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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION BARCOO

Reference: Operation E09/1383

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 23 AUGUST 2011

AT 10.04AM

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

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

MR FORDHAM: I call Mr Gregory Ambrose.

ASSISTANT COMMISSIONER: Yes. Are you Mr Ambrose?

MR AMBROSE: Yes.

ASSISTANT COMMISSIONER: Mr Lewis, you're acting for Mr Ambrose. Will your client be seeking a declaration?

MR LEWIS: He will, Commissioner.

ASSISTANT COMMISSIONER: Take a seat, Mr Ambrose. Mr Lewis has indicated that you wish to seek a declaration under section 38 of the ICAC Act. The effect of that is that nothing you say here can be used against you in any future proceedings as long as you do not breach the ICAC Act by providing false information or in some other way. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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

ASSISTANT COMMISSIONER: And now you're required to take an oath on the bible or make an affirmation.

MR AMBROSE: On the bible.

ASSISTANT COMMISSIONER: Could the witness be sworn, please.

<GREGORY PAUL AMBROSE, sworn   **[10.05am]**

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Gregory Paul Ambrose.

And your occupation?---Computer programmer.

10   And are you currently working as a computer programmer?---I do.

Are you associated with a company or entity called Catalina IT?---Yes, I'm a sole trader trading as that.

And for how have you used that entity?---Since 2003.

Thank you. I'll show you two documents?---Sure.

If you could go to the thick one first?---Yeah.

20

Is that a statement prepared and signed by you on 14 December, 2010?
---Yes, it is.

And does your signature appear at the base of each of the first 22 pages, 23 pages?---Yes, yes, it does.

The smaller document that I have provided you with, is that a statement prepared by you on 22 August, 2011?---Yes, it is.

30   And does that document make changes or amendments to the thicker document that I just gave you?---Yes, it does.

I tender those documents.

ASSISTANT COMMISSIONER: Yes. The statement dated 14 December 2010 will be Exhibit 16 and the statement of Mr Ambrose dated 22 August, 2011 will be Exhibit 17.

40   **#EXHIBIT 16 - STATEMENT OF GREGORY PAUL AMBROSE
DATED 14 DECEMBER 2010**

**#EXHIBIT 17 - STATEMENT OF GREGORY PAUL AMBROSE
DATED 22 AUGUST 2011**

MR FORDHAM: If I could just take you to the thick statement, if you go to paragraph 21?---Yeah.

And if you go to the thin statement at paragraph 5?---Yeah.

Do I understand that you wish to make a change to what was originally in paragraph 21 by reference to what it was that Sunil did or did not do in relation to the report that you're referring to in that paragraph?---Yeah, I think, where does the - - -

10

I'll put it to you this way, in the first version you say that Sunil on your understanding contributed substantially to the report and in the second version you say you believe it was written by Sunil?---I'm not really sure about that. What I, what I thought I was doing was saying that the, I thought the original, the large one, was saying that I had written that myself and I, it seemed like a clerical error and what I wanted to do was to clarify the fact that that particular document was, was written by Sunil. I didn't want it to appear as though I'd written it. I don't know if I've got that wrong there but that was my intention.

20

All right. Thank you for that. Now, what is Dokeos, or Dokeos, D-O-K-E-O-S?---Dokeos is an open source freely available piece of software that handles learning management and it's available for free. I mean, it's, it's like all open-sourced software and it's written in a language called PHP which is what I know.

For those of us who aren't as au fait with computing as perhaps you are, do I understand that there's commercially available software produced by the likes of Microsoft, Apple or whoever else and that there is an open

30   community where free - - -?---That's right.

- - - products are put up by members of the online community?---That's right.

And that's one of those programmes?---That's right.

And what does it do?---It, it includes a whole learning management system which involves recording information about examinations, questions, classes, recording teachers, controlling the examination. It's a learning

40   management system like Dokeos can include all those things.

When did you first come into contact with Mr David Johnson?---It was in early 2008.

And how did you come into contact with him?---He contacted me. No, no that may not be right. I can't remember, I used to be a member of a PHP Sydney group and from time to time people would put posts on to that saying they needed help or had a job. And it may be that I, I'm just thinking

now, whether I contacted him or he contacted me. I'm not sure. But it was through that post I found out that he needed some help with setting up Dokeos.

And did you provide that help?---Yes, I did.

At the time that you first provided the help were you told what it was he wished to do with the Dokeos system?---I believed he was trying to, he was going to sell it to education organisations and schools. The thing with Dokeos is that, or any of these systems, is that they are a fairly flexible sort of product. And to use them in any particular environment you need to configure them in a way that suits that environment. It may involve cutting out options, putting new options in, changing colours and logos as well.

And - - -?---And I believed that that's what he was going to do to various clients.

In any event you provided some assistance with installing Dokeos?---Yes, I did.

And did you charge a fee for that?---No, I didn't.

Why?---Because I felt from conversations with David that this was a start up company and he was trying these things out and that I was just giving him a bit of help. It's one of those things where you start off giving a bit of help to see how, just to get someone going and then you think at some point, if I do that maybe when things take off or he sells it I'll get more involvement in the, and some work from it.

When you say start up company, at the time that you first had dealings with Mr Johnson were you aware of any particular corporate entity or you were just dealing with him as a person?---No, I was just dealing with him.

At the end of July 2008, were you contacted again by Mr Johnson?---If this is referring to the AID project, I think, I think that was early, I can look at my notes, I think that was early, yeah, 2 July, yes.

Now what is the AID project?---The AID project is - - -

Was sorry?---Is software that was written by the Department of Education. It was written to, this is my understanding of it, was it was written by their internal computer department and, for their EMSAD client within the department. It's software that allows assessment items to be stored, to upload and be stored and these can be texts, photographs and probably movies. It's stored into a database so that they can be made available to teachers and other people who are trying to make up tests. And so this is a shared database of, of assessment items, as they're called.

And when you were in contact with Mr Johnson in early July 2008, was something said about the AID project to you?---Only the, as far as I remember, the letter he talked about in the email, he talked about there was a project, we talked about it later. But he was saying that, that this system had, they'd spent all the money to do the development work on it and they needed some guidance as to what to do with it next.

Commissioner, the documents in relation to Catalina IT start page 203 of the bundle. Can the witness be provided with the bundle of exhibits, please? ---Thank you.

Right. 203?---Yes.

Just leave those for a moment?---Sure.

I want to ask you some background questions and then we'll – a moment ago you gave me an answer that referred to the system and what was to be done with it. Was there some discussion about work that you and David might do in relation to that system?---No. We weren't going to make any changes to, or additions or anything to the existing system, it was there. What we were looking at at that stage was giving advice as to what, what suggestions they, what, what they should do with the system.

And who was it proposed would give this advice?---Me.

And how was it, was it suggested you be paid for this advice?---Yes, the idea was that – what I understood was that the Department had decided that – and, I mean, this was sort of – they needed to have someone look into this project and find out what to do next. They spent a lot of money developing it and it wasn't suitable so they had various options. The thing was that David suggested that I work with him on this project. I couldn't do the project on my own, I didn't know anything about the Department of Education and how it worked or have access to the software in any way, but what I could bring to it was the fact that I'm an experienced PHP programmer and I've been developing web applications for eight years and this is a web application so I could come along and give – I'd be a good one to analyse it. I've also worked in the language Java which this software is written in prior to being - using PHP. So I had a background in it that would – I would be ideal to do that with.

I just want to break that up slightly?---Sure.

The first thing is this. At any stage where you provided any work in relation to any project with the Department of Education and Training were you contracted to the Department and did you receive any documentation from the Department or an agency that allowed you to work as a contractor? ---No.

Were you ever inducted into the Department of Education and Training and its systems?---No.

Did you ever sign any confidentiality of similar documents in relation to Department of Education material?---No.

In order to perform the advice or review that you performed were you provided with access to Department of Education systems?---No.

Were you provided with access - - -?---Excuse me a second on that. I think, there was one time when David gave me a URL to some software that I could look at but when I looked at it I realised it was – and I tried it, I put it into a browser – it was an internal DET system and I couldn't access it. He was trying to show me – I really don't remember the context of this, but there was some point where he had said, "Have a look at this software." And I don't know – I may be getting it wrong but that's – when you asked me did I have access to any of their systems I need to just put that within that that was as close as I got to it.

At any time when you provided the review were you provided with information by anyone as to how the internal systems in the Department of Education worked?---You mean the technical systems how they worked?

Yes?---Yes. I had a DVD from David with lots of documents on there which describes, or had included the specification for the system, all the – I mean, it was a huge amount of, huge volume of documents, he passed them all over to me so that I could understand what had happened and what the system was trying to do. The particular thing I had was the function and specifications for the AID system which I had full details of.

All right. Now, could you please turn to page 109 of that bundle you have in your hands?---Yes.

Yes, thank you. Was Catalina IT the entity through which you traded ever an approved Department of Education and Training or Department of Commerce supplier?---No.

And did you ever make any application for that to occur?---No.

Thank you. Sorry, I'll take you back to page 109?---Yeah.

Now, that is an email from Mr Johnson to you dated 11 July, 2008?---Yeah.

And you'll see there's a reference to a PO which you understand is a purchase order, correct?---Yeah.

And, and a figure?---Yeah.

Now, what did you understand that figure was to relate to?---It was to, to relate to the review that was to be done of AOD.

And who suggested that figure?---David did, in fact it, it came to me as a fait accompli really, it was, this was what he'd negotiated.

On the next line you were asked to send a quote?---Yes.

And what was that quote to be for?---For the, the work.

10

And a covering letter?---Yes, that's right.

Now, in the third paragraph it sets out what is to occur, is that correct? ---Yeah.

And does that paragraph reflect the discussions that you and David Johnson had had in relation to the review that was to take place?---Yeah, that's exactly what we did.

20   Now, in the final paragraph you will see references to, if I can put it this way, opportunities that were available. Is that a fair statement?---Sorry, which paragraph?

Well, the second-last paragraph although reasonably straightforward? ---Yeah, yeah.

And had there been discussions about how it was you could build ongoing revenue?---I don't recall the specifics of it but I know my own sort of feeling at the time was that if we did a good job for the Department here we,
30   you know, we would sort of, it would sort of put us in good stead to do further work. I mean it's, yeah, that's all I can say really, yeah, but there were, we did.

Now, in the next line - - -?---Yeah.

- - - there's a reference to some attachments, basic URL design and screen dumps?---Yeah.

Sitting here today do you remember what those documents were?---I think
40   they were from the existing AID system. What he was trying to show me was well, look, to get started here are some of the, this is the start of the, of the systems, what it looks like. I don't know if they exist here.

Now, if you could please go over to page 110?---Yeah.

Now, halfway down the page you'll see an email 14 July, 2008, 11.21 David Johnson to you?---Yes.

What does that email set out?---It's asking me to, to format a quote for him in a particular way.

Yeah. Now, who was the quote to be addressed to?---To David at the Department.

And does the email set out the exact form of words that you're to use? ---Yes, it did.

10   Now, if you go back to page 104?---Yes.

Is that the quote that you - - -?---Yes, it is.

- - - produced?---Yes, it is.

Now, you'll see at the top that quote has a date of July 8, 2008?---Yeah.

That's backdated, isn't it?---Pardon?

20   It's backdated?---I don't, I don't recall it being backdated but - - -

Well, if you have a look in the emails you were told to produce on 11 - - -? ---Yeah, it is, that's right.

On 11 July you were told that you'd have to send a quote for the above dated earlier this week, correct?---Does it say in there earlier this week or are you implying it from the dates?

No, no. Go to page 109?---Yeah.
30

Second paragraph, "Please could you send" - - -?---Yes, "dated earlier this week".

Yeah?---Okay, that's right.

Now go two pages over?---Yeah.

And the form of words you received was 14 July, correct?---Yeah, to be dated the 8th of the 7th, yeah, that's right.
40

And that's what you did?---Yeah.

If you go back a page to page 103, is that the covering letter referred to also dated 8 July?---Yes, it is.

Why is it that if you were working in conjunction with Mr Johnson that Catalina IT was sending the invoice for the total amount?---David explained it to me that he was setting up Ogawie and that it hadn't, he hadn't sort of

announced it yet. The thing that was holding him up was his website and he said to me that he'd only get one chance at releasing Ogawie to the world and he said that some people at the Department knew of Ogawie already and others didn't. And he just wasn't at a position to announce it. But on the other hand there was this opportunity to do this work. It was something that the two of us were going to work on as a project. And we both had our own companies. And he was saying can you invoice this rather than me because I can't, I haven't Ogawie off the ground yet. It hasn't been announced yet.

Thank you. Now of that sum that's set out in the invoice what was the proportion that each of you was to receive?---(not transcribable).

Just let me finish the question, I'm sorry. I need, otherwise they can't record it?---Yeah.

So what was the proportion that each of you were to receive?---50 per cent.

Now in relation to the AID project, were you given access to existing documentation from the DET?---Yes.

And is that the CD you referred to before?---(NO AUDIBLE REPLY)

And who supplied that to you?---(not transcribable)

At any stage did you attend the Department offices at St Leonards?---Yes, once.

And was that on or about 23 July?---Yes, it was.

What was the purpose of that visit?---The purpose was, was to see the actual software running, it was to talk to developers, get a feeling for what state the system was in.

And when you went there did you meet with anyone from the Department of Education and Training as opposed to contractors?---I don't know. I met three or four people there. And I didn't know who the, the only person I knew who was there was, that I knew was David Johnson. I knew that there was a, I thought it was the project manager for the project, but I don't remember a name. And there were a couple of other developers there as well.

Just in terms of the person you thought was the project manager, male or female?---Male.

Are you able to give any sort of description at all?---No.

That's all right. Now did anyone ask you who you were or what you were doing there?---Nobody.

Did you have to sign in or anything similar to get in?---I don't believe I did, no.

And whilst you were there, you were given access and shown various department systems or information?---The way it worked was that the developers, I'll call them developers for the time being, I don't know exactly what their roles were. The developers were trying to give me a demonstration of the system. So to do that they set up a terminal and started to try and show how you could search for various assessment items. The whole thing fell apart in many ways because the software, they had trouble running the software. They weren't sure whether they had the right version of the software. They couldn't find any data in the system by using the system to search, which to me seemed a strange sort of thing. They even had, one of the developers had to go and look into the database directly to find data so that they could then know to search. And the problems with it was that you seemed to have to need to know which school had created the assessment items before you could go and search for it. And this, this was a problem in that they didn't remember which school they put their test data against. So also I mean I got the impression that the system was a very clunky sort of old fashioned looking system, was my impression at the time. But that was the purpose of the visit, was to see, actually see the system running.

All right. Now did you form a view as to whether or not the system would need to be replaced or upgraded?---I had made that decision, the decision developed in my mind over a period of time based on the documentation I'd read and also, also from what I saw at that demonstration.

All right. Now, at some point were you provided with a scope document that sets out the type of system that was being used?---I believe so.

Can you just turn up annexure 5 to your statement, the thick document? ---Let me find that. Which one is that? Is there a page number in there I can see?

Page 91 I believe. No. Sorry, I've been (not transcribable)?---I can't really tell which one that is from here.

Perhaps I'll deal with it this way?---Yes.

I'm just going to show you the document that is page 46. Do you have page numbers on the top corner of - - -?---Yes, I do. Thank you. Yes.

Now, is that a scoping document or a preliminary report of some sort? To refer to paragraph 21?---Yes. It's not mine.

No, I didn't say it was?---No.

I'm asking you - - -?---Yes, it is, yes.

Was that given to you by someone?---I have seen it before, I don't remember anything – is this - - -

Well, stop there for a moment?---Yes.

Go to paragraph 21 of your statement?---Okay. Now, this is the 21 that we're talking about, the (not transcribable) here, that's right. Yes. So that's that one, yes.

And you say David forwarded that to you?---Yes.

Now, if you could go to – and I'm sorry to do this to you, but I need to go through the documents – to that white folder again?---Yes.

Could you please go to page 115?---Yes.

There's an email dated 4 September at 13.15 in which Mr Johnson's provided you with a rough report outline, you see that?---(not transcribable).

No, no, just, perhaps if you could just concentrate on each question that I ask you?---All right.

If I'm confusing you I apologise but I have to go through some documents? ---No.

On 4 September you were provided with a rough report outline and you were told roughly how long it had to be and what may or may not need to happen with the rough outline you were being given, do you see that?---Yes, I can.

Now, I'll just give you a page number so that it's easier for you. So if you just pick up your statement. Page 58 I'm told?---58?

Yes, that's it. Page 58 has got the word "cover" and then behind that for a series of pages - - -?---Yes.

- - - are headings and the like?---Yes.

Now, is that a document that you were provided with?---Yes.

And what is it?---It's David's shell of the document as to how the structure of my report should be.

And then in that white bundle - - -?---Yes.

- - - if you go to page 117 - - -?---Yes.

- - - is that the Catalina IT report into the AID system?---Yes.

And it proceeds for a series of pages that were signed by you, is it not?
---That's - I believe so.

If you go to the conclusion for me at page 135?---Yeah.

10 And you'll see there you've set out your conclusion as to what was or
should occur with the system?---Yeah.

And correct me if I'm wrong but you were basically saying it should be
terminated and a new process developed?---Yeah.

That final report fits the format of the draft that Mr Johnson sent you?
---Yeah.

Now, in relation to that report did Catalina IT prepare an invoice?---Yes, it
20 did.

And if you turn to page 140?---Yeah.

Is that the invoice you prepared?---Yeah.

Turn over a page for me to page 141?---Yeah.

And just so we're clear about it, the invoice that you sent was for $62,450 as
discussed in that first email plus GST, correct?---Yeah.
30
Go to the next page for me, page 141?---Yeah.

What's contained at the bottom there?---That's the invoice received from
Ogawie.

And for how much is that?---35,450 plus GST.

Is that 32,000 or 35?---I think, did I say - 32,450.

40 And what is the date on that invoice?---26th of September, 2008.

Go back a page, what was the date on your invoice?---The same date.

Now, could you please go through that bundle to page 163 for me?---Yeah.

And just so we're clear about it, did you pay that invoice to Ogawie or
Ogawie as you call it?---Yes.

Now, on 1 August, 2008, 12.03, do you see an email there, David Johnson to you?---Yes.

Just have a read of that email to yourself for a moment?---Yeah.

Now in that email Mr Johnson explains to you that he's found a budget of $700,000 being approved to develop a new system. Was it ever explained to you what that actually related to?---No.

10   And paraphrasing but did you understand that email to be explaining to you that there was a prospect for some further business for you and him?---No, I didn't. What I understood from that was that - the trouble with the AID Project was that $500,000 had gone into it as far as I knew to develop something that didn't work and what we were trying to do was to find an alternative and my sort of feeling was that there was a much better way of developing web applications than the way they'd approached it and that was built into my recommendations. This here, I think what David was saying to me was that they were trying to instead of just - he was trying to explain to me what they were going to do with the AID Project and that's, you
20   know, basically it was being sidelined by some other project that came along. I didn't think there was any, that we would be involved in that.

All right. Now, what is or was Project Oscar?---Oscar was my name for a project that - one of the things that came out of the AID Project - - -

If I could stop you there for a minute?---Sorry.

I need to do this sequentially so - - -?---Okay, sorry, I'm jumping - - -

30   - - - perhaps just one thing at a time?---Okay.

What is or was Project Oscar?---Oscar was a project written by Ogawie to - as a proof of concept for a system that had the core functionality that AID was trying to achieve.

And in communications between you and Mr Johnson did you always use the term Oscar or sometimes did you refer to it as something else?---We both used AID and Oscar in, in - Oscar was my word for the system because I needed to give it a name to, to work on and I didn't want to give it the AID
40   one because that was a DET sort of thing. I wanted to separate this out as being an Ogawie system.

And what is it that it was planned that Oscar would be a proof of concept of - - -?---The basic elements of the AID system were to have a way of creating assessment items and creating test from those and being able to run those tests. And what had occurred was when I was looking at the AID system was that the functionality wasn't all that great, there wasn't a huge amount of functionality in there. And what we could do was to demonstrate

that core functionality quite easily as a web application. And so that was –
it was my idea to produce that and to me it gave more credence to my
recommendations in the report. It's easy to say in report, you know, just go
and build another one it will be whatever, but what I was trying to say was
well, I've recommended that in the report but if we were to do a core – if we
were to produce a system with the core functionality in it which went
through to the stage where it could do online testing as well then it would
have the double benefit of confirming that the report I'd done was actually
legitimate in terms of its recommendations and also that it was an
achievable thing.

Right. Now, who was it that you understood was to produce this proof of
concept?---Me.

And on whose behalf was it going to be done?---Ogawie's.

And where was the work going to be done for Oscar?---Initially there was
no – I mean, I can't remember exactly what that was going to be, events
overtook my original ideas of what was going to do. I started by saying to
David, Look, you know, we could build something like this, the core
functionality of it, I don't remember exactly where but at some point, and I
can't remember exactly when, David got his office in Help Street and - - -

Help Street where?---Chatswood.

And whose office was it?---David's.

Was there anything on the door that told you whose office it was?---No.

Certainly it didn't have DET or anything similar written on it?---(NO
AUDIBLE REPLY)

Now, can you go to page 179 of that bundle for me?---Yes.

25 August at 20.56, is that an email from Mr Johnson to you?---25th – page
179?

179?---There's one at 18, 16.18, 20.56, that's from – yes, it is, yes.

And there's a reference on the fifth line to you being a logical choice as a
technical director, do you see that?---Yes, I do.

Technical director of what?---Ogawie.

And in relation to what?---One of the things that I hoped and then talked in
general terms my purpose in working with David at this stage was to get
myself to a point where I was going to be a part of Ogawie, I had talked
about that this is what I, you know, whether it was just a matter of doing

work for Ogawie or whether I became a part of it, but what David was saying is that he saw me as being a technical director at some point and that would've been exactly what I was looking for.

And were you charging – I withdraw that. I'll come back a step. Now, in relation to Oscar and what it was that you were attempting to produce a proof of concept of was there any discussion between you and Mr Johnson about who the product could be marketed to?---No. Can we talk about – sorry, when I say could be marketed to, no, there wasn't. It was my understanding that it was going to be marketed to the Department and to other people and it was specifically, specific to it that it wasn't tied just to the Department because it would need to be integrated with other people's systems.

Was there any discussion as to who those other people or entities might be? ---I just remember Victoria being mentioned, that's all. I mean, there were – I have a recollection of there being a number but I don't think they were specific, it was more a sort of a wish that this could be sort of thing rather than - - -

Now, a moment ago you said something about whether or not it would be tied to DET technology. Could you just explain that to the Commission for me?---Yes. Look, one of the problems with the system, with web applications it seemed to me as part of the AID system that it was integrally tied into the Department's system which meant that if it was a successful system it could never be sold on to anyone else without cutting it out of that system and that would be a big job and I thought if we were doing anything, if anyone, even if the Department were going to do a new web application that they would try and keep it as self-contained so that it would run on its own and that would mean that it could be plugged into other systems easily. If you try and have a bit of software that uses and integrates very closely with the Department's it's very hard to untangle that and then move it into another environment.

Now were you the only person who worked on project Oscar?---No. David suggested that he would get two junior programmers to help me.

Did he?---Yeah.

Who were they?---They were two Chinese gentlemen and I used to call them David and Michael.

And where did, where did they perform work physically?---They worked at Help Street, Chatswood.

And under whose direction?---Under mine.

And what was it they were doing?---I was designing the core functionality for Oscar before a core functionality for AID. I was designing something that achieved that and they were writing the software for me under my control.

Now if you could go to page 181?---Yep.

Actually I'll go a step over, go to page 182. Is that an email from you to David Johnson on 3 October, 2008?---Yes.

And in there you make reference to David on the second number paragraph?---Yeah.

Who is that person?---You mean where it says David and Michael?

Yes. If you come down it says, David and Michael have got quite a bit done?---Yeah, they're the two programmers.

When you say they've got quite a bit done, quite a bit done on what? ---When - - -

Sorry which project?---This is Oscar.

Thank you. Now if you go down further you then summarise the project. Correct? I summarise progress, I think - - -?---Yeah, that's right. Yep, yep, progress.

I've got a big hole in my page but I think that's what it says?---That's right.

And then it says 1) and you set out some issues you had?---Yep.

2) David has completed his review. Do you see that?---Yep.
All right. Now again is that the same David you spoke about a moment ago?---Yes, it is. All the David's mentioned in that section all relate to the programmer, David.

And then there's a reference to Michael in sub-paragraph 4?---Yep.

That is the Michael you spoke about a moment ago?---That's right.

And you talk about putting things on Ogawie's server?---Yep.

Where was it that Oscar was stored or kept?---Each, each of the programmers had a copy on their own PC, but there was an external server called Dokeos.com.au, I believe and it was stored on there so that it could be run by anyone, well anyone who could see it.

Now a bit further down you'll see an email 3 October at 20:04?---Yep.

And David Johnson asking you to make sure that Michael and David had direction?---Yeah.

Direction in relation to what project?---To the Oscar project.

And just a bit further on at T188, page 188 of that bundle?---Yep.

10   I won't go through it in detail but is that an email from you to David Johnson, copied to a Mr Huang and a Mr Zhang?---That's right.

And to what topic does that email relate? Which project?---Oscar.

And does it deal with, in summary form, everyone can read it for themselves, but what it was that was occurring with the project at that point and what was to be done and any limitations that were being faced?---Yeah. There were technical issues with achieving the functionality wanted and this was just describing them.

20   Now the email has to attachments listed on the bottom. Please if you could go to T190. Is that one of the attachments?---I'm just checking. Yeah.

What does that attachment relate to?---This attachment is my summary of what I think we needed to include in the, in Oscar.

And you'll see in the second paragraph you refer to potential integration of various DET systems?---I'm not sure (not transcribable) not tried to explain it, yeah.

30   Yeah, yeah. Now, do I take it that the primary focus of Oscar was the Department of Education and then a secondary benefit was anyone else it could be marketed to?---I don't really remember if it was that way round. I do, what I was, my sort of idea was that this would be a product to sell and the DET would be one of them. I don't remember feeling that the DET were the prime ones for this. I might be wrong but I just don't, I just, I knew they were an obvious one to, to choose but I didn't necessarily mean they're the only one or the, the prime one.

Now the Michael and David that you spoke about a moment ago and you've
40   told us they were working at Help Street, Chatswood, now they were working under whose direction again?---Under me, yeah.

And how many days a week were they working?---Five.

And you were providing them with direction and tasks to fill up the time that they had at Help Street?---(NO AUDIBLE REPLY)

And if you go to 198 - - -?---Yeah.

- - - is that the second of the attachments to that email I showed you a moment ago?---I think so, yeah.

And what is it?---It's just suggesting what further things need to be done to, to Oscar, I think, yeah.

Were you aware whilst you were working in conjunction with Mr Johnson of a project called SMART?---Yes, I was.

10

And did you yourself do any work in relation to it?---SMART seems to have cropped up all over the place (not transcribable)

Yeah, I know but I'd actually like you to just very carefully concentrate on the question that I've asked you?---All right.

It's very simple. Did you yourself do any work in relation to SMART? ---Yes.

20   Thank you. What if anything did you do?---The programmer, Dallas, who was here yesterday, as a witness yesterday, was, he was employed by David Johnson and one of the things he was going to do was to do something that related to SMART and I wasn't sure exactly what it was. This was in January 2009 and I was - but my recollection is that this was something to do with SMART.

But prior to that had you yourself done any work in relation to the SMART Project?---(not transcribable)

30   Were you aware of some issues requiring design work for the user interface?---Yes.

Would you go to page 144 for me?---Yes.

Now, that's an email from Mr Johnson to you?---Yeah.

And perhaps I'll put it this way, in that email - well, sorry, as a result of this email you agreed to perform some billing work on behalf of Mr Johnson and/or Ogawie, correct?---Yes.

40

You didn't actually yourself provide any services to the Department of Education in relation to the bills that were to be rendered?---No.

And what it was was that you were offered and accepted the sum of $2,000 for the services you provided in producing and rendering a bill?---That's right.

And do you know what that work related to?---The SMART user interface design.

Now, if you go to 146, is that a coversheet with 147 being behind it - - -? ---Yeah.

- - - a purchase order?---Yes, it is.

Addressed to your entity?---Yes.

In December of 2008 did you raise an invoice in the sum of $52,450 plus GST?---Yes, I did.

Why?---Because David had asked me to.

Please have a look at page 148?---Yes.

Is that an email relating to the invoice that I spoke about a moment ago? ---Yes, it is. Yes.

Did you do anything to check whether or not the work had actually been done?---Yes, I did. I wrote to David about it and asked him to confirm that the work had been done and that the clients were happy with the result.

And is that set out in the email immediately below that one I just took you to on page 148?---Yes, it is, that's right.

And if you go to page 151. At some point did you receive confirmation that the work had been done?---I did, yes. Yes, at the bottom there.

Now, if you go to page 157?---Yes.

What is that document?---That's my invoice for that user interface work.

If you go to page 159. What is that document?---That document is invoice from me less the 2,000.

Just so we can be clear about it, the services of 50,450 plus GST?---That's right.

The 55,495?---Yes.

And if you go back to your invoice it's 52,450 plus GST, correct?---That's right.

And then page 158?---Yes.

Is that an email confirming that you'd received your money making certain arrangements as to what you were to do with the $52,000-odd balance? ---Yes, it is.

Thank you, I have nothing further.

ASSISTANT COMMISSIONER: Can I just ask you why – didn't it occur to you that it was strange that he was willing to pay you $2,000 just to send an invoice?---No, it didn't.

It is strange isn't it, have you ever done that before?---No, I haven't.

Been paid to send an invoice?---Well, I'm invoicing through my system and, you know, through my company, it just seemed that I was doing him a service.

But what service?---Just sending and receiving.

So $2,000 - - -?---I didn't ask for this, it was, it was - - -

I understand that, I'm just asking you to think about it. I mean, did it never occur to you that this might've been a way of concealing the involvement of Ogawie in this transaction?---No.

And in the previous matter where Catalina had invoiced without reference to the involvement of Mr Johnson or Ogawie?---His explanation for wanting me to do the invoicing, I felt that he would prefer it to go through Ogawie but he, because he was trying to build up his business, the reason he was doing it through this was that he hadn't announced that - - -

I'm sorry, I don't – what does that mean he hadn't announced that?---Well, he was, he was in the process of announcing his company Ogawie - - -

He had the company didn't he?---He had it as - - -

He could build through Ogawie?---He was announcing it to the DET.

Announcing it to them, what does that mean?---He was setting up a new service selling education things and the Department was going to be one of the clients of his through that.

So did that mean he didn't at that time want them to know - - -?---Well, he was just - - -

- - - about Ogawie?---He explained it to me that he wanted to make an announcement of his, of Ogawie being a service and selling to the Department and at that stage he wasn't in a position to do that. And I knew

there was, that was true because he was trying to set up websites with all his – summarising his company.

But he wouldn't have needed a website to invoice them for work?---No, he wouldn't but to – he explained to me that he needed it to announce that.

Yes?---That's – look, that's how it seemed to me at the time that he was saying in the future the Department is going to be a big client of Ogawie and I've got one chance – I remember his words – I've got one chance only to launch this and when I do I want the website in place, I want everything ready to go. And I knew he'd had trouble with getting his website going and I knew he was in that situation. But he was coming to me saying in the short term can you do this for me? And I said – and he explained the reasons for it which were that, as I've mentioned, to me that seemed a reasonable thing because he would had to have done a launch without a website. So I don't know what the launch was going to be but it was going to be – the Department was certainly going to be a focus of his work.

Well he was already working for the Department wasn't he, through Ogawie? He himself was working - - -?---I didn't know what his arrangements were with DET.

All right?---I didn't know.

MR FORDHAM: I'll follow that up with more questions just briefly.

ASSISTANT COMMISSIONER: Yes, yes.

MR FORDHAM: Just to follow up from what the Commissioner asked you?---Sure.

The time you levied your first invoice on behalf of Catalina IT in relation to the review, Mr Johnson told you what the form of the words was to be. Correct?---(NO AUDIBLE REPLY)

He also told you that it needed a cover letter?---Yep.

You knew it was addressed to him - - -?---Yep.

- - - at the Directorate of the New South Wales DET?---Yep.

You also knew that he was somehow involved with Ogawie?---Yep.

And that Ogawie was to take a half share in the first invoice?---Yep.

When it came to the second invoice, sorry, the UI invoice - - -?---Yeah.

- - - again you understood that the invoice was to be directed to Mr Johnson at the New South Wales Department of Education and Training?---Yep.

You also knew that Ogawie was going to pocket all the $2,000 of the invoice and you understood that Mr Johnson was behind Ogawie, if I can put it that way?---Yep.

Thank you.

ASSISTANT COMMISSIONER: Yes. Ms Bourke.

MS BOURKE: Just following on about those questions, I act for David Johnson. You spoke about, you said that he referred to (not transcribable) spoke to you about his company?---Yeah.

I suggest to you that your discussions or his discussions with you were always about the fact that he hadn't set up his website yet. That was the thrust of his discussion with you about Ogawie?---It was certainly a big element of it, but I, I got the impression from what he was saying, I didn't know if it was just the website, if that was certainly, definitely the case. But I have this recollection that it was, he was going to at some point say to the Department, you know, that he was going to start, be actively sort of promoting his company to the Department and that it was being delayed because of the website. Because without the website there and people being able to refer back it and to see what he was doing he wouldn't even be able to have business cards with his website. And that's how I saw it at that stage. And he was, seemed to me frustrated at the delay in this whole process because he had copyrighters who were letting him down and so I, I felt that the, that this was what was delaying him at this stage.

At all times in your dealings with him, you were self employed by the company Catalina, which was your company?---Yeah.

And you knew that he was, that he had a company?---Yeah.

Ogawie Pty Limited?---Yeah.

If you could get your large statement, the earlier one?---Yeah.

And have a look at paragraph 8?---Yeah.

Now in it you say, you're talking about the work that you were going to do with Mr Johnson?---Yeah.

And you say I did it, I did this for free with the vague expectation that some work come of it?---Yeah.

This work was always a speculative venture on your part wasn't it?---It was.

In paragraph 9 - - -?---Ah hmm.

- - - about five lines from the bottom, you're saying I told him, being Mr Johnson, that your speciality was web applications and then you've said in brackets, an AID programme was also web based but written in Java, a language I'm less familiar with?---That's right.

In your evidence this morning you said you had worked on Java as well as PHP?---That's right.

10

And you were in fact competent to work with Java?---Java, I worked in Java in England before I came back in 2003. I worked in it for three or four years and, but I haven't touched it since I got back. So I'm more familiar with PHP because I concentrated on that since then. But calling me a, you know I was, you lose sort of touch with the language if you don't work in it from year to year. So I was more familiar with the PHP.

But you felt that you were completely confident to carry out the review of the failed AID Project with the skill set that you had?---I knew that there
20   was going to be a challenge, the trouble, the trouble was that I didn't know how much of the software I'd have to look at on the existing AID Project and I could easily have got buried in detail and software and I could have got myself out of my depth at that stage and that might have meant resigning from the thing and saying sorry, we can't do it. It was a risk I was taking because - but as it, it didn't work out that way thank goodness.

And you took the risk?---I did, yeah.

And the evaluation report that you produced to the Department, your
30   professional opinion is that was a proper and professionally accurate report?
---Yes, and I'm very proud of it.

Now, you knew that Mr Johnson was the project manager for the SMART Project - - -?---No, I didn't.

- - - in the Department?---No, I didn't.

Well, I suggest that you did know that?---I didn't know.

40   And did you know that the SMART Project had become a sort of a parallel project to the AID review?---No, I didn't.

ASSISTANT COMMISSIONER: Did you understand that he was working for DET at all?---I understood he had a contract of some sort there and he did things from time to time but he was not, it can't have seemed like a full-time thing, it seemed as though - I didn't know exactly what it was, sorry.

And that was the extent of your knowledge was he had some sort of contract with DET, that he'd work for them from time to time?---Yeah, because he was also running Ogawie and he had his office and he was there in meetings and doing things as well and that's - so I knew he had contacts and things he was doing, I was, he obviously had some contract of some sort there but I didn't know exactly what it was.

Yes, Ms Bourke.

MS BOURKE: I'd like you to look at paragraph 21 of your statement and then as it is replaced by paragraph 5 - - -?---Oh, yes.

- - - of the, yesterday's statement?---Yeah.

So perhaps just look at paragraph 5. You've said as part of the evaluation process David forwarded a report to you. You believe it was written by Sunil?---Yeah, that's right.

You had no basis for that belief, did you?---Only that David told me I believe.

Well, I suggest that David never told you that Sunil had written that document?---Well, I, I was under the impression it was and I can't remember the conversation where he said it or didn't say it but that was my understanding. I remember even saying something or - about it saying that Sunil has done a detailed, not a detailed, a good summary of what was there but it was Java centric, in other words it concentrated more on the Java available products than the PHP ones but I, my recollection is that it was Sunil, I could be wrong but that's, that's my recollection.

Now, if you have a look at paragraph 24 of the larger statement?---Yeah.

And you've written "By late September David and I had completed the report"?---Yeah.

I wrote most of, "I wrote most of the report as I had performed most of the review"?---Yeah.

And that's correct, isn't it?---That's right.

And again that review was properly carried out and competently done? ---I believe so.

Now, paragraph 28 of your large statement where it goes over to the next page?---Yeah.

You're talking about Oscar, "Oscar was totally unrelated to the AID software at DET - - -?---Yeah.

- - - except it had similar aims and in our case we wanted to develop it as a proof of concept for Ogawie to sell." Now, again, I'm not a computer person clearly but proof of concept is not an application, is it?---No. It's a, well, let me explain - if I can explain what it is or what I thought it was 'cause rather than just call it proof of concept. What I was trying to do is to say strip away all the complexities that a big system would have like integration to other systems and whatever, find out what the core functionality that a system like this needs, what does it need to make it

10   successful and the thing about it is that it needs to be able to - it needs teachers and people to be able to use it and feel they really like it and work with it and it seems to be the whole thing it essentially is with the original AID Project that it was designed from one end right through and the teachers and people were right at the end of it and this one here, I was saying let's concentrate on what you really need to do as a teacher to get this system to work and that is you need to be able to create questions and be able to put questions in and you need students to be able to take those tests and think this is a great application. So I was concentrating on getting that core functionality there and then say look as, if we can show that we can get

20   people excited about a product that will really work and then we can bolt on all the other bits later so it's a proof of that concept.

Would you agree with this suggestion that it is a proposal of a way of remedying a problem?---No, I wouldn't. The only concept – it's a really exciting concept and it's such a pity that it hasn't turned into something really good – well, maybe it has now, I haven't been involved with it, but what I was trying to do is to show this is – it's really exciting, you could do something really exciting for teachers and students with this application in spite of its boring name (not transcribable) David. Look, I can – maybe,

30   maybe I should keep quiet really about it but it's a very exciting sort of thing. My son – sorry, excuse me – I gave – hold on a sec – I go to – sorry, maybe I'll just leave this subject and just stop.

Certainly you've answered the question as far as I'm concerned?---Okay.

(not transcribable) information that I was seeking, thank you?---Okay.

If you could go to paragraph 35?---Yes.

40   Now, really in relation to the work that you're saying that Michael and David were doing would you agree with this proposition that at that time there was no guarantee that that project would ever succeed?---That's completely right.

Paragraph 50. You refer to an application called Liferay?---Yes.

Really just to clarify something, Liferay is, again, an open source application?---I didn't know anything about it - - -

Did you know that that's the case?---I didn't know that, no.

At paragraph 51 headed My Parting of Ogawie - - -?---Yes.

- - - you've spoken there about another project called SMART?---Yes.

I suggest that there was a program that had a similar functionality but that it was not referred to as SMART?---That could be. I don't remember the details of that. What happened was that I was working for free on this project in a speculative way as you've said, but when it got to the end of the year I got to a point where I said, Look, I've done enough here, and that I'm going to – I'll carry on a little bit here to sort of whatever, hoping with David that I'd be able to get to the stage where I got some money for what I was doing but it never eventuated so I really didn't want to take on another project within Ogawie while there was no question of me being paid for it. I felt sort of I was being stringed along a bit for this. So this, Dallas who was here yesterday was to work on this and my recollection is it was something to do with SMART but I could be wrong.

And it was at that time that you asked to be paid $100 per hour, to be remunerated on a per hour basis?---Yes. That's right.

I've got no further questions.

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Purdy, do you have any? Do you wish to ask any questions (not transcribable)?

MR LEWIS: Mr Ambrose, is there anything else that you'd like to add to your evidence?---No.

Okay. Thank you. Nothing further.

ASSISTANT COMMISSIONER: I'd just like to give you an opportunity to comment on something. If you could turn to page 157 of the large exhibit? ---Yeah.

And this is the invoice from Catalina. You'd agree that on the face of this, this purports to say that Catalina has provided professional services as in a user interface redesign - - -?---Mmm.

- - - as per quote you provided?---Yeah.

Now that would be quite a false impression wouldn't it?---It was subcontracted work as far as I was concerned. It was provided, I mean when you say who provided it, I certainly didn't provide any of the actual service, no.

So it would be a false, anybody looking at this would gain the false impression that Catalina had provided services to the DET?---I hadn't done the work myself, that's, that's all I can say really.

Well Catalina hadn't done the work in any way?---No, no, no they hadn't.

So I'm giving you an opportunity to comment on whether you agree that this invoice contained false information?---Well it didn't, it doesn't seem, I can see that you can see it that way, but my sort of feeling about it was that this work was being subcontracted effectively and that while I didn't do the work myself, I mean Catalina didn't do the work, it was a reasonable thing to do the invoicing for it.

Although the invoice gave the impression that Catalina had done the work?---Done the work, yeah.

All right?---It seemed reasonable to me.

All right. Is there, nothing else for this witness?

MR FORDHAM: No thank you.

ASSISTANT COMMISSIONER: All right. You may be excused. Thank you for your attendance.

THE WITNESS EXCUSED   **[11:17am]**

ASSISTANT COMMISSIONER: Actually we may as well take the break now. It might be better than starting another witness. We'll have a 15 minute adjournment only.

SHORT ADJOURNMENT   **[11:17am]**

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: I call Mr Appleby, David Appleby.

MR LEWIS: I think you gave me leave to appear for Mr Appleby, Commissioner.

ASSISTANT COMMISSIONER: I did, I did Mr Lewis. Is he seeking a declaration?

MR LEWIS: Yes, he is.

ASSISTANT COMMISSIONER: Thank you. Now Mr Lewis has indicated you're seeking a declaration under section 38 of the ICAC Act. The affect of this is that nothing you say can be used against you in any future proceedings. However, it may be used if it's found you've breached the Act by giving false information for example. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need

10   for the witness to make objection in respect of any particular answer given or document or thing produced.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON

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

ASSISTANT COMMISSIONER: Mr Appleby, you're required to take an oath on the Bible or make an affirmation to tell the truth.

MR APPLEBY: Affirmation.

30   ASSISTANT COMMISSIONER: Yes. Could the witness be affirmed, please.

<DAVID ROBIN APPLEBY, affirmed   **[11:40am]**

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---David Robin Appleby.

And what is your occupation?---Sole trader as a web designer.

10   And for how long have you been a web designer?---About 13 years.

You refer to yourself as a sole trader, is it the case that you perform most of your work on contract for various people?---Yes, usually just one to one business, business. I don't have contracts usually.

You might be able to help us out with something that seems to have cropped up. Is subcontracting a very key part of the IT industry?---Yes. There's a very broad range of technology. It's rare that one person can cover all those technologies.

20

Commissioner, the relevant documents are contained at page 211 and following. And also 161, but I'll come back to that. Now prior to August 2008 had you had any dealings with David Johnson?---I have done some work him in the past, yes, I did a catalogue for him, a graphic design project.

And in late August 2008 were you contacted by Mr Johnson?---Yes.

And if you have a look at page 211 of that bundle, the number is on the top
30   right hand corner?---Yes.

The emails are in reverse order so if you go to the one at the bottom of the page, Tuesday, 26 August, 2008?---Yes.

There's a reference to a discussion. Do you remember roughly when that discussion took place? If you can't say, just tell me. It's not a memory test?---Yeah, I'm not sure exactly. I would have been, it could have been a few weeks beforehand.

40   Do you have any memory of what the discussion was about?---He just rang up and said he needed some help with some, developing some screens and UI work.

Now that email sets out what the UI work is to relate to. Do you see that? ---Yes.

Were you provided by Mr Johnson at any stage with any material from the Department of Education and Training that they were then using?---There

was a user interface document. He did at one stage give me an actual application copy on CD of the SMART programme.

And when you say the SMART programme to your understanding was that a Department of Education and Training programme?---(NO AUDIBLE REPLY)

At any stage were you contracted directly to the Department?---No.
At any stage did you sign any confidentiality or other documents in relation to the Department of Education and Training?---Not that I recall.

And you then set out in the emails above it and I'll do it in short form, basically an estimate of what you would charge and an offer is made to you suggesting that about a week's work should cover it. Correct?---Yes.

Did you perform work in relation to the user interface?---Yes.

What did you do?---I met with some people.

I'll stop you there. Where did you meet with them?---I went to Bankstown.

Into a particular building?---Well David came and saw me at my home.

Yes?---Home office. He gave me some usability documents. I think he did actually give me some keylines as well.

Now I'll stop you there. Just in case we're not all following this, because not all of us are as au fait with this as you are. Useability documents, what are they?---It was fairly comprehensive study of someone using the existing application showing charts on where on the screen they were looking and, and just reporting on generally how users use the application.

And did you understand that that information had come from the Department of Education and Training?---I knew it was done for them, I think that it was actually done by a third party though.

After that you said something about some key lines, what are they?---It was an outline of what I was to produce screens for, the application.

Now, I might just jump forward if I could. Can you go to page 232?---Yes.

What is that?---Looks like, could be one of the designs I did.

And behind that, 233 through until 234?---Yes, they look like more sample.

And in what form were they produced, in hardcopy or softcopy or both?---I supplied them digitally so probably as images and then eventually I did hand over some code, some HTML and style sheets for them.

Now, I just want to go back a step. When you had the meeting at Bankstown in whose offices was that at?---I thought it was the Education Department.

And did you meet with anyone from the Education Department?---I think there was, there were three or four people there which I, yes, thought were from the Education Department.

And were you asked to sign in or sign any documentation when you were there?---Not that I recall.

Were you asked to sign anything to do with confidentially or anything similar?---Not that I recall.

And did anyone ask you who you were and what you were doing there? ---Yes. I, I can't recall specifically.

And were you there to receive information or to give a presentation or a bit of both?---To receive information.

And from who did you receive that information?---From the three or four people, the staff, the Department of Education people.

And what information did you receive?---Their thoughts on what needed to be done to the program to improve it.

As a result of the information you received and, I take it, some work you performed did you produce those documents I took you to a moment ago from 232 to 234 amongst other things?---I wouldn't know if it was specifically those, there was a bit of, a few screens back and forth.

And at some point did you render an invoice for the work that you did?---I did.

Can you have a look at page 161?---Yes.

And is that your invoice?---Yes.

And as far as you're aware was that paid?---Yes.

Thank you. I have nothing further.

ASSISTANT COMMISSIONER: Yes, Ms Bourke.

MS BOURKE: No, I have no questions.

ASSISTANT COMMISSIONER: Mr Purdy?

MR PURDY: Thank you, Commissioner. Mr Appleby, I represent the Department of Education. And you've given some evidence about a visit to the Department offices at Bankstown. Did you attend there with David Johnson?---Yes.

Thank you, I have no further questions.

ASSISTANT COMMISSIONER: Thank you. Yes. Well, thank you very much for your evidence, you may be excused now.

THE WITNESS EXCUSED   **[11.49am]**

MR FORDHAM: I call Mr Kevin Johnston.

ASSISTANT COMMISSIONER: Mr Johnston, is he here?

MR FORDHAM: I sincerely hope so.

ASSISTANT COMMISSIONER: And you're Mr Kevin Johnston?

MR JOHNSTON: Yes, I am.

ASSISTANT COMMISSIONER: Mr Purdy, are you acting for Mr Johnston?

MR PURDY: Strictly speaking, Commissioner, we, we have discussed the question of a section 38 order and Mr, Mr Johnston does request one.

ASSISTANT COMMISSIONER: All right. Thank you for that. Yes, Mr Johnston, I'm going to make a section 38 declaration, the effect of which is that nothing you say here can be used in any civil, criminal or disciplinary proceedings in respect of you?

MR JOHNSTON: Yes, yes, thank you.

ASSISTANT COMMISSIONER: The only exception being if it's found you've breached the Act by giving false information or in some other way.

MR JOHNSTON: Okay, thank you.

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

objection in respect of any particular answer given or document or thing produced.

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

10

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

MR JOHNSTON: I'll make an affirmation.

20

ASSISTANT COMMISSIONER: Yes, thank you.

<KEVIN JOHN JOHNSTON, affirmed   **[11.51am]**

ASSISTANT COMMISSIONER: Yes, Mr Fordham.

MR FORDHAM: Sir, what is your full name?---Kevin John Johnston.

And what is your current occupation?---My title is Senior Manager,
Common Systems and Services in the Information Technology Department

10   of the, of Department of Education and Communities.

As at late 2007 through to early 2009 what was your position?---Similar, the
titles have changed a bit in that time. I think my title was Manager,
Information Services back in 2007 so I was - do you want me to talk about
what I was managing?

Yes, I'll come there in a moment, I just want to know the name of the actual
position?---Yes, I think it was Manager, Information Services at that time.

20   We've been supplied some information from the Department that suggested
your role was Manager, Information and Reporting Applications, does that
sound right?---That was an earlier title, yeah.

I'll come back to that in a minute. Just have a look at that document for me.
Just have a look at that document for me. Is that a statement prepared by
you and dated 5 May, 2011?---Yes.

Signed by you on the left-hand side of the foot of each page?---Yes.

30   I tender that document.

ASSISTANT COMMISSIONER: The statement of Kevin Johnston dated
5 May, 2011 will be Exhibit 18.

**#EXHIBIT 18 - STATEMENT OF KEVIN JOHNSTON DATED 5
MAY 2011**

40   MR FORDHAM: In simple terms what I suppose is but was the
Information Technology Directorate of the Department?---The Information
Technology Directorate is the key information technology unit of the
Department of Education so it provides the information technology services
to the whole of the State so it, it manages the State-wide network, it
manages application development and delivery and the operations of those
applications so those applications are used by all teachers and students
across the State in both schools and TAFE.

Yeah, I was just going to come to that. You cover not only schools but TAFE institutions?---Yes.

This is at the time?---Yes.

It's the case, isn't it, that the Department I think at that stage had in excess of 100,000 employees?---Yes, that would be correct, yes.

And is it fair to say that the Department would in 2008, and I'll use that block but late 2007 through to 2009 would have been one of the largest consumers of IT services in the country?---Yes, yes, it always rates high in any of the, any of the surveys about the scale of the operation.

Is it also the case that in the period I'm talking about, late 2008 through to early 2009 there was an emphasis in the IT directorate in trying to convert a number of existing systems to web based applications?
---Not so much convert. There was a direction in the industry in mid 2000 I guess and earlier to go web rather than other technologies. And we had a lot of legacy systems built in various technology sets. What we did though is make a decision that new developments would be developed in web based technologies. And we did convert some of our, some of our legacy applications into web based technologies as a discreet project.

Now there's been much discussion in this inquiry about the SMART programme. In simple terms could you explain what that was?---SMART is the development of a system to manage student test results. There was an earlier system called SMART in the Department that needed to be replaced. And it managed information on statewide testing. The business area, which is EMSAD wanted to develop a new system and make that work with the new national testing regime called the NAPLAN.

Can I just stop you there for a minute. The previous statewide testing, that would be the statewide proficiency testing that children would undergo at various stages in their education?---Yes. Like the Basic Skills test, for example.

And do I understand that the object of the system was to collate information both at the testing level and the result level from those programmes?---Yes, that's right. So schools could analyse the performance of their students at a very detailed level. And people like Principles could do inter-school comparisons at the whole school level.

Now I'll just stop you there for a moment. During 2008, the Department was working along with a number of other departments around the country towards the NAPLAN system weren't they?---They were, not as an information system to my knowledge. We were looking to implement NAPLAN which is a testing regime, so to replace our state based test with the new national test. So that's, I think that's what you mean.

Did you envisage that SMART2 would take into account the coming existence of NAPLAN?---Yes, absolutely. That was the prime driver for replacing the old system.

That was to be, NAPLAN of course is a national system?---It's a national testing regime, yes.

Now the AID project, could you just explain that briefly?---The A-I-D project was Assessment Item Databank was a project to develop a database, if you like, of test questions that teachers could draw upon to frame local staff tests using a collection of specified questions and answers.

Right. So, just so that I can understand this, do I take it that if I'm a Geography teacher at Bankstown, the idea was I could go to the AID programme and put together a test to give my students?---That's correct. And print off a test paper with all those questions listed, for example.

And a set of answers?---And the answers, yes.

And how long had that been in development as at early 2008?---Early 2008, probably about 12 months.

And do you, and please tell me if you don't know, but do you know how much had been spent on attempting to implement AID before it was shelved?---From recollection I think it was in the order of $400,000.

And was AID brought to completion?---No, it wasn't.

Why not?---Why not, we had some issues with the business customer about, primarily about the, the intuitiveness and the look of that system. How it was presented to teachers. And we also had issues about loading question sets from older systems that the business unit had into that system, and they were finding it difficult under, with their business pressures to resource, extract the, the extracting of questions from those systems so we could load them into AID. So it got to a point where I had to take resources off the development because we didn't have any meaningful work for them.

I will come back to that, but at some point did the Department commission a report into the AID system and what, if anything, could be done with it?---Apparently it did, yes, but I didn't have any knowledge of that at the time.

Now, I'll just come back to that. Given that, and perhaps I'll introduce it this way, what was your exact role and delegation during the first half of 2008?---Well, when you say my role, what I was doing?

Your job?---Yes, O.K. Early 2008 I had about 50 staff working for me and that was flicked between normal operational activities with a number of

systems that were being used day-to-day in the Department, so keeping those systems running and managing problems around those systems and also I had a number of projects and project managers reporting to me so as well as the SMART project I had a project called the School Website Service which is a very large project. I had another project called (as spelt) TaLe which is Teaching and Learning Exchange, both of those projects had dedicated project managers who reported to me as well as the SMART project.

10 So are you able to say how many projects you were actually working on in early 2008?---It would have been – in early 2008 – four counting the AID project.

And were they all of similar size and complexity or some larger than others?---Some were larger than others, SMART was 4.3 million, the School Website Service was about 3 million, the TaLe project was about 3 million.

Now, in relation to each of those projects did you have a separate project
20 manager?---Yes.

In relation to the SMART project who was that person?---That was David Johnson.

Mr Johnson was a contractor was he not?---Yes, he was.

And were you aware that he traded through an entity called Ogawie at the time?---I was aware that he had a company called Ogawie and I assume that company was the way he employed himself through a recruitment agent.
30
Each of the other projects, I think there were three others, did they each have a project manager?---Yes, they did.

Were they permanent or contracted staff?---They were contract staff.

What was the extent of the reliance by the Information Technology Directorate as at 2008 on contracting staff?---There was a very heavy reliance, I would guess about 80 per cent of the staff were contract staff and that included most of the people with technical skills and it also meant that
40 we did a lot of operational system management and maintenance using contract staff as well.

Do you have tertiary qualifications yourself?---Yes, I do.

And what are they?---In science.

And do you have an IT tertiary background?---No, I don't.

And do I understand that each of the project managers in relation to each of the projects in which you were supervising they were contracted IT staff, is that right?---Yes, they were contract project managers sourced through recruitment agents, yes.

And the object, I take it, was for you to manage each of these separate projects?---To direct those projects. The project managers were responsible for managing the project.

10 And I've been given a – and I'll come back to it later but I just want to ask you to comment on a document for the moment. I've been given a document that's headed New South Wales Department of Education and Training Manager Information and Reporting Applications and it's at page 23 of the CP bundle, if that's with you?---Sorry, what page?

No, you don't have it yet?---No.

23?---Oh.

20 Now, if you just have a look at page 23?---Ah hmm.

The ICAC's been informed by the Department that this is the relevant position description for you as at 2008 and the role you were performing. Do you agree with that?---I would agree that it's probably the official view of the duty statement for my position at that time but these often didn't keep up with events.

All right. Well, I just want to ask you some questions about it. In relation to primary objectives it's suggested you would give strategic direction and
30 operational support. I take you agree with that proposition?---Yes.

A couple of paragraphs down it's suggested that you're to provide high level and expert technical advice on the use of IT data. Is that a skill set you actually possessed at that time?---I guess it's, it's a question of the level of that advice. My role was to manage a lot of technical people which is typical in IT management and provide advice based on the information provided to me by those technical people so I don't have a strong technical knowledge but I believe I did that.

40 Well, I was just going to come to that. As at 2008 you wouldn't describe yourself as having a high level of technical background, would you?---Not in terms of things like development, programming, systems analysis, that's right.

And where it came to gaining an understanding of what was occurring in each of the projects that you supervised - - -?---Yes.

- - - you were reliant on the managers who were appointed, correct?

---That's correct.

And each of those people you tell us was a contracted person?---That's correct.

And in relation to the SMART Project you relied on David Johnson? ---That's correct.

Now, to be fair to you what you did bring to the role that you had was a background in managing and deploying resources for and on behalf of the Department to try and achieve various outcomes. Is that fair?---Yes, yes, that's fair.

And you had I take it extensive experience in collating both the people and the information and then trying to manage that to achieve an outcome? ---Yes, I'd agree.

But in relation to actually what was occurring on the ground level and what the Department was paying for, you were reliant on the contracted managers such as Mr Johnson?---Yes, that's correct.

Thank you. You can put that aside for the moment?---Yes.

A moment ago I asked you about the ratio, well, I didn't ask you the ratio but you gave me one, in relation to permanent staff and contractors. Since 2008 and to your observation has that increased, decreased or stayed the same?---We have gone through a conscious effort to move from a reliance on contract staff to permanent staff and that's primarily in the area of operational systems maintenance and management so they're ongoing roles for the Department and we went through a large restructure which we're just finishing off now so, for example, most of my contract staff in those roles have become permanent roles but we rely on contract staff is the philosophy for project-related work which has a defined start and end date.

So if I can just break that up. Do I understand that the Department has converted a number of contracted staff to permanent positions with the Department?---Yes. Now, what, what, when you say converted it advertised positions as permanent for competitive recruitment.

And do I understand that most of those permanent positions, if I can call them that, relate to the ongoing management of systems that are in place? ---Yes, that's right.

Where it comes to the development of new projects is it still the case that the Department is reliant on contractors?---Yes, it is.

In that bundle at page 77 that I gave you a moment ago there's a suggestion, you don't need to look at it, I'll give you the numbers, that there's

permanent staff of 404 and total contractors of 247. Sitting here at the moment does that sound about right to you?---Ah, that, it, yeah, yes, it's hard for me to, to get the figures for that but - - -

If you don't know (not transcribable)?--- - - - but the total sounds right, yes.

All right. Now I just want to ask you a bit about the recruitment process as it was in early 2008. By that stage Mr Johnson had been appointed as the project manager for SMART. Correct?---That's correct.

Now if it was that, I'll withdraw that and put it another way. How was it that the need for particular resources was identified? Was that something you did or something you relied on the contractors to inform you of?---I relied on a project manager to do that.

And is it the case that if a project manager formed the view that resources were required they would need to seek some form of approval from you? ---There was, I didn't have delegation to give that approval. There was a process by which we had to have preapproval and that was at a higher level in the Department.

Do I understand that your delegation I think went up to about $150,000?---I think it was around about 100,000 at that time.

Can you, oh perhaps we need to give you Exhibit 1. That's a white volume, it's got some numbers in the top right hand corner and if you could go to page 17. Do you have page 17 there?---Yes, I do.

Is that what you're talking about, a contractor selection preapproval form? ---Yes, I am. Yes.

And you'll see there that that relates to the SMART project?---Yes, it does.

And do I understand from your evidence, well perhaps you can tell me, who would have been the person who suggested to the department that those resources were required?---The project manager.

And who was that?---David Johnson.

And given that was outside your delegation did that have to be actioned up the line if I can call it that?---It wasn't even a matter of delegation limit. It was a matter that to engage a contractor there had to be preapproval at those senior levels.

And is the advantage of preapproval that once the amounts were set and the positions approved, those within the management team could go about recruiting as long as they stayed within the preapproved limits?---Yes.

And who was it once the preapproval had been granted that actively was to seek out, assess and recommend employment?---Typically it's the project manager.

And in this case and in relation to Mr Kempegowda, Mr Bhuiyan, Mr Rezwan, Mr Huang and Mr Zhang, did you yourself assess any of those people?---No, I didn't.

And who if anyone did you rely on when it came to their assessment?---I relied on the project manager and typically there'd be at least two people on that interview panel. So there should be a panel report based on competitive interviews.

Now when you say the project manager you mean Mr Johnson?---David Johnson, yes.

Now I just want to deal with that for a moment. Did the Department have so called preferred suppliers of contractors?---The Department was obliged to use a state government panel contract of recruitment agents. And out of that we had typically six or seven agents that we would go to to provide resources. We could choose from a list of about that many companies.

Are you familiar with a company by the name of Greythorn?---Yes, I am.

And were they one of those approved suppliers?---Yes, they were.

How is it – I withdraw that. What was the usual manner in which a contractor was discovered, presented to the Department, interviewed and then contracted, so we'll deal with each. Where were the contractors sourced from, the potentials?---Typically we would send a kind of job statement with skill sets required to several of those agents and asking them for, to submit several resumes, likely candidates.

And once those resumes have been presented who were they presented to? ---They're presented to the person who's coordinating the recruitment with the agent which is typically the project manager.

And in this case Mr Johnson?---Mr Johnson, yes.

Once those resumes had been presented and analysed what was the interview process?---Yes, there should've been an interview process.

And for each position is it customary to interview one person or more than once?---It's customary to interview more than one to get some comparison, but I don't know that that's always possible based on the resumes presented.

And at the time, and I mean in 2008, how many people were supposed to constitute a selection panel?---I think it was two for contractors.

And what was the makeup of that selection panel supposed to be?---I believe there was supposed to be a permanent staff person on it.

And we know in relation to this case that Mr Johnson on the documents appears to be involved in each selection, would you have expected that? ---Yes, I would.

And that a Mr Lo and a Mr Kempegowda who are contractors to the Department were purportedly involved in each selection. And do I understand from your evidence that there should've been a permanent person?---Yes, I think there should have according to our guidelines, yes, and I, yes, I do.

Now, can I just ask you in that bundle that I've given you – one moment, I'll go back to something else. Go to page 19. Is that a Contractor Assessment document?---Yes, it is.

And is that the document – or you tell me, does this document record the assessment process that purportedly takes place in relation to a contractor? ---Yes, it does.

And you'll see down the bottom Assessment Strategy, Interview Referee, Skills et cetera, where the word "yes" appears under interview what does that suggest to you has taken place?---It suggests to me that those processes were conducted as part of the assessment and recommendation.

So as in your position were you provided with these documents for each of the contractors employed?---No. No, I wasn't.

Reading this document, in your position and with your knowledge of the Department protocols does that suggest to you that where the word "yes" appears the representation is that an interview has been done, referees have been checked and the skills test applied?---Yes, I do.

Now, that's not a mere interview, a skills test, in fact, is someone doing something isn't it?---Yes, a skills test would be typically a series of questions that might be given to, or would be given to candidates prior to the interview and they hand that in and then they're assessed at some point after the interview to analyse their skill level.

And do you understand the reference to referees that someone has actually checked the references that have been given?---Yes. That's correct.

And finally do I assume that where an applicant's name is listed, there are four in that sense, Jiang, Sambrane, Kempegowda and Yee that each of those applicants would have been subjected to an interview, referees check and a skills set applied?---Yes, it does – I do assume that, yes.

Now once - and I'm just going to deal with this particular set of documents so that we can get a feel for how this works if you'll permit me?---Ah hmm.

If you go to page 22, the Contractor Selection Form?---Yes.

What's the object of this form?---This is the form, once we have approval to go out to market to recruit a contractor - - -

10 Ah hmm?--- - - - we do the assessment and recommend a candidate. This is the form that recommends the candidate in that process.

And the recommendation is said to be by David Johnson?---Yes.

Now, did you rely on that recommendation?---Yes, absolutely.

And in reliance on that recommendation what did you do?---Well, I recommended it further up the line.

20 And did you yourself undertake any independent checking of the underlying contractor assessment?---No, I didn't.

And do I assume that to be the case for each of these gentlemen?---Yes.

Now, once you've recommended it do I take it that the approval level of Mr Gee and Mr Wilson, what is required because of the sums involved, that it gets approved by someone at that level, is that right?---It's, it's, it's not, I don't think it, as I said before, I don't think it's just the sums involved. I think the act of recruiting a contractor has some special delegation controls.

30
And what if any communication did you have with Mr Gee or Mr Wilson about your recommendation?---Oh, I would say none.

Is it the case that you rely on Mr Johnson and accept his recommendations, sign the document and pass it up the line and you are not contacted other than the fact that you've recommended it by signing it?---That's right.

And so is it fair to say that once you accept the recommendation of Mr Johnson then save and except in some unusual circumstance, once you

40 recommend it it's going to go up the line to the point of employment? ---Yes, given that there's a pre-approval, yes.

As at 2008 you didn't have a particularly detailed knowledge of contract 881 or how it worked, did you?---I had read the contract some years before but, yeah, not a detailed knowledge, no.

Now, was it the case that from time to time rather than going through the process of a preferred supplier such as Greythorn providing a list of

candidates, the Department or one of the - well, I'll withdraw it, I'll do it in separate parts. The Department would come up with its own candidate? ---I'm aware of rare circumstances where a person is available for a role and generally well-regarded and they're really directed to go through a recruitment - one of the standard recruitment agencies to put themselves forward.

Is it the case that the way the contracting system works that unless one of the authorised recruitment agencies is involved then the person cannot be employed?---On very, very rare exceptions there's been a process where if those agents couldn't come up with a suitable candidate you could try more broadly and I'm only aware of doing that myself once.

Did you understand as at 2008 whether or not there was a practice where contractors would suggest other contractors to the Department without first going through Greythorn or a similar agency?---I'm not aware of contractors being engaged through other than those agencies.

The word I used was suggest, were you aware of contractors proposing or suggesting further contractors to be used by the Department without first sourcing them through Greythorn?---From time to time contractors would suggest suitable people because they're, they're in the industry but they would be - the only way to my knowledge they would be engaged is to go through a suitable agency as part of a competitive process.

Now, I'll deal with them collectively unless somebody complains about it but in relation to Mr Kempegowda, Bhuiyan, Rezwan, Jiang and Zhang, were you aware of how it was that they came to be assessed by Mr Johnson? ---Well, I made the assumption that - okay.

No, no, I asked you a question?---No, I'm not.

Were you aware?---No.

Now I'll ask you about your assumption?---My assumption was that the agents had sourced and recommended or put forward those, those candidates.

Now by the time you saw pieces of paper in relation to these gentlemen, if you can have a look at page 23 by way of example. Greythorn is listed as an agency name. Correct?---Yes, that's right.

And that's what you would have expected?---That's right.

And why that's important is the box below that says they're a preferred agency?---That's right.

Which is the standard method of retention?---Of engagement, yes.

As at 2008 was there an induction process for contractors in relation to the DET Code of Conduct?---No, I don't, in practice, no I don't think so. We were taking on a lot of contractors in those days. And I don't think that happened.

Now I can take you to it if you like, but the Code of Conduct that was in force at the time recognised did it not that contractors had an inherent conflict of interest because they worked for themselves or their own company?---I'm not sure of that on my reading, so - - -

All right. Can we pull it up? Do we have a page number? Page 50 of your statement. And if you go through to page 63. If you go back one page, sorry, page 62. See the heading Conflict of Interest?---Yes.

Now if you go through about four pages, you'll get to subparagraph 27? ---Yes.

And do you see Additional Advice for Casual and Part Time Staff and Contractors?---Yes.

27.2?---Yep.

Contractors owe their first allegiance to their own company and its profitability. Do you see that?---Yes, yes.

And there's an emphasis of not placing them in positions where they would be expected to safeguard DET's interest?---Yes.

Now that Code, well and I'll come back to it later on in a moment, but it's the case isn't it there's been amendments to the induction process and the Code of Conduct in relation to contractors and conflicts of interest?---Yes, there has been.

All right. Now I'll come back to that. In the binder that is Exhibit 1, which has the numbered pages in it, if you go to page 14. Do you have that? ---Yes, I do.

And it's an agreement of confidentiality pecuniary interest disclosure? ---Yes.

And was that the document that was to be supplied to contractors as at 2007 through 2008?---Yes, it is.

And there's a name of a predecessor company there that you'll see three pages on that's signed by Mr Johnson?---Yes.

And do you see paragraph 11 there's a reference to the disclosure of actual or potential conflicts of interest?---Yes, that's right.

And it was the case, was it not, that that was a form that was to be drawn to the attention of contracting staff?---Yes, that's right.

Was that something you did or something you relied on the managers to do when they employed - - -?---It's something I would have done for people directly reporting to me and then this was one of a series of forms that the project manager had to furnish in relation to the starting of a contractor.

Well, dealing with the people who reported to you, one of those people was Mr Johnson, was it not?---Yes, that's right.

And did you draw this form to his attention?---I don't recall actually, whether an, yeah, I don't recall.

Was it your practice as at 2008 when dealing with a form such as this to take the contractors to any particular part of it or give it to them and ask them to read it?---I'd give it to them and ask them to read it.

And unless this had been signed do I take it the process couldn't go any further?---Well, it shouldn't have gone any further in this case.

Now, I can take you to them if you like but contained at pages 22, 40, 55, 86 and 72 are the Contractor Selection Forms in relation to Mr Kempegowda, Mr Bhuiyan, Mr Rezwan, Mr Zhang and Mr Huang?---All right.

If you accept that from me?---Yes.

It's the case, isn't it, that each of those forms was presented to you?---That's correct.

And in relation to each of those contractors you relied on Mr Johnson for his assessment?---That's correct.

You accepted the representations he made to you about their suitability for employment?---Yes.

Did you accept that they would be deployed working for the Department of Education?---Yes.

Exclusively?---Exclusively.

And as a result of that you signed the selection forms?---Yeah. Can I just qualify that exclusively?

Sure?---For the purpose of this engagement at 40 hours a week, that would be exclusively to DET. Some contractors at times would have other, other jobs doing other things at other hours but the 40 hours a week for us is exclusive to us.

Does the Department, sorry, I withdraw that. Did the Department of Education and Training, as it was at 2008, have an office at Help Street at Chatswood?---No.

Did you ever authorise anyone ostensibly employed for the SMART Project to work at Help Street, Chatswood?---No, I did not.

Did you ever authorise Mr Huang or Mr Zhang to perform work at Help Street, Chatswood?---No, I did not.

Where was it expected that they would do their work?---As expected they would be split really between the St Leonards office of the Department, which is the main IT site, and also the business client site which is EMSAD at Bankstown.

And where was your office?---In St Leonards.

And do I take it that if you didn't see particular people wandering around the office at St Leonards you would assume they were on site at Bankstown?---That's correct.

And were you ever aware that Mr Huang and Mr Zhang were performing work at Help Street, Chatswood?---No, I was not.

Were you ever aware that Mr Huang or Mr Zhang were performing work for and on behalf of Ogawie for a project that was not the SMART Project? ---No, I was not aware of that.

If you'd been aware of that what if anything would you have done?---Well, it would have been a situation I'd talk with David, the project manager about, David Johnson to ascertain why this was happening but it, it would have been an extraordinary situation and, yeah, I would have been - - -

Now, were you aware that any of the contractors that I have referred to, the five of them, were employed by Ogawie or related in some way to Ogawie or related in some way to Ogawie and that they would derive their remuneration through Ogawie?---No, I was not aware of that at all.

Were you – I'll do it in short form unless somebody complains – were you aware that there was a significant disparity between what the Department was paying in relation to each of these contractors and what they were actually receiving in their hands?---I was not aware of that in 2008, no.

And were you here yesterday?---No.

Right. It was explained by a former employee of Greythorn that there were tight margins on the approved contract suppliers such as Greythorn as to what they could take from each hourly sum that went on to be provided to contractors?---That's correct, and I believe that that's a condition of their agreement with the State Government panel contract and it was built around a $5 per hour margin to the agent.

10   And I'll be correct if anyone thinks I'm wrong, but there was some evidence that suggested that where you had an hourly rate of about $82 an hour you would expect something like $75 to end up in the pocket of the actual contractor?---Something like that, there's various overheads that get taken off before it gets to the contractor, yes.

You wouldn't expect margins in the vicinity of $50 would you?---No, definitely not.

If you'd been aware that that was taking place what, if anything, would you
20   have done about it?---I would've talked to the recruitment agent about that, the agent that's providing that resource to us.

Was there any way as at 2008 that the Department could actually readily check what it was the contractors were receiving and what was being paid to an agency such as Greythorn?---We, in doing contract, contractor engagements and contract renewals we would go to the agent and ask for the breakdown of the cost structure which includes the items on this form, which includes things like payroll tax and margins and the amount paid to the contractor.
30
Now, it's the case, isn't it, that a number of the actual contractors have – shelf companies effectively, through which they trade?---Yes, yes, a number of them do, yes.

Is it, or was it at 2008 the Department's practice to have a contract supplier such as Greythorn then contract to another agency who would then subcontract?---Well, we, we expected the agent to provide us with resources. I'm aware that some agencies seem to have some subcontracting arrangements with other companies that don't really concern us.
40
Now, were you aware during or prior to January 2009 that the five contractors that I've mentioned were recommended to Greythorn and supplied to you without first being engaged and assessed by Greythorn? ---No, I'm not aware of that.

And if you'd be aware of that what, if anything, would you have done about it?---I would've discussed that with Greythorn because my expectation is that Greythorn is sourcing and providing those people.

Were you aware at any stage that those people were being sourced and supplied by Mr Johnson or Ogawie Pty Limited?---No, not at all.

And if you had been aware of that what, if anything, would you have done? ---That would've been basically an untenable situation.

Why?---Because of the conflict of interest. We're meant to be getting resources fit for purpose from the open market by a recruitment agent not to have people who are in charge of the recruitment recommending or assessing and recommending people they have an interest in.

It's a bit more than that isn't it? Didn't Mr Johnson recommend to the Department what resources were required?---Well, typically a project manager will scope and schedule their project, work out the phases that are required and the skills they need to deliver to that schedule. So it's a project manager responsibility to recommend the resourcing structure of their project.

And that's what he did in this case isn't it?---That's what he did in this case, yes.

And then if you accept the proposition I put to you a moment ago, he then sourced and supplied the people to fit the positions he recommended. That's right isn't it?---Sorry, could you repeat that?

He then sourced and supplied the people to fit the positions he'd recommended?---Well it sounds like that. We were expecting that Greythorn was providing those resources.

And would the Department have accepted a situation where Mr Johnson was or a company associated with him was receiving financial benefit as a result of your employment of each of those contractors?---Definitely not. That would have been untenable.

Now I may have put something that I need to check. Just please wait one moment?---Ah hmm.

No, it's all right. I thought I'd asked a question and it had an incorrect assumption on it, so I'd have to withdraw it, but I don't. Now what if anything do you know about the existence of Catalina IT?---Catalina was recommended by David Johnson to undertake an analysis for the SMART project. That's the only knowledge of Catalina I had.

Did you know whether or not Catalina IT was an approved supplier for the DET?---I took for granted that it was because in the submission that was put to me it said clearly they were an approved supplier under panel contract 2036.

Did you check?---No, I did not.

As at 2008 was there a register of approved suppliers that could have easily been looked at?---Yes.

Did you accept that Catalina IT were an approved supplier?---Yes, definitely.

10   The submission that was put to you in relation to Catalina IT, who put that submission to you?---David Johnson.

And in short form what did that submission suggest?---That submission suggested that there had been a comparative analysis of two possible suppliers to do a user interface analysis for the SMART system.

Can you go to page 142 for me?---Yes.
Is that the submission that was put to you?---Yes, it is.

20   And on the second page is it signed by Mr Johnson?---Yes, it is.

Is it also signed by you?---Yes, it is.

And in placing your signature there what reliance if any did you place on the contents of this document?---I took it at face value and that there had been a competitive process between Catalina and the other company called Dialogue. I actually at the time remember talking to David Johnson about how to go about this exercise and referring him to another project manager who'd recently gone through it to understand the process that should be
30   followed.

Now in relation to Catalina IT, at any stage did you understand that there was any working relationship between Catalina IT, Ogawie and or Mr Johnson?---No, not at all.

If you had been of that understanding would you have approved the document that I just showed you?---No, definitely not. We would have rejected it and we would have had to do another process.

40   Did Mr Johnson have any authority to approve the payment of invoices submitted by Catalina IT?---No.

Were those invoices channelled through you or somebody else?---I hadn't seen those invoices so they must have gone through somebody else.

Have a look at page 139 for me?---Yes.

The AID programme or application was one of the projects which you managed, correct?---Yes, that's correct.

Isn't it the case that payment for this invoice should have been submitted through you?---Yes, it should have.

It was not?---That's right.

To whom did it go, do you know?---No, I, no, I have no knowledge of it.

10

If you had been given the invoice in the form that it appears at 139 would an annotation from David Johnson would that have surprised you?---What would normally happen is the contract project manager could certify performance of service but they could not approve payment so it's, it would be normal for, for a, an invoice to have a statement by the contract project manager about that.

That work had been done?---That work had, confirming that work had been done satisfactorily, yes.

20

Were you at any stage during 2008 aware that Ogawie, a company associated with Mr Johnson, was to receive half of the payment for the review that was undertaken into the AID Project?---No, not at all.

And if you had been what if anything would you have done about it? ---Well, we would have rejected the whole process, the whole submission, we wouldn't have followed through, we wouldn't have made payments, we would have had some kind of inquiry into what was going on here.

30   Does it work this way: that if you'd been aware of any form of association, business or otherwise, between Catalina and Ogawie and/or Mr Johnson that the approval to conduct the review by Catalina would not have been given, is that what you're telling me?---That's correct.

Now, do I take it from an answer you gave a moment ago that you were also not presented with the second of the invoices from Catalina IT which is at page 154?---Yes, that's right, I was not.

Were you aware that that work was being done?---No, I wasn't. I was
40   actually on leave at that, that period and I remember coming back from that leave wondering what was happening about this UI exercise because they're generally quite interesting exercises and you like to see the output of them.

Are they interesting because they're the bits that actually people get to use and interact with?---Yes, professionally in terms of how the system is going to present itself to the user itself.

Now, in your position, excuse me, were you presented with timesheets for each of the participants in the SMART Project at the end of each week or fortnight?---Yes, it was a weekly, a weekly exercise. They'd be presented to me typically the Monday morning following the week, the reference week.

And when they were presented to you what annotations if any suggested that the work had actually been done?---There's a couple of things.

10 Yeah?---Sorry. There's a, the middle signature block on a timesheet is - - -

I might just get one up on the screen for you - - -?---Yeah.

- - - if that'll help. I have them as annexure V but you have numbered pages so I'll just - got them. I've got V. Now, you see that's a computer generated form?---Yes.

It has Michael Zhang in the top corner?---Yes.

20 That appears to be for the week ending 31/8/2008?---Yes.

When it comes to you has it been pre-populated?---Yes, it has. It comes out of a project management system which we largely just use for time recording so people would be allocated to tasks against a particular project in that system and that's identified the project code in the left-hand column.

And is that 60317930?---Yes, that's correct.

Now, what does that project code relate to?---That would've been the
30 project code for the SMART redevelopment.

And do I take it that where there is only one project code that all hours on the timesheet are said to relate to that code?---Yes, that's correct.

And therefore that project?---In rare circumstances you can have two projects with the same financial project code but in this case there wasn't.

And do I take it that 60317930 suggests to you, looking at it, that each hour on this and every other timesheet that bears that number relates to work
40 performed by the individual in relation to the SMART project?---Yes, that's correct.

And as far as you are aware that was work being performed at either of the offices of the DET at Bankstown or St Leonards?---Yes, that's right.

Now, it's obviously been signed in the bottom left corner by a Mr Zhang?---Yes.

And then there's also a signature by David Johnson?---Yes.

When you get it is that the way it looks with all those signatures there except yours basically?---Yes, that's right.

Now, why is it that you need to sign it?---For the approval to approve the timesheet so that it can be paid.

And was it your practice to check with the individual contractor such as Mr Zhang in relation to work that was done?---No, it was not.

Who, if anyone, did you rely on in certifying the payment by the Department of Education and Training?---I relied on the person certifying the performance (not transcribable).

Now, we can go through them page by page if you like, but in relation to each of these contractors, for each of these timesheets that's Mr Johnson isn't it?---Yes, it's always the project manager or team leader, yes.

And in signing in relation to Mr Zhang and Mr Huang at any stage did you understand that you were certifying work that had taken place at Help Street, Chatswood?---No, not at all.

And did you understand that you had, you were certifying work other than that strictly and totally related to the SMART project?---No, definitely not.

And if it had been drawn to your attention that work other than work on the SMART project at either of the DET offices was being presented to you for authorisation would you have authorised it?---No, not at all.

Excuse me while I just check my notes. Do you know a man called Greg Ambrose?---No, I don't know him.

At any stage did you authorise Mr Ambrose to perform any work for and on behalf of the Department of Education and Training?---I understand now that he is associated with Catalina so other than the user interface submission around doing that exercise no, I don't.

And did you at any stage authorise access for Mr Ambrose to Department of Education resources?---No, I don't believe I did, I don't recall doing that.

You would've expected him to be performing his review of the AID project to have certain access to resources?---Yes, I would.

Would it have been the case that if he was going to get access to the Department of Education information that he should have signed some sort of agreement in relation to the confidentiality with that?
---Yes, that would be right.

And please correct me if I'm wrong, but nowhere in any of the material that I've read does such a document exist?---I'm not aware of any.

Do you agree that it should have?---Yes.

Do you know a man called Mr Appleby?---No, I do not.

And do you know whether or not, well did you or anybody, no I'll withdraw
10   that. Did you authorise Mr Appleby to do any work on the user interface?
---No.

If Mr Appleby was given access to any Department resources, would you have expected him to have signed some sort of confidentiality agreement? ---Yes, I would.

And if he didn't you'd agree that that's a failing in the system that was then in place?---Yes, I would.

20   And the same would apply to Mr Ambrose?---Yes, I would agree with that.

I'll just be one moment while I check something. In the smaller bundle of documents that you were given, I think it's Exhibit 14. I'm not very good with numbers. Could you turn to page 110? Please assume that we'll be calling someone else, but given you're the man on the ground I'd like to ask you some questions about what if any changes have been made since these events?---Ah hmm.

Do you see at page 110 the Code of Conduct?---Yes.
30

That is the new Code of Conduct is it not?---It looks like it, yes.

And if you go to 115 it is expressly stated that it's to be drawn to the attention of contractors and volunteers. Do you see that 3.3?---Yes, I see that.

And do you see at 3.4 that it is the responsibility of the operatives of the Department, the permanent staff to make the contractors and all volunteers aware of the Code?---Yes. Yes.
40

Is it the case that there is now a more stringent induction process for contractors?---Yes, it is the case.

And do I understand that part of that induction deals specifically with the conflict of interest?---Yes, that's correct.

And the potential for that conflict of interest?---Yes.

And if you go to page 147 there's a conflict of interest facts sheet. Do you have that?---Yes.

Is it your practice now to take people to that sheet?---Yes, as of a short period ago, yes it is.

When you say a short period ago, how long?---We implemented to my understanding we implemented this about two months ago.

10   Thank you. Could you go to page 150? What is that document?---A Contractor Personal Deed.

And what is the object of that deed?---That they'll act in line with the Code, Code of Conduct.

And you see on the second page there's a reference to conflicts of interest? ---Yes.

Now is it the case that these matters are now drawn specifically to the
20   attention of those people that are signing them?---Yes, it is. And contractors have to fill in a pecuniary interest declaration.

And I think if you go through to page 153 - - -?---Yes.

- - - that's the declaration you're referring to?---Yes, it is.

And at 160 there's the opportunity to update it if necessary?---Yes, that's correct.

30   Now is anything said to contractors about the need to identify and update the register in relation to potential conflicts?---Yes. The contractors have been informed, the existing contractors were informed of this and completed their pecuniary interest declaration. And they have to notify of any changes.

Now, just finally, two persons or people have given evidence here today, Mr Appleby and Mr Ambrose, gave evidence that they attended meetings at the Department of Education premises. Are you aware that ever took place?--- I'm only aware of I think one meeting between Mr Vince Gee and David Johnson and I think Greg Ambrose that I wasn't at that meeting.
40
And again I'll be corrected if I'm wrong but I got the impression from the evidence they gave that little if anything was asked of them as to who they were and what they were doing and they certainly weren't asked to sign any documentation on entry, do you agree that that should have taken place? ---Yeah, they, well, they should have signed in to our reception area and received a day pass for example.

And you've already agreed with the proposition that if they were going to be provided with information from the Department and its systems that they would have signed some confidentiality documentation?---Yes, that was typically done with the engagement of contracted companies doing those sorts of analyses.

Yes. I have nothing further, thank you.

ASSISTANT COMMISSIONER: I presume you may have some questions, Ms Bourke?

MS BOURKE: Yes.

ASSISTANT COMMISSIONER: All right. We will, I'm afraid you'll have to stay till after lunch?---Right.

We will adjourn until 2.00pm.

LUNCHEON ADJOURNMENT   **[1.01PM]**