP, the cost was borne by the company?---Oh, certain aspects of but not entirely.

Mr McCallum and other guests might have paid for their own food and drinks at some of the sporting events?---At, at the races everyone paid their

own entry and then all food and drink there was at each individual's expense and then at the rugby everyone bought their own drinks.

All right. But apart from those incidental expenses SNP bore the cost of the function?---Yes.

Do you recall that Mr McCallum was accommodated at the Ibis Hotel at the airport on one occasion in conjunction, in conjunction with attending a dinner at SNP's guest in Sydney?---No, I can't, I can't recall that.

10

To your knowledge did SNP from time to time pay for cartons of beer to - for, for Facilities Management staff to enjoy on a Friday afternoon in their offices?---I, I've only purchased one I think, one case of beer at a, on a Christmas period or maybe two in different occasions prior to Christmas but I haven't purchased Christmas - ah, cartons of beer for Friday afternoon drinks.

20

Are you aware whether or not Mr Richey has done that?---Oh, I've seen correspondence within the, the documents we've been given. I think it was within Mr Richey's statement that he states that he has.

And you've got no reason to dispute that?---Oh, it's in his statement, I don't know, I'm not aware of it.

30

What was SNP's purchase in extending the hospitality I've just been asking you about to Mr McCallum over the years from May 2007 to February 2007?---Any of our major events we extend invitations to all our clients for the purpose of trying to shore up lines of communication, show new products to our clients, create an environment where they're able to network with fellow, what can I say, industry sectors and create an environment where they feel comfortable to relate to those people and also us.

Is it fair to say that the contracts with the University, the security and the mail contracts were valuable contracts to SNP?---Oh, yes.

It was important to retain them, correct?---Yes.

40

And Mr McCallum during those periods from May, well, in fact from earlier but, but up until about February 2011 was the key person at the University responsible for administering those contracts on behalf of the University? ---The majority of the time, yes.

It was Mr McCallum who would make decisions for example about additional work that SNP might be asked to do?---All the operational aspects of the contract I think were with Mr McCallum, yes.

For example when the opportunity to provide the AV services came up it was Mr McCallum that raised that with you, was it?---Ah, yes.

It was Mr McCallum who discussed with you prior to the mail services tender process the notion that SNP might be interested in tendering for the work?---I would suspect so.

And it was Mr McCallum who made the decision about – I’ll withdraw that. It was Mr McCallum who represented the University in assessing expression of interest and tenders received under the mail services tender. Were you aware of that?---No. I’m not privy to who was part of the
10 assessment team.

Do you recall I asked you some questions about Mr McCallum meeting with you in Newcastle at the end of March 2007?---Yes. Yep.

And that was in relation to the expression of interest for the mail services?
---Yes.

Did you infer from that that Mr McCallum was at least involved in that decision making process in some way?---I think he was the contact for the
20 tender and he was clarifying on the scope. I’m not, I’m not privy to if he was part of the tender committee. I could speculate that he was, but I’m not privy to that.

SNP typically made a submission to the University about a price variation under its contracts on an annual basis. Is that correct?---We do with all our clients annually, yes.

And that submission was made to Mr McCallum?---I think so.

30 So in extending all of this hospitality to Mr McCallum wasn’t it also your purpose, and I’m talking about just your own purpose at the moment?---Ah
hmm.

Wasn’t it your purpose to create a relationship where Mr McCallum might be inclined to favour SNP in making decisions relating to first the security and subsequently the mail services contracts?---In my experience any relationship is built upon the service you deliver. So if we weren’t delivering the service that was required by the University, we’d have no
40 relationship.

But the hospitality formed an important part of the relationship that you were able to build with Mr McCallum didn’t it?---It’s a standard business practice of what we, what we do and how we network within our clients and business sectors. And how we provide invitations to our clients to other clients.

And one of the reasons that’s your standard practice is to develop strong relationships with clients in the hope that they will exercise their decision

making powers in a way that is helpful to rather than contrary to the interests of SNP. That's right isn't it?---It is in our best interests to develop strong relationships. But if it determines the results of tenders et cetera, that would be upon our tender submission and our current service delivery.

I'm not suggesting to you for a moment Mr McLean that you could ignore having to perform the work you were contracted to do at the University?
---Yep.

10 But this hospitality that was extended to Mr McCallum was in effect the icing on the cake wasn't it, in strengthening the relationship?---Well I previously explained what the hospitality was in aid of.

You attended Mr McCallum's 50th birthday. Is that correct?---Yes, I did.

And did you attend that because Mr McCallum was an important contact person for one of SNP's major clients?---No, because we've developed a friendship over the years.

20 Was that 50th birthday party held on 30 July, 2009?---I can't recall.

Do you remember putting some money on the bar at that function at the St Kilda Hotel?---It wasn't at the function, it was at the after party. The function itself was at the Golf Club.

All right. And afterwards you moved to the St Kilda Hotel did you?
---Sometime afterwards. I can't recall.

30 So yourself, Mr McCallum and presumably some other guests?---I think there was a fair portion of the people. I can't, I'd assume Col was there because it was his birthday.

And do you recall, well he wouldn't have been going home early would he?---I don't think any of us did that night.

Do you recall putting some money on the bar at the St Kilda Hotel at that after party?---I can't recall, but if it's there it happened.

40 Do you recall whether you claimed that money back from SNP?---I can't, sorry.

I want to ask you some questions about SNP's employment of Jasmine McCallum?---Yes.

She was employed in a part time capacity in February 2008. Is that right?
---I think so.

And I want to suggest to you that that came about initially as a result of a suggestion made by Mr McCallum to Mr Richey that Jasmine would be available to fill the position that Mr Richey was then looking to fill in the mailroom, do you agree with that?---I've seen correspondence to that effect, yes.

10 Right. And were you aware at the time Jasmine was employed that SNP was looking to employ – was considering employing Jasmine McCallum? ---I know that at that time upon reviewing documentation that we were struggling to find anybody to employ, we had advertisements everywhere throughout the University and we were looking at advertising in the local papers and also to advertise in the job agencies as well.

In May 2009 or thereabouts Ms McCallum was employed on a fulltime basis, is that correct?---I'll take your word for it but, yes.

Could you turn to page 333 of volume 6 please?---I haven't got volume 6.

20 Do you see on the second half of page 333 an email from Mr McCallum to you on 20 May 2009?---Yes.

And do you agree with me that in that email Mr McCallum asks you – I withdraw that. Tells you that Jasmine would like an offer of a fulltime position with SNP, correct?---Yes, he states that she would love a fulltime position.

And you reply the following day at the top of page 33 that you're attempting to make room for Jas – I take that to mean Jasmine McCallum ?---Yes.

30 - - - as we speak?---Yes, correct.

So does that enable you to recall that she was employed fulltime shortly after May 2009?---I think she was, yes.

40 And when Mr McCallum made the request in his email of 20 May 2009 to you you would've been in a difficult position to refuse that request wouldn't you?---Not necessarily. My response saying, "attempting to make room for Jas as we speak" is a result of Jasmine being an excellent worker and we had substandard workers within our current roster, we were trying to manage or performance manage those people out appropriately so that we could try and entice because initially Jasmine did not want to leave her Big W work and work with us fulltime.

I'm not suggesting that Ms McCallum was not a good employee as you say, Mr McLean, - - -?---Yep.

- - - but in view of Mr McCallum's position with the University and the importance of the mail and security contracts with the University to SNP it

would've been difficult for you, if you had wanted to, to decline or to say to Mr McCallum, "Sorry, we can't employ Jasmine on a fulltime basis."?---It can be perceived that way but that's not the reason for my response.

Did SNP sponsor the New England Rugby Union to the tune of about \$5,000 a year?---Yes, we did.

And that occurred from about 2008 to 2011?---I can't remember the exact years but we did for a period of some years.

10

All right. Were you aware at the time that those sponsorship – I'll go back a step. Did Mr McCallum suggest that to SNP the sponsorship?---I can't remember specifically the conversation but I'd probably say he did.

And do you recall whether he informed you at any stage that he was an Executive Officer at the New England Rugby Union?---I can't recall. I mean myself being informed of the position he held, I can't remember.

20

Do you remember being aware of the position he held at any time from 2008 when SNP was paying the sponsorship moneys?---Afterwards. I know in later years that I know that he was an Executive Officer or I think that's the position but I can't remember the position or where I was informed of what position he held within New England Rugby. He obviously had to hold some position to approach us.

30

The Commission has heard evidence which I think you may be aware of that Mr McCallum received ten per cent of sponsorship moneys paid to the New England Rugby Union. Is that something that you were aware of at any stage whilst SNP was paying these sponsorship moneys?---No, not at all.

Right. Just excuse me one moment, Commissioner. Commissioner, I have no further questions for Mr McLean.

ASSISTANT COMMISSIONER: Thank you. Yes. Does anybody seek to question Mr McLean?

MR NEIL: I wonder if I might have leave to ask a few short questions about the email of 17 July 2007?

40

ASSISTANT COMMISSIONER: Yes, Mr Neil, but could you come forward to one of the microphones.

MR NEIL: I wonder if Mr McLean might be shown that document please, the email at page 87.

MS WILLIAMS: It's volume 13, page 87.

MR NEIL: Yes. Now, while that's coming up, Mr McLean, I want to, at the risk of insulting your common sense, whether you will agree with me that in July 2007 you appreciated that there was little point in hiding something from somebody who already knew it, do you agree?---I don't understand your question, sorry.

In July 2007 when you wrote this email you appreciated that there was little point in hiding something from somebody who already knew it, do you agree?---No, I can't recall what I appreciated back then, sorry.

10

Well, that's common sense isn't it?---Potentially so.

Yes. And you're a common sensical man, are you not?---I guess so.

And if you'd turned your mind to it you would've appreciated that there was little point in hiding something from somebody who already knew it, do you agree?---Again, I can't recall what my opinion was back when I wrote that email.

20 You knew in July 2007 that your client or SNP's client was the University of New England, is that right?---Yes.

You knew in July 2007 that SNP's invoices would be addressed to the University of New England, is that right?---Yes.

You therefore appreciated, did you not, when you wrote this email on 17 July 2007 that the costs that Mr McCallum wanted you to hide in the invoice would be hidden from the recipient of that invoice to the University of New England, do you agree with that?---In some respects, yes.

30

And in what respects do you not?---Well, Mr McCallum gave evidence earlier stating reasons why he didn't want certain things listed as certain things because he had a grievance with Finance and - - -

And to what extent - - -

MR BOURKE: I object.

MR NEIL: I'm sorry.

40

MR BOURKE: The man shouldn't speak over the witness.

MR NEIL: Very well. I didn't understand he was speaking but carry on?---And I – again, I can't – I'm not privy to what Mr McCallum was thinking or what was happening internally at the University.

So that anything that Mr McCallum was thinking or anything that was happening internally in the University was quite extraneous to your state of

mind as at 17 July 2007, that's right isn't it?---Well, as I've mentioned previously I can only go off what's written in this email, I have no recollection of that period and I can only comment on what I've written there.

Well, you have told the Commission that you knew nothing about what was in Mr McCallum's mind on this question and nothing about what was happening internally in the University, correct?---I can't recall any of that, no.

10

And if that's right, if you knew nothing about what Mr McCallum was thinking and nothing that was happening within the University as at 17 July 2007 then matters of that kind would have played no part in your thinking when you wrote this email, do you agree?---What I've said I can't recall the time of the email being sent so any comment I'm making now is based upon what I'm reading on this email which is I can't recall what was – anyone thought or what was happening internally at the University or what I was thinking at that time either.

20

But even if you'd known, even if you'd known for example that what Mr McCallum wanted to do was to hide the cost of the vehicle from someone within finance, what, what would that knowledge, how would that knowledge have influenced your thinking?---Well, I can only again speculate but I would be suggesting it's an issue for Mr McCallum.

And not at all for your or SNP?---Obviously at the time I didn't think so.

If the Commission pleases.

30

ASSISTANT COMMISSIONER: Thank you, Mr Neil. Yes, if there's nobody else? Yes, Mr Bourke.

MR BOURKE: Commissioner, if I could seek leave just to ask a few questions.

ASSISTANT COMMISSIONER: Yes, certainly.

40

MR BOURKE: Just on that last topic, Mr McLean, did you in giving instructions about these invoices have any intention to mislead the University?---Not at all. They were receiving the vehicle that was needed.

ASSISTANT COMMISSIONER: I'm sorry, how were they receiving a vehicle? Wasn't your company using the vehicle?---Yes, but it was for the purposes it was requested by the University.

It was for the purposes of you carrying out the contract that you were being paid to perform wasn't it?---No, what I've stated, Commissioner, is that that vehicle was for the AV technician and I can only - - -

And you were being paid to provide the AV technician under an agreed price?---Yes, your Honour.

Well, you can't - - ?---Commissioner, sorry.

It's no point saying the University wanted the car, the car was necessary for you, your business to be carried out?---But - - -

10 The University just ended up paying for it?---Not exactly, Commissioner. The, what I've stated in my correspondence is that the vehicle was part of the security contract, which it was, the HiAce van, and that it would be dual-used in conjunction with the mail contract. What was neglected was the use that was - of the AV technician that they would require a vehicle as well.

That was your problem wasn't it?---Well, no because - - -

20 If you neglected to get enough vehicles to service the AV technician - - - ?
---No.

- - - that was your problem?---No, it wasn't Commissioner because the AV technician was not part of the original tender, it was an additional duty and as the - - -

But you had given - you quoted - - -

MR BOURKE: I'm loathe to object to - - -

30 ASSISTANT COMMISSIONER: Excuse me.

MR BOURKE: I'm loathe to object to the Commissioner and questions but could I respectfully ask that the witness be allowed to finish his answers.

ASSISTANT COMMISSIONER: Well, the witness is not really making any sense.

40 THE WITNESS: Well, Commissioner, the HiAce van, the initial HiAce van was part of the security tender, right, and then when the mail tender came - ah, in between the mail tender an additional duty of the AV technician was, was formed and that - - -

ASSISTANT COMMISSIONER: Yes, and you provided a price to provide that service did you not?---That's, that's correct and during the, during the day the AV technician was able to utilise the van because it was under-utilised by the security personnel. So then when the mail tender arise the security van was now monopolised the entire day by the mail people so therefore the AV technician no longer had the use of the security vehicle

that was under-utilised during the day so therefore we had to get another vehicle to site.

Yes. So if that was a miscalculation it was a miscalculation on your part and - - -?---Not at all.

10 Yes. You had provided a quote to provide the AV technician, you had provided a quote to provide the security services, you had provided a quote to provide the mail services. If at the end of the day you didn't have sufficient vehicles to do that, that was your problem not the university's problem?---I beg to differ, Commissioner, because the AV technician was just utilising the security vehicle because it wasn't being utilised during the day.

20 Yes, well, that does not in any way explain the issue that I've raised with you, that the University was under no obligation to provide this additional vehicle and that you well knew that as shown by your email where you just say the vehicle has to be hidden by another description?---Yeah, well, I didn't say that, that was suggested to me, Commissioner.

It's your email, you used the word hidden?---Yeah, and I was also used that Colin McCallum has instructed this to be, to be done a certain way.

Yes. Yes, Mr Bourke.

MR BOURKE: You were asked some questions about Mr McCallum's position with the New England Rugby Union?---Yes.

30 And you said you had no idea that he was getting paid. At that time and currently did you hold a senior position with a sports body?---I hold several, I'm the president of the Newcastle Basketball Association and I'm the state under 16 boys' basketball coach.

And in relation to those two positions that you hold are they paid positions or honorary?---Honorary.

40 Honorary. Just one final matter, it's an observation, but I take it that it's conceded that the emails that were referred to before lunch by Counsel Assisting, my friend's now seen those, that they are consistent with the evidence that the witness gave before lunch. I think that's essentially agreed isn't it?

ASSISTANT COMMISSIONER: About the contents of those emails?

MR BOURKE: Yes.

ASSISTANT COMMISSIONER: Well, Counsel Assisting has seen them so - - -

MR BOURKE: (not transcribable)

MS WILLIAMS: I've seen the emails on, on the screen. I've, I've placed on the record through asking Mr McLean about them the dates of those emails and the general subject matter and as I've indicated I will ensure that the Commission staff do whatever is possible to obtain copies of them so that they can be tendered in evidence but I'm not prepared to place a summary of their contents on the record based on memory of a screen.

10 ASSISTANT COMMISSIONER: Yes. I'm sure, Mr Bourke, we will be able to get a copy of those emails through some means. I'm happy for them to be placed on the record at that time and they will speak for themselves as to their consistency with the evidence given by the witness.

MR BOURKE: Very well. Could the witness then be excused from his summons?

ASSISTANT COMMISSIONER: Yes. Oh, yes, Ms McGlinchey. Could you just come forward please.

20 MS McGLINCHEY: Mr McLean, I appear for Mr Munro?---Oh, I see.

Mr McLean, do you recall that in 2009 you were requested to attend a meeting with Mr Munro and I think Mr Ipkendanz gave you that request? ---Ah, yes.

And you did in fact attend a meeting with Mr Ipkendanz and Mr Munro? ---I'm not sure if Mr Ipkendanz was actually in the meeting I had with Mr Munro but I remember being in Mr Munro's office, yes.

30 And the subject of that meeting was for Mr Munro to convey to you some dissatisfaction with the performance of your company?---Yeah. Yes, we were struggling at that time.

And is it your recollection that the subject of that dissatisfaction included slow response to callouts?---I, I can't recall the subject of it but I just knew that it, I know the meeting was relative to poor service delivery.

By your company?---Yes.

40 Does it accord with your recollection that it may have included poor response to callouts?---I, I, I can't remember I'm sorry.

And does it jog your memory if I suggested that it also included the quality of reports back to, to the University?---I think there was various issues but I'm sorry, I can't recall the specifics of it.

You can't remember any of those issues?---No, but I know it was in relation to they weren't happy with us at that point in time and we were, we needed to do something to pick up our service levels.

And do you recall that Mr Munro suggested that if there was no improvement in the service provision it would significantly put (not transcribable) at the risk of not being able to re-tender?---Yes, indeed.

And were improvements made?---Oh, we invested heavily in getting the right people to site to ensure we improved our service levels.

10 And what sort of things did they include?---We recruited experienced University personnel from outside the region and relocated them to the University and I would say the results from that speak for themselves. I think we've got one of the enviably, what can I say, teams at the University campus now up at University of New England.

Thank you, nothing further.

ASSISTANT COMMISSIONER: Thank you. Well, if there's nothing else, do you have anything else, Ms Williams.

20 MS WILLIAMS: (not transcribable)

ASSISTANT COMMISSIONER: Yes, Mr McLean, you may now be excused from further attendance at this inquiry?---Thank you.

Thank you.

THE WITNESS EXCUSED

[2.59pm]

30

MS WILLIAMS: Commissioner, I call David Chaloub. Yes, you're Mr Chaloub.

MR McILWAINE: Assistant Commissioner, my name is McIlwaine, I seek your authority to appear for Mr Chaloub.

ASSISTANT COMMISSIONER: Yes, Mr McIlwaine, you're given leave to appear for Mr Chaloub. Mr Chaloub, you've been called here to give evidence, you are required to answer all of the questions asked of you.
40 You're entitled to seek a declaration under section 38 of our Act.

MR CHALOUB: Yes.

ASSISTANT COMMISSIONER: Do you - - -

MR McILWAINE: My client seeks the declaration, Commissioner, and he'll given evidence on oath as well.

ASSISTANT COMMISSIONER: On oath?

MR McILWAINE: Yes.

ASSISTANT COMMISSIONER: Thank you Mr McIlwaine. Mr Chaloub, the effect of this order I'm about to make is 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 that you've breached our Act by providing false or misleading information.

10

MR CHALOUB: Yes.

ASSISTANT COMMISSIONER: Otherwise nothing you say nothing you say here can be used. Do you understand that?

MR CHALOUB: Yes.

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

20

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 ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED

30

ASSISTANT COMMISSIONER: Could the witness be sworn, please.

40

ASSISTANT COMMISSIONER: Thank you. Yes, Ms Williams.

MS WILLIAMS: Mr Chaloub, could you state your full name and address for the record, please?---David George Chaloub, XXXXX.

10 And you are an, an estimator employed with Quad Services Pty Limited. Is that correct?---Yes.

And you've made two statements in connection with the Commission's investigation. Is that correct?---Yes.

The first dated 9 November, 2011?---Yes.

And the second dated 5 December, 2011. Is that correct?---Yes.

20 Mr Chaloub's first statement is in volume 1 pages 529-650. And I tender those pages and ask that they be included in Exhibit 1.

ASSISTANT COMMISSIONER: Yes, pages 529-650 of volume 1 will be included in Exhibit 1.

#EXHIBIT 1 - FIRST STATEMENT OF DAVID CHALOUB - PAGES 529-650 OF VOLUME 1

30 MS WILLIAMS: And the second statement is in volume 1 pages 651 to 656. And I ask that those pages also be included in Exhibit 1.

ASSISTANT COMMISSIONER: Yes. Those pages will also be included in Exhibit 1.

#EXHIBIT 1 - SECOND STATEMENT OF DAVID CHALOUB - PAGES 651 TO 656 OF VOLUME 1

40 MS WILLIAMS: Mr Chaloub, I want to ask you some questions about the tender put together by Quad Services in late 2009, early 2010 for cleaning services at the University of New England. I should check first, do you have copies of your statement with you?---Not on me, no.

All right. I'll ask that Mr Chaloub be provided with volume 1 opened at page 529 please. Mr Chaloub, you refer in your statement to the role that, this is your first statement made on 9 November, to the role that you played

in the preparation of Quad Services tender for that cleaning contract. What was the role so far as you observed of Mr Yardley at Quad Services in relation to the preparation of that tender?---He was to oversee the final price to make sure that we put the most competitive price forward.

And in paragraph 8 of your first statement at page 531 of Exhibit 1, you refer to having sought further information from the client on service specifications and building sizes in connection with that tender?---Yes.

10 And you say you did that through the tender forum. What's the tender forum you're referring to there?---It's the UNE website that all the contractors were to ask questions through.

It's an electronic system is it?---Yes, yep.

And you also raised a request with Mr Turner who was Quad's manager on site?---Yeah, he was our site manager, yes.

20 Do you remember which particular buildings you sought further clarification in relation to?---No, not off hand.

I presume you were requiring a written response from the University that could be relied on in preparing Quad's tender. Is that correct?---Yes.

And do you recall whether you got such a response?---I think we got it through the tender forum where, I recall that we had to ask some questions about some areas that, that we'd already done but weren't included in the tender, yet they wanted a price for. And they're some of the questions that we asked and they replied back through the forum.

30 All right. And that was in the response of an email or some other sort of electronic (not transcribable)?---It would have been through the electronic forum.

All right. And if I understood your answer correctly, you think do you that the buildings you were inquiring about were buildings that weren't officially part of the tender?---No, they were part of the tender, but the square metre size that we had on the site visit didn't match what, what we were quoting on. There were differences in sizes.

40 I see?---And that's what I just wanted clarification on.

So at the site visit you were provided with some square meterage details? ---Yes, we were, we had to do a site visit. We were shown a number of buildings, probably about three or four buildings in total.

And you had in the University's request for tender document some details about building sizes and square metres?---Yes, we were provided with square meterage for most buildings but not all.

All right. And then at the site visit were you provided with square meterage for those additional buildings?---No, no. There were some buildings they couldn't provide square meterage. And it was just relied on us as our experience to work out prices.

10 And your request you think related to the buildings for which the square meterage was not specified - - -?---That's right.

- - - in the request for tender?---Those as well as – because we'd already done the job for three years previously we knew what areas we were cleaning and the – what was in the document didn't match what we were cleaning. So that's why we, we asked for those clarifications.

20 And I just want to ask you some questions please about paragraphs 10 and 11 of your statement. Before I do that though, do you recall whether or not you mentioned to Mr Yardley that you had asked for those clarifications about building sizes?---No. I don't usually talk to – it's up to the estimator to, to make sure that we've got all the details before the senior person looks at it and okays it.

Do you recall mentioning to anybody else at Quad Services other than Mr Turner that you'd asked for those clarifications?---Probably Dobrilla, who was the Area Manager at the time.

30 Do you recall whether Mr Yardley ever asked whether you'd received a response to your query about the building sizes?---No, because I never asked him in the first place.

And if I can return to paragraphs 10 and 11 of your statement on page 531. You say at the end of paragraph 11 that the majority of timing was calculated using data supplied and some production rate formulas?---Yes.

40 The timing you're referring to is that the hours per week submitted for each building?---That's the time to clean each building, depending on the frequency and the size and the surfaces.

Right. And from that timing figure you then extrapolate an hours per week to go on the tender. Is that correct?---Yes, and, and work out a price.

All right. In paragraph 10 you mention that Mr Turner had worked out the hours that he thought were required to clean each building. Is that correct? ---Yes. As he's done it, as he did it previously, yes.

All right. And do I take it that – I’ll withdraw that. Was there any difference between the timing that you calculated as you refer to in paragraph 11 and the timing that Mr Turner provided?---No, there was probably a small difference, like in minutes, which didn’t really affect the final price.

10 All right. And that difference – I’ll withdraw that. So the end result was that the, the hours per week submitted by Quad reflected information, substantially reflected information that Mr Turner had provided to you about the time required to clean?---Yes, which I had confirmed through the spreadsheet that I did.

Yes. And whatever other information you may have had about square metres, production, rate formulas didn’t materially alter Mr Turner’s figures per building?---No.

I want to ask you now about paragraph 15 of your first statement on page 532?---Yes.

20 And can I ask you to look also please at page 650 where you should find a copy of the email that you refer to in paragraph 15?---Yes.

Can you just explain to the Commissioner why you interpret Mr Yardley’s question set out in the email at page 650, “Has Bill run the figures past Col”, in the way that you explain in paragraph 15 of your statement?---Usually when Andrew asked me to check the figures, what I, with this, in this case, because we’d run the University for a while, the worksheet I did with the square metre rates with the different size of the buildings as well as the frequencies, I wanted to check with- - -

30 Excuse me. Could you keep your voice up?---I wanted to check with, with Bill that the figures that we were providing were correct and that we hadn’t missed anything, because we, we can’t afford to miss any areas in a tender because that would put us at a disadvantage.

So you wanted to check with Mr Turner that the square metre figures were correct?---Yes.

40 Is that what you- - -?---The spreadsheet that I did, I wanted Bill to go over it and make sure that we put the right square meterage for each building as well as the frequency for, for each building. And from that email, I think that’s what Andrew was meaning me to check ‘cause with most tenders I usually check it before we actually submit to make sure that we’ve got the right details in there.

So Mr Yardley’s email to you at page 650 is a response to your email that appears towards the bottom of that page to Mr Yardley, attaching a final workbook and pricing schedules. Is that right?---Ah hmm. That’s right.

And do you say that at that stage, well, at that stage would Mr Yardley have been aware of the work you'd been doing in relation to checking square metre figures?---He would have asked me to double-check the figures, which he does with every tender, and then I would have sent him the final worksheet saying that, yes, I'd checked it, 'cause he always, he always asked me to make sure that I've got all the areas accounted for.

10 Could Mr Chaloub be shown a copy of MFI 3, please?---Thanks. Yes?

Mr Chaloub, the documents that are attached to the first page of that bundle, are they the documents that were in fact attached to your email that appears at page 650? Are you able to confirm that?---I recall that is the worksheet that we, we actually used, so that would have been the one attached.

And that worksheet sets out not only square metre details but also pricing, does it not?---Yes, yeah, that's our complete worksheet that we use when we do quotes.

20 Right. And it sets out weekly hours figures. Is that correct?---Yes, weekly hours as well as the rates and everything else.

And in fact weekly and daily minutes. Correct?---Yes.

30 And why was it, why is it that you say in paragraph 15 of your statement that you read Mr Yardley's email to you at page 650 as referring to the square meterage details as opposed to any other figures in the attached documents?---Because we always go via the square meterage to work out the times, so without the square meterage we can't work out any times 'cause they're all linked as formulas. So he wanted me to double-check to make sure the square meterage was correct.

In this case though you had been given details of the time from Mr Turner. Correct?---Ah hmm.

40 And those details were based on Quad's experience in actually cleaning the buildings over the past five years. Correct?---As well as the square meterage provided by the University, which I did in the, in the worksheet, that Bill had to go through and make sure that we were using similar times.

You understood the reference to Col in Mr Yardley's email to be reference to Mr McCallum. Is that correct?---No, I didn't understand that part of, "Past Col", but I did know that I had to send it to Bill to double-check.

Is it the case that when you received the email you didn't know who Col was?---I can't remember that, no, no. I knew that Col was in charge of the tender process for the University of New England, so it could have been that

Bill had to check the square meterage and make sure everything was right through the process at the University.

But isn't it the case that by this stage, by 19 January when you had prepared the worksheets that are MFI 3, you had already undertaken that checking process yourself and you'd done that via the tender forum. Correct?---
That's right, but I'd also have to check it through Bill's experience, so we have to do two, two checks really, one is through the tender process where we get the square meterage through the company or through the contractor,
10 and the other one is through our own experience if we've cleaned the job before, which we had. So that's why I had to get two checks.

So you had done those two checks, you had consulted with Bill and you had made, raised queries with the University through the tender forum. Correct?
---Ah hmm. And this was the final check.

Why was it necessary as a final check to run square meterage figures past the person at the University in charge of the tender process?---Because there had been some changes through the forum that a few things had changed,
20 that's why we wanted just to double-check, make sure everything was, was right before we put our final price through.

To your knowledge was Mr Yardley aware of changes that had been made through the tender forum in relation to square meterage?---I can't recall that he knew anything about that, no.

If you had further queries as at 19 January about the square meterage areas, the logical thing would have been to raise those again through the tender forum, would it not, rather than contacting Mr McCallum?---Yeah, we, you
30 have to go through the tender forum, it's the only way to find anything that's, that you want any changes to, 'cause there's a cut-off time and you're not allowed to ask after a cut-off time about any questions.

Do you recall what the cut-off time was in this particular instance?---No, I don't.

What if anything did you do in response to Mr Yardley's email on 19 January?---I don't remember what I did but I, if I think back I might have, the only thing I could have done would be ring Bill and get him and run
40 through the worksheet with him to double-check that way.

You don't remember one way or the other whether you did that?---No. That's what I was saying, I don't remember if that's what I did, but if I were to do something like that, that's what I would do.

But you say in paragraph 15 of your statement that you understood from Mr Yardley's email that he wanted the square meterage details to be run by Mr McCallum before the tender was submitted. Correct?---I can't remember.

What I can remember is that I did, I would have rung Bill and got him to check the areas that differ to make sure that they were correct.

All right. Sitting here now, can you remember when you received Mr Yardley's email on 19 January, what you thought he meant by the statement, "Has Bill run the figures past Col?"---No, I can't, sorry.

Right. Breaking it up, can you remember, you understand the reference to Bill to be a reference to Mr Turner?---Yes.

10

When you made your statement on 9 November, 2011, could you remember at that time what you thought Mr Yardley meant on 19 January when he sent you the email in 2010 asking, "Has Bill run the figures past Col?"---No, it would have been the same thing, that he wanted me to double-check the figures via Bill, but I can't recall what he, why he would have said Col.

ASSISTANT COMMISSIONER: Well, that's not, that's not what it says, Mr Chaloub. He seems, he's asking has Bill run the figures past Col. You- - -?---Yes, I understand that.

20

When you read it you would have understood that's what- - -?---Yes, Commissioner.

- - -he wanted?---Yes, Commissioner, but I don't know whether or not- - -

Well, did you ask Bill has he run the figures past Col?---No, Commissioner, I can't remember asking Bill. All I remember or what I would've done is speak to Bill about going through the square meterage and make sure they were right.

30

So you just ignored the part about asking whether Bill had run them by Col?---Bill might've asked Col but I can't recall, I can't remember asking him to do that, no.

All right. You don't remember asking him to do that?---No. No.

But you may have?---Looking back I might've, I can't remember that.

Is Mr Yardley your boss?---Yes, he's my CEO, he's the - - -

40

Well, I suppose you would've wanted to do what he asked you to do in this email wouldn't you, or to check it out?---Yeah, which I would've done by ringing Bill, Commissioner.

But you can't tell us anything about what you said to Bill?---I can't remember what I said to Bill back then.

All right. Yes, Ms Williams.

MS WILLIAMS: Can you remember whether you replied to Mr Yardley's query about whether Bill had run the figures past Col?---No, but if I did reply Bill would've rung me back and said everything was okay and we would've worked out that the rates were right and I would've replied back – otherwise I wouldn't have replied back to - - -

10 But you can't remember whether you said to Mr Yardley, "Yes, Bill's done that" or, "No, he hasn't" or something else, you just - - -?---No, I would've just sent him an email with the final workbook.

So far as you're aware did Bill Turner or anybody else at Quad Services run any of the figures in Quad Services' tender past Mr McCallum before the tender was submitted?---I couldn't, I wouldn't know that, no.

Do I take it you know that you didn't do it?---I didn't do it, no, definitely not.

20 And if somebody else at Quad Services did that it's not something you would be aware of, is that correct?---That's right. I wouldn't know.

Have you had, did you have discussions prior to signing your statement on 9 November with anybody else at Quad Services about the email that appears at page 650?---No, I was told not to speak to anyone about that.

You were told that by the Commission investigators, is that correct?---Yes.

30 And did anybody at Quad Services approach you about that particular email before you signed your statement on 9 November?---No.

Just pardon me one moment, Commissioner. Commissioner, I have nothing further for Mr Chaloub.

ASSISTANT COMMISSIONER: Thank you. Does anybody wish to ask Mr Chaloub any questions?

MR NEIL: Commissioner, may I have leave to cross-examine briefly about the email of 19 January.

40 ASSISTANT COMMISSIONER: Yes, Mr Neil, if you come forward.

MR NEIL: Mr Chaloub, I want to ask you a little something about the email about which you've already been asked some questions and copy of which you now see before you?---Yes.

Now, as I understand your evidence you assume now that when you read this email in January 2010 you understood Mr Yardley's reference to the figures in the last sentence of his email to be a reference only to the square

meterages set out in your workbook or worksheets, is that correct?---That's right. Square meterage and frequencies.

Yes. Now, you'll accept, won't you, that Mr Yardley's email was sent in response to an earlier email sent to him by you, copy of which you're now looking at, which attached your final workbook and your pricing schedules, is that correct?---That's right, yes.

10 And, of course, there are hundreds, probably thousands of figures in that workbook and those pricing schedules, do you agree?---Definitely.

Not confined to square meterages, correct?---No, there's - - -

But including, for example, estimated hours of work, correct?---Yes.

And prices, correct?---Yes.

20 But your understanding – I withdraw that. Your assumption, just so that I can understand your evidence correctly, your assumption is that out of all of those figures when you read Mr Yardley's email to you, if you can scroll down to that, you understood his reference to the figures to be confined to only the square meterages - - -

MR McILWAINE: Object, Commissioner.

MR NEIL: - - - in your final workbook and pricing schedules, do you agree?

30 MR McILWAINE: That's not the witness's evidence.

ASSISTANT COMMISSIONER: I'm sorry, Mr McIlwaine?

MR McILWAINE: That's not the witness's evidence. He did answer - add but it was very quietly - - -

ASSISTANT COMMISSIONER: Yes, he added "and frequencies".

MR McILWAINE: "And frequencies".

40 ASSISTANT COMMISSIONER: So is that the frequency with which they have to go and clean the building?---Yes.

So you now think that he may have also wanted to run past the square meterage and the frequencies?---With the square meterage to get an accurate figure you need to know the frequency as well. You need the square meterage and the frequency so they relate - - -

I'm sorry, can you not hear him?

MR NEIL: Even I'm struggling to hear and I'm (not transcribable).

ASSISTANT COMMISSIONER: I'm sorry, could you please keep your voice up, that microphone does not amplify your voice, it just records it - - - ?---Okay.

- - - so you have to speak up?---Sorry.

10 Now, you were saying to get an accurate figure you need not just the square meterage but the frequency?---But the frequency of the areas as well.

Yes.

MR NEIL: And frequency was a subject that was also dealt with in your final workbook and the pricing schedules, is that correct?---That's part of the workbook, yes.

20 All right. So now please so that I can understand your evidence correctly you now assume that at the time when you read Mr Yardley's email of 19 January 2010 you understood his reference to the figures in the last sentence as being confined to the square meterages of the buildings and the frequencies with which they should be cleaned, correct?---Yes.

And did not include, you assume – your understanding was that it did not include a reference to hours or prices, correct?---No, that's correct.

30 Now, so far as the square meterages are concerned one source of information upon which you had originally acted was the tender specifications themselves - - -?---Yes.

- - - and the contract documents attached to that, is that correct?---That was part, that was one of the sources, yes.

Because those tender specifications or at least the associated documents included floor plans and area sections and other information which stipulated the square meterage - - -?---Yes.

40 - - - of particular buildings, is that right?---Yes.

But your recollection is not all of the buildings which were the subject of the tender - - -?---No, because they didn't provide - - -

- - - were the subject of information (not transcribable), is that right?
---That's right, they didn't provide all areas with those, that information.

Now to supply that deficiency you asked some questions within the - - -?
---Forum.

- - - tender forum process, is that right?---For some of them, for the others that they didn't provide any question, any specific details we had to rely on our own experience.

Well, just put those to one side for the moment, could I concentrate on the tender forum for now. The tender forum was an online process was it?
---That's right, yes.

10 And it was a process one tenant of which was that each of the tenderers had access to everything that was posted on the forum, is that correct?---Yes.

Both the questions and the answers, is that right?---Yes.

And as you understood it that was so that no tenderer would have exclusive, the exclusive advantage of any particular - - -?---That's right.

- - - piece of information?---Yes.

20 And it's your recollection, is it, that within the processes of the tender – I withdraw that. It's your recollection that you or Quad used the processes of the tender forum in order to ask for and obtain information about the square meterages or some of the buildings in respect of which that information had not been provided in the original tender documents, is that correct?---Yes, as well as other things that we needed for the response.

I just want you to focus on the square meterage. But then your recollection is that there was still some buildings in respect of which you did not have any information about the square meterage, correct?---Yes.

30 Neither information derived from the original tender documents nor the tender forum, correct?---Correct.

And in relation to that last class of building you or Quad looked at the buildings yourself, is that correct?---Yes, via our site manager at the time.

And made an estimate of the square metres of the, of the buildings in question, is that so?---That's right, yes.

40 How many such buildings were the subject of estimates of that kind?---I can't recall, I don't - - -

A small number?---There wouldn't have been a great number, it would have been probably 10 or 15 per cent, 20 per cent.

And is there any particular reason why you had, why you or Quad had elected to rely on your own estimates rather than ask questions within the

tender forum about those buildings?---Because there wasn't any areas provided for. There's some areas that they can't provide square meterage.

And, and could you, could you tell me why please?---There's some areas say external areas that you can't provide like concrete areas, it could be playing fields, it could be corridors, stairwells, things like that that it's impossible to provide square meterage.

10 And impossible to provide square meterage because it's, it's just too hard to measure them, is that right (not transcribable)?---That's right, you've got to provide your own experience to, to work out times.

All right. Now putting those buildings or areas to one side, in so far as you relied on information that came with the list of square meterages that came with the original tender specifications all through the tender forum, that was all information the source of which was the University itself, do you agree? ---That's right, yes.

20 And insofar as you relied on estimates, that was in relation to buildings or areas about which no accurate information was or as you understood it could ever be available?---That's right.

Now, I just want to go back to this email for a moment and just concentrating on the square meterage issue for the moment, when, when you read this email did you have in mind that Mr Yardley wanted Mr Turner to ask Mr McCallum to check the accuracy of the figures that the University had itself supplied to Quad and the other tenderers?---I can't recall.

30 Well, it's highly unlikely that you would have had that thought, do you agree?---That he would - sorry, what was the question?

It's highly unlikely that you would have imagined that what Mr Yardley wanted to ask Mr McCallum to do was to check the accuracy of the figures that the University had already supplied to Quad and the other tenderers? ---It would have been for the areas that they didn't provide.

40 Right. So - and in relation to those areas as you've told the Commission no one was capable of accurately ascertaining the square metres?---No, but we did have a time put down there for it which is what I had to check with Bill about.

Well, I'm just concentrating on the square metres for the moment because as you've told the Commissioner time was not among the figures that you assumed Mr Yardley was talking about. Square metres and frequency were the two issues that you assumed, that you now assume you thought at the time Mr Yardley was talking about.

MR McILWAINE: I object, Commissioner, I don't want to lead evidence that clearly there's a relationship between meterage and reference in time and if my friend's suggesting (not transcribable)

ASSISTANT COMMISSIONER: Yes, I think it's hours, more the hours that are specified.

MR NEIL: Yes. Just going back to your earlier evidence - - -?---Ah hmm.

10 - - - I accept that you've said that you can't recall precisely what you thought when you read this email in January 2010, very well. But as I understand what you have said it is that you now assume that when you read Mr Yardley's reference to the figures you understood him to be referring to square meterage and frequency and not to hours or prices?---Sorry, it would have had to have been hours, you see, square meterage and hours are related because without that we can't work out the other.

20 All right. So you now assume, do you, that when you've read this email you understood the reference to the figures to be a reference to square metres, frequency and hours, correct?

MR McILWAINE: Commissioner, the witness is being asked a number of questions about what he now assumes. He's given evidence he doesn't recall (not transcribable)

ASSISTANT COMMISSIONER: Well, in his statement he, he set out - - -

MR McILWAINE: (not transcribable)

30 ASSISTANT COMMISSIONER: - - - his then memory. He has since added a couple of additional things which as I understand his evidence he is saying he does now recall that that's what the figures meant to him. I guess we are sort of asking him to say what he assumed back then. I mean, I would rather know if it's possible what he thinks now or does he understand the email now or does he not?

40 THE WITNESS: Sorry, Commissioner, what I understand from that email, I mean, I can't recall what I understood back then but if I would look at it now it would be that I needed to check the times, the square meterage with Bill to find out if they were correct as in we've put the right square meterage for those areas that we did know compared to what the University gave us. With the times there's no way that we could find out whether the times are correct or not but Bill would be able to know from experience whether that was right and that's what I think the email from Andrew was referring to, to make sure that everything was summarised properly.

MR NEIL: Mr Chaloub, I appreciate it's a very difficult position in which you now find yourself but would you just spend a moment reading that last

sentence to yourself and let me know when you've done so, just read it very carefully?---With that last sentence I couldn't tell you whether or not Bill would speak to Col about that because - - -

No, very well, I'm not asking you about that. Have you read the sentence?
---Yes.

10 And you agree, don't you, looking at that sentence now to use the words you used a moment ago it doesn't ask you to check any figures with Bill does it?---No, it doesn't say anything about checking figures.

No, not with Bill and not with anyone else, do you agree?---No, but the way I, I understood it is to check the, the final workbook which is what I did with Bill before I sent them to Andrew.

Looking at that sentence now you accept, do you not, that it is asking in very clear language whether Mr Turner had run the figures past Mr McCallum, do you agree with that?---It seems that's what it's asking.

20 And really there's, as you look at it now, there's not the slightest doubt about that, is there?---If you look at it is, no.

And, and what your earlier statement in the, in the passages to which your attention was drawn by Counsel Assisting deals with and what you've been asked about at some length (not transcribable) is your understanding as at 19 June, 2010 when you read this email, your understanding of what Mr Yardley was referring to when he used the words "the figures" in that sentence, do you understand that?---Yeah, my understanding in the figures from what I recall is to check the square meterage and the times and the
30 frequencies.

All right. Now when you say from what you recall what, what are you recalling? Something that was inside your own head or - - -?---No, something that I'd spoken to Bill about in reviewing the final spreadsheet.

First of all when had you – was there one or more than one such conversation that you can recall with Mr Turner?---With Bill?

40 Yes?---I would have had a number of – it's part of my job to go back and forth with the, the operations personnel.

And when you went back and forth with the operations personnel, including Mr Turner, did your conversations confine themselves to the square metres of the buildings in question?---And the frequency, and the frequencies and the times.

And when you say the times you mean the estimated time to complete the work?---The estimated times, yes.

So your, your discussions with Mr Turner prior to 19 January, 2010 embraced figures as to square meterage. Correct?---Yes.

Frequency of cleaning. Correct?---Yes.

And the time that it would take to undertake the, those tasks. Correct? ---Yes. And from what I recall also we had to work out consumables as well, which again was part of the tender.

10

What about pricing, did you talk to Mr Turner about pricing?---No. Operations don't have anything to do with pricing, it's just something I do and then pass on to and get it reviewed by my superiors.

Now in any of the conversations that you can now recall with Mr Turner prior to 19 January, 2010 did you ask him to discuss figures pertaining to square metres with Mr McCallum?---No.

20

Did you ask him to discuss figures pertaining to frequency with Mr McCallum?---No.

Did you ask him to discuss figures pertaining to hours or timing with Mr McCallum?---No.

Were you party to any conversation or other communication with Mr Turner in which he was asked by anyone to run figures pertaining – I'm sorry, to discuss figures pertaining to square meterage with Mr McCallum?---No, I can't remember, recall anything like that.

30

Is it likely that if you had been privy to such a conversation or communication that you would remember it?---If it stood out in my mind I would, but I can't remember it.

Were you privy or party to any conversation or communication in which Mr Turner was asked by anybody to discuss figures pertaining to frequency with Mr McCallum?---No.

40

And were you privy or party to any conversation or other communication in which Mr Turner was asked to discuss figures pertaining to hours or timing with Mr McCallum?---No, not that I can recall.

Were you privy or party to any conversation or communication with anyone in which the possibility that Mr Turner might discuss figures pertaining to square meterage with Mr McCallum was discussed?---No, not that I recall, no.

Were you privy or party to any such communication or conversation in which Mr Turner – in which the possibility that Mr Turner might discuss figures pertaining to frequency with Mr McCallum was discussed?---No.

Were you privy or party to any conversation or communication with anyone in which the possibility that Mr Turner might discuss figures pertaining to timing or hours with Mr McCallum was discussed?---No. No.

10 Did you raise any such possibility with Mr Yardley at any time prior to 19 January, 2010?---About what?

The possibility that Mr Turner might have discussed figures pertaining to square meterage, frequency and hours or timing with Mr McCallum?---No. No.

Prior to 19 January, 2009 had the idea that Mr Turner might discuss any figures of that kind with Mr McCallum occur to you?---Not that I can recall, no.

20 Were you conscious as you now can remember it of having had such a thought after 19 January, 2009?---No.

Had it occurred to you that that was something that is prior to 19 January, 2009, 2010 I'm sorry, but that was something that you should discuss with Mr Yardley?---If I'd known that we were going to talk about anything with, with the University I would have told him, but not direct to Mr McCallum or anything, no.

30 Do you think that, as you now look at this email, according to your best recollection do you think that this was the very first time when the idea that Mr Turner might discuss any figures with Mr McCallum pertaining to the tender had been raised with you?---I don't know. I couldn't tell whether Bill talked to Col about figures at all.

40 I'll just ask the question again. Is it your best recollection as you look at this email now that when you read it in January 2010, that was the first time that the idea that Mr Turner might discuss any figures pertaining to the tender with Mr McCallum had been raised with you?---Yeah, reading it now, probably.

And why do you say probably?---Because I'd only had dealings with Bill all during the tender process and the UNE forum.

Now just go back to the square metres for a moment?---Ah hmm.

You've agreed I think that it's not likely that when you read this email in January 2010 that you would have thought that Mr Yardley was referring to square meterages which had been supplied by the University to the

tenderers, either in the original tender specifications or the, in the context of the tender forum. Correct?---It would have been on square meterage that – in areas that we didn't clean that we would have had to check through Bill.

Because of course you appreciate as you look at this email now that it would have been quite ridiculous to have had the, to have thought that Mr Turner or anyone else needed to run figures past Mr McCallum that had been already supplied to all the tenderers by the University. Correct?---I couldn't answer that. I wouldn't know what he did.

10

But you do think that there's a possibility now as you look at this email that when you read it at the time you thought that one of the things Mr Yardley was referring were figures pertaining to the square meterages of buildings or areas in respect of which no such information had been provided to anyone by the University. Correct?---That's right. This is a double check, yes.

20

And you've said I think – correct me if I'm wrong, that in relation to those buildings or areas the reason why that information had not been supplied by the University to anyone was that it was information that it was impossible to ascertain?---Mmm. Well it would have taken a lot longer for them to provide, which they didn't have the time.

Well looking at this now can you tell me please, what do you imagine Mr McCallum might have been able to tell Mr Turner in relation to those figures?

MR McILWAINE: How could this witness answer that question? Mr Yardley might be able to answer it.

30

ASSISTANT COMMISSIONER: Yes, I do think it's a bit hard for the witness to speculate about what he might have thought at the time.

MR NEIL: I won't press the question. Now moving away from square meterage to frequencies. Frequencies relates I think, is a question that relates to the frequency with which particular buildings or areas are cleaned. Correct?---Are cleaned, yes.

40

And that was all information which had been supplied to Quad and the other tenderers either in the original tender specifications or in the context of the tender forum?---Ah hmm.

Is that correct?---That's correct, but if I can - - -

Yes, yes?---Some of those frequencies that we'd already cleaned were different from what was provided. That's why we had to check through the forum.

Yes. And so you checked in the context of the forum?---Ah hmm. Yes.

So in the end all of the figures that Quad had in relation to frequency were figures that had been supplied to it and the other tenderers either in the context of the original tender specifications or the tender forum. Correct?
---Except for those areas that they didn't provide.

And the areas – there were areas were there in relation to which no information was made available to Quad - - -?---That's the areas - - -

10 - - - or other tenderers - - -?---That's right.

- - - as to frequency. Is that correct?---No, frequencies there was.

Yes, I'm just confining myself to frequency now?---Yes.

20 All of the information that Quad used for the purpose of its tender that pertained to frequency was information which had been provided to it and the other tenderers either in the original tender specification or in the context of the tender (not transcribable). Is that correct?---As far as I recall yes.

Yes. Now, so far as hours or timing were concerned, that was something that the University did not provide to Quad. Correct?---No, to, to anybody.

Or to any tenderer. Correct?---No, that's correct.

30 Because that was the very, I withdraw that and start again. Because the tenderers' assessment of time was one of the variables on which each of the tenderers was competing. Correct?---That, that worked out the price, yes.

Yes. And so if would have been quite wrong for the University, as you understood it at the time when you were working on this tender, quite wrong of the, for the University to provide assistance to one tenderer in relation to issues of hours or timing that it did not provide in the same terms to every tenderer?---No, no tenderers would provide hours to, to a prospective contractor.

40 And yet as you look at this email now, your, you think it is at least possible that when you read it you understood that one of the figures that Mr Yardley thought Mr Turner should run past Mr McCallum were figures that pertained to hours or timing. Is that right?---Not the hours though, we would never, we would never, a contractor would never provide hours to a tenderer to give us the okay because that wasn't done.

So just so that I understand your evidence correctly, if you now look at this email, you now look at this email and you don't think that it is likely that you understood at the time that Mr Yardley's reference to the figures in the last sentence included figures pertaining to hours or timing. Is that correct?

---No, it would just be square meterage, frequencies that we work out to make sure that we've got the right frequencies and the right square meterage for the areas.

Is it possible, sir, that when you read this email, what you understood Mr Yardley to be asking you was to tell him whether Mr Turner had run the contents of your workbook and pricing schedules past Mr McCallum?

---No, don't recall he would have done that, no.

10 That's the cross-examination.

ASSISTANT COMMISSIONER: Thank you, Mr Neil. Does anybody else wish to ask this witness any questions? If not, yes, thank you, Mr Chaloub, you can now be excused from further attendance?---Thank you.

THE WITNESS EXCUSED

[3.53pm]

20 MS WILLIAMS: Commissioner, the next witness I was proposing to call was Mr Magi, however I certainly will not finish him in the time available. I wonder if rather than commence with Mr Magi I might instead tender the documents that comprise the statements of witnesses who I do not propose to call. Is that a useful way to use the remaining five minutes?

ASSISTANT COMMISSIONER: Yes, I think that's, that's useful.

MS WILLIAMS: I tender the statement of Mark Lawler, that is pages 297 to 335 of volume 1, and I ask that those pages be incorporated in Exhibit 1.

30

ASSISTANT COMMISSIONER: Yes, that will be done.

EXHIBIT 1 - STATEMENT OF MARK LAWLER - PAGES 297-335 OF VOLUME 1 TO BE INCLUDED IN EXHIBIT 1

MS WILLIAMS: I tender the statement of Tony Dunn at pages 521 to 528 of volume 1 and ask that those pages be incorporated in Exhibit 1.

40

ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 1 - STATEMENT OF TONY DUNN – PAGES 521-528 OF VOLUME 1 TO BE INCLUDED IN EXHIBIT 1

MS WILLIAMS: I tender the statement of Jennifer Wild at pages 115 to 164 of volume 2 and ask that those pages be marked Exhibit 2.

ASSISTANT COMMISSIONER: Yes, they will be marked Exhibit 2.

**#EXHIBIT 2 - STATEMENT OF JENNIFER WILD – PAGES 115-164
IN VOLUME 2 TO BE MARKED AS EXHIBIT 2**

10

MS WILLIAMS: I tender the statement of Drew Kendal at pages 80 to 101 of volume 2 and ask that those pages be included in Exhibit 2.

ASSISTANT COMMISSIONER: Yes.

**#EXHIBIT 2 - STATEMENT OF DREW KENDAL – PAGES 80-101
IN VOLUME 2 TO BE INCLUDED IN EXHIBIT 2**

20

MS WILLIAMS: I tender the statement of Lyndall Ewert at pages 369 to 408 of volume 5 and ask that those pages be marked Exhibit 5.

ASSISTANT COMMISSIONER: Yes, they will be so marked.

**#EXHIBIT 5 - STATEMENT OF LYNDALL EWERT – PAGES 369-
408 IN VOLUME 5 TO BE MARKED AS EXHIBIT 5**

30

MS WILLIAMS: I tender the statement of Karen Lovell at pages 411 to 443 of volume 5 and ask that they be included in Exhibit 5.

ASSISTANT COMMISSIONER: Yes.

**#EXHIBIT 5 - STATEMENT OF K. LOVELL – PAGES 411-443 IN
VOLUME 5 TO BE INCLUDED IN EXHIBIT 5**

40

MS WILLIAMS: I tender the statement of Alan Lee at pages 444 to 458 of volume 5 and ask that those pages be included in Exhibit 5.

ASSISTANT COMMISSIONER: Yes.

**#EXHIBIT 5 - STATEMENT OF A. LEE – PAGES 444-458 IN
VOLUME 5 TO BE INCLUDED IN EXHIBIT 5**

MS WILLIAMS: I tender the statement, statements of Mr Jason Richey at pages 284 to 368 of volume 5, that is two statements and I ask that those pages be included in Exhibit 5.

ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 5 - STATEMENT OF J. RICHEY – PAGES 284-368 IN VOLUME 5 TO BE INCLUDED IN EXHIBIT 5

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MS WILLIAMS: I tender the statement of Adam Smith at pages, sorry, pages 222-252 of volume 7 and I ask that those pages be marked Exhibit 7.

ASSISTANT COMMISSIONER: Yes, they'll be so marked.

#EXHIBIT 7 - STATEMENT OF A. SMITH – PAGES 222-252 IN VOLUME 7 TO BE MARKED AS EXHIBIT 7

20

MS WILLIAMS: I tender the statement of Sue Winnacott at pages 364 to 371 of volume 7 and I ask that those pages be included in volume, sorry in Exhibit 7.

ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 7 - STATEMENT OF S. WINNACOTT – PAGES 364-371 IN VOLUME 7 TO BE INCLUDED IN EXHIBIT 7

30

MS WILLIAMS: I tender the statement of Sam Notley at pages 75-168 of volume 8 and ask that those pages be marked Exhibit 8.

ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 8 - STATEMENT OF S. NOTLEY – PAGES 75-168 IN VOLUME 8 TO BE MARKED AS EXHIBIT 8

40

MS WILLIAMS: I tender the statement of Julia Howe at pages 169-210 of volume 8 and ask that those pages be included in Exhibit 8.

ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 8 - STATEMENT OF J. HOWE – PAGES 169-210 IN VOLUME 8 TO BE INCLUDED IN EXHIBIT 8

MS WILLIAMS: I tender the statement of Luke Stephen at pages 409-410 of volume 5 and ask that those pages be included in Exhibit 5.

10 ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 5 - STATEMENT OF L. STEPHEN – PAGES 409-410 IN VOLUME 5 TO BE INCLUDED IN EXHIBIT 5

MS WILLIAMS: I tender the statement of David Schmuide at pages 1-57 of volume 10 and ask that those pages be marked Exhibit 10.

20 ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 10 STATEMENT OF D. SCHMUDE – PAGES 1-157 IN VOLUME 10 TO BE MARKED AS EXHIBIT 10 -

MS WILLIAMS: I tender the statement of Terry Woodward at pages 326 to 330 of volume 10 and ask that those pages be included in Exhibit 10.

30 ASSISTANT COMMISSIONER: Yes.

#EXHIBIT 10 - STATEMENT OF T. WOODWARD – PAGES 326-330 IN VOLUME 10 TO BE INCLUDED IN EXHIBIT 10

MS WILLIAMS: And finally for the moment I tender the statement of Raymond Kwan at pages 331-521 of volume 10 and ask that those pages be included in Exhibit 10.

40 ASSISTANT COMMISSIONER: Yes, well they'll all be so marked.

#EXHIBIT 10 - STATEMENT OF R. KWAN – PAGES 331-521 IN VOLUME 10 TO BE INCLUDED IN EXHIBIT 10

MS WILLIAMS: Thank you, Commissioner. Together with the Commission staff I'll arrange for a list of the exhibits and the relevant page numbers to be prepared and circulated amongst all the parties.

ASSISTANT COMMISSIONER: Yes, Mr Watson.

MR WATSON: I'm sorry, before we adjourn, Commissioner, there might be there's a question of the order made under section 112 now Mr Chaloub has given his evidence.

10

ASSISTANT COMMISSIONER: Yes.

MS WILLIAMS: Can you just excuse me one moment, Commissioner.

ASSISTANT COMMISSIONER: Yes, Ms Williams.

MS WILLIAMS: Commissioner, in my submission it would be appropriate to revoke that order made in relation to Mr Yardley's evidence earlier at this stage.

20

ASSISTANT COMMISSIONER: Yes. The suppression order previously made in relation to Mr Yardley's evidence concerning an email he sent will now be revoked.

THE SUPPRESSION ORDER PREVIOUSLY MADE IN RELATION TO MR YARDLEY'S EVIDENCE CONCERNING AN EMAIL HE SENT WILL NOW BE REVOKED.

30

MS WILLIAMS: May it please.

ASSISTANT COMMISSIONER: Yes. Now, if there's nothing else – yes, Mr Steirn.

MR STEIRN: There are two matters, firstly, some housekeeping. I understand the Commission is not sitting Monday or Tuesday.

40

ASSISTANT COMMISSIONER: No, we will not be sitting again till 1 February.

MR STEIRN: I have a problem on Wednesday.

ASSISTANT COMMISSIONER: Yes.

MR STEIRN: I understand the Commission will be sitting Wednesday, Thursday and Friday. I have an application that the evidence concerning Mr Magi, Mr Anley be adjourned to Thursday if possible.

ASSISTANT COMMISSIONER: I would hope that we will not be sitting Wednesday, Thursday and Friday, I - - -

MR STEIRN: I'm sorry, I - - -

ASSISTANT COMMISSIONER: I concede that, you know, we will have to sit at least Wednesday and possibly into Thursday but subject to what Counsel Assisting has to say I would not object because you have been here
10 waiting for some time. What do you think?

MR STEIRN: I just assumed that you'll be sitting Monday and Tuesday for some reason, I don't know why I thought that but - - -

ASSISTANT COMMISSIONER: No, I think people who have been here have been told that we would be going till the 1st but - - -

MS WILLIAMS: Yes. I thought I had informed my learned friend, if I hadn't made it clear I apologise to him. My present expectation,
20 Commissioner, is that we will be sitting during – the Commission will need to sit during part of Thursday at least to finish the evidence and in those circumstances I have no difficulty with Mr Magi being called on Thursday rather than Wednesday if that is convenient to the Commission.

ASSISTANT COMMISSIONER: That's fine. And Mr Anley as well?

MS WILLIAMS: Yes, Commissioner.

ASSISTANT COMMISSIONER: Yes. All right. Well, yes.
30

MR STEIRN: Can I foreshadow another application?

ASSISTANT COMMISSIONER: Yes.

MR STEIRN: And it's in relation to commercially sensitive material. Pursuant to section 112 of the Act in relation to pricing involving quotations that's obviously commercially sensitive and there should be some embargo not just for publication of the evidence but not even disseminated to people present and I note there are competitors by virtue of the inquiry and that
40 really is a matter which does concern my client. I don't know how that's suppressed but I'm just alerting the Commission to it.

ASSISTANT COMMISSIONER: Well, I think some of the material that has been tendered would contain pricing information.

MR STEIRN: That's true enough but there may be other evidence which comes to the fore.

ASSISTANT COMMISSIONER: Yes, well, look, I'm certainly willing to entertain any application in respect of further evidence where it's considered that there's commercially in-confidence material.

MR STEIRN: I'll speak to my friend in due course.

ASSISTANT COMMISSIONER: Yes.

10 MR STEIRN: If it could be dealt with I'll appreciate it.

ASSISTANT COMMISSIONER: Yes. That can certainly be dealt with if the issue arises and we'll not call Mr Magi or Mr Anley till Thursday.

MR STEIRN: Thank you.

20 MR McILWAINE: One short matter, Commissioner. Those persons whose statements were tendered my friend indicated they were not going to be called, I take it they can be – two of them whom I act for, Mr Richey and Mr Schmude are they now excused from their summons or are they still (not transcribable) questions.

ASSISTANT COMMISSIONER: I think we did – how long have people had these statements if they wanted to ask for anybody to be called for cross-examination?

MS WILLIAMS: The other legal representatives have had the statements since Monday just after the opening address, Commissioner.

30 ASSISTANT COMMISSIONER: All right.

MS WILLIAMS: I'm not aware of anyone wanting to ask questions of any of those witnesses yet but I'm not sure if the people have - - -

ASSISTANT COMMISSIONER: Well, unless somebody indicates that they have any particular desire to call anybody, yes, these witnesses can be excused at this time.

MS WILLIAMS: Thank you, Commissioner.

40 ASSISTANT COMMISSIONER: All right. Well, look, as I said the next day that the Commission is able to resume is Wednesday, the 1st of February so at this stage we will adjourn until 10.00am on 1 February.

AT 4.02 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.02pm]