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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION GERDA

Reference: Operation E17/0445

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 26 FEBRUARY, 2019

AT 10.00AM

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

MR ENGLISH: Commissioner, we're dealing with the evidence of Mr Robinson first up.

THE COMMISSIONER: Right.

MR ENGLISH: I've got some materials to tender before he's sworn in.

THE COMMISSIONER: Yes.

10 MR ENGLISH: Can I start with the statement of Morgan Andrews dated 25 February, 2019.

THE COMMISSIONER: Yes, thank you. That'll be admitted into evidence and marked Exhibit 115.

#EXH-115 – STATEMENT OF MORGAN ANDREWS DATED 25 FEBRUARY 2019

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MR ENGLISH: Thank you. Then next is the statement of Stephen Phillips dated 18 July, 2018.

THE COMMISSIONER: That will be admitted into evidence and marked 116.

#EXH-116 – STATEMENT OF STEPHEN PHILLIPS DATED 18 JULY 2018

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MR ENGLISH: Next is the statement of Alex Brennan dated 22 January, 2019.

THE COMMISSIONER: That will be admitted into evidence and marked Exhibit 117.

#EXH-117 – STATEMENT OF ALEX BRENNAN DATED 22 JANUARY 2019

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MR ENGLISH: Next is the statement of Lisa Cooper dated 20 December, 2018.

THE COMMISSIONER: That will be marked Exhibit 118.

**#EXH-118 – STATEMENT OF LISA COOPER DATED 20
DECEMBER 2018**

MR ENGLISH: Next is the statement of Cameron Smith dated 28
December, 2018.

THE COMMISSIONER: That will be marked Exhibit 119.

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**#EXH-119 – STATEMENT OF CAMERON SMITH DATED 28
DECEMBER 2018**

MR ENGLISH: Next is the statement of Jordi, J-o-r-d-i, Austin, dated 11
July, 2018.

THE COMMISSIONER: That will be marked Exhibit 120.

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**#EXH-120 – STATEMENT OF JORDI AUSTIN DATED 11 JULY
2018**

MR ENGLISH: Next is the statement of Bryan de Caires, d-e C-a-i-r-e-s,
dated 30 January, 2019.

THE COMMISSIONER: That will be marked Exhibit 121.

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**#EXH-121 – STATEMENT OF BRYAN DE CAIRES DATES 30
JANUARY 2019**

MR ENGLISH: Next statement is of Chris Delaney, dated 4 January, 2019.

THE COMMISSIONER: That will be marked Exhibit 122.

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**#EXH-122 – STATEMENT OF CHRIS DELANEY DATED 4
JANUARY 2019**

MR ENGLISH: Next statement is Nisha Graham, dated 19 July, 2018.

THE COMMISSIONER: I'll mark that 123.

#EXH-123 – STATEMENT OF NISHA GRAHAM DATED 19 JULY 2018

MR ENGLISH: And the final statement of this tender is of Alex Maitland, dated 11 July, 2018.

THE COMMISSIONER: Thank you. We'll mark that Exhibit 124.

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#EXH-124 – STATEMENT OF ALEX MAITLAND DATED 11 JULY 2018

MR ENGLISH: And then Commissioner I also have some materials to tender. They are pay guides under the Security Services Industry Award.

THE COMMISSIONER: Are they to be tendered as one exhibit?

20 MR ENGLISH: No, just give me one moment, please, Commissioner. No, separately if we could, please, Commissioner. The first is the pay guide under that award that is to apply from 1 July, 2015. I'll hand that up. I might hand up three to your associate, Commissioner.

THE COMMISSIONER: That's fine, yes, thank you.

MR DREWETT: Commissioner, I missed the first tender, 115. Could you -
- -

30 THE COMMISSIONER: That's a statement of Morgan Andrews of 25 February, 2019.

MR DREWETT: Thank you.

MR ENGLISH: I'll just hand up those three pay guides for the Security Services Industry Award. The first being the guide that applied from 1 July, 2015. If that could receive an exhibit number, please, Commissioner.

40 THE COMMISSIONER: All right. Thank you. That'll be marked Exhibit 125.

#EXH-125 – PAY GUIDE – SECURITY SERVICES INDUSTRY AWARD 2010 TO APPLY FROM 1 JULY 2015

MR ENGLISH: The next in your bundle, Commissioner, should be the pay guide that applies from 1 July, 2016.

THE COMMISSIONER: Yes, that will be marked Exhibit 126.

**#EXH-126 – PAY GUIDE – SECURITY SERVICES INDUSTRY
AWARD 2010 TO APPLY FROM 1 JULY 2016**

10 MR ENGLISH: And the final pay guide should be that which applies from
1 July, 2017.

THE COMMISSIONER: That will be marked Exhibit 127.

**#EXH-127 – PAY GUIDE – SECURITY SERVICES INDUSTRY
AWARD 2010 TO APPLY FROM 1 JULY 2017**

20 MR ENGLISH: If Mr Robinson then can please make his way up to the
witness box.

THE COMMISSIONER: And you appear for Mr Robinson, Mr Larkin,
don't you?

MR LARKIN: Yes, Commissioner.

THE COMMISSIONER: Thank you. Mr Robinson, will you take an oath
or an affirmation?

30 MR ROBINSON: An oath, please, Commissioner.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Take a seat. Do you seek a section 38 declaration?

MR LARKIN: Yes, Commissioner.

10 THE COMMISSIONER: Thank you. I'm going to repeat probably what your barrister has already said to you, but just let me remind you of your rights and obligations to the witness. As a witness you must answer all questions truthfully and you must produce any item described in your summons that I require you to produce. Are you still employed by the university?---Yes, Commissioner.

20 All right. The effect of a section 38 declaration, which your counsel has asked me to make, is this. That although you must still answer all questions and produce any item that I ask you to produce, your answer or the item produced can't be used against you in civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings.

The first exception is that the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act and, most importantly, the offence of giving false or misleading evidence. If you give false or misleading evidence to this Commission, you commit a very serious offence for which the penalty can be imprisonment for up to five years. Do you understand that?---Yes, Commissioner.

30 The second exception only applies to you because you are a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. So they're the two exceptions. I propose to make the declaration now.

40 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.**

THE COMMISSIONER: Mr English.

10 MR ENGLISH: Thank you. If you can just please state your name for the record.---Gregory Francis Robinson.

And if Exhibit 105 can be brought onto the screen, please. While that's happening, you've made three statements for the purposes of this investigation?---Yes.

So this is the statement that you made on 31 January, 2019.---Yes.

20 You identify at paragraph 3 that you're the director of Campus Infrastructure Services at the University of Sydney, and you identify your roles and responsibilities in paragraph 4, correct?---Yes.

If we can skip over to page 3, please, you can see at paragraph 7 there you identify that you met a whistleblower who raised concerns with you about his experiences with the Campus Security Unit, and that person was an Uber driver.---That's correct.

Did you recognise that person?---After we'd commenced a conversation and he identified himself, I was able to remember seeing him on campus.

30 And he identified himself with what name or how did he identify himself?
---Commissioner, I was asked specifically by the particular driver not to identify him. I have provided a receipt of the Uber trip with his name in it, so I just, unless you particularly - - -

All right, look, don't worry. I won't press you on it.

THE COMMISSIONER: So we've got the details somewhere, yes. Thank you.

40 MR ENGLISH: Now, you've given a fairly detailed explanation of what he told you during that trip, at paragraph 7. Then you say in the final sentence, "Because of the aforementioned discussion, I advised internal audit the next day, who undertook an investigation into the library guarding, which was inconclusive."---That's correct.

Are you aware whether there was any review of the time sheets on-site in respect of library guarding?---No, I'm not. I, I don't know the specifics of what the internal audit team did, other than they mentioned to me that they

did look at CCTV footage and a number of other control systems to see if they could identify the numbers of guards and the locations of guards in the library over a period of time that they examined.

I just want to try not to labour this point, but if I can just have Exhibit 43, page 20, brought on the screen, please. This is a site time sheet at the University of Sydney in respect of 11 December, 2017. Do you see that?
---Yes.

10 And Fisher Library extension, you see the names under that list?---Yes.

Was that your understanding, that the complaint raised by the Uber driver, or the issue raised, concerned the Fisher Library guarding services?---That's correct.

And you can see there that there's a lack of licence information and missing signatures on this particular day for Monday?---Yes.

20 If we just skip over to page 17, please, you can see again this is for Tuesday, the 12th of December, 2017, for Fisher Library extension. Again there's missing licence numbers and signatures in respect of the time sheet for that job.---Yes.

I'll just do one more day with you. If we can go, please, to page 15. This is for 13 December, 2017. This is the Wednesday of that week, and again you can see Fisher Library extension, missing licence numbers and signatures.
---Yes, I can.

30 So I've just brought that material to your attention. Can I ask why was it that there wasn't an audit conducted when you became aware of this issue in relation to the site time sheets?---In relation to the disclosure by the Uber driver?

40 That's right.---Yeah. What I had been told by Stephen Phillips, who I reported the incident to first, or the disclosure to first, was that this was a matter that was under investigation with the ICAC, and I was asked not to do anything. So I had left it with internal audit that they, as I understand it, to the best of my knowledge, had a discussion with the ICAC and were given approval to go ahead with doing some limited investigations, and that's what I refer to as being inconclusive.

And do you say that those limited investigations, I know they didn't, but ought to have included a review of the site time sheets?---I would have thought that that would have been part of the process if you were looking to validate what had been given to me as a disclosure.

THE COMMISSIONER: Do you know whether, sorry, you mentioned somebody who was part of the internal audit team.---Sorry, Commissioner, I

mentioned Stephen Phillips, who's the vice principal of operations, my superior.

Do you know who made up the internal audit team?---Yes, Eifion James and Martin McLoughlin were the two gentlemen who I spoke to about this particular disclosure.

10 Do you know whether they prepared a report?---Not that I'd have seen, Commissioner. I, it would be normal practice for them to produce a report on an investigation. That would be the practice that I'm used to, but I haven't seen one, Commissioner.

Thank you.

MR ENGLISH: I'm not intending to be critical in any way, Mr Robinson, but if I can have Exhibit 102 brought on the screen. This is a photo of the time sheets in their original form that were seized from the Campus Security Unit, and you can see that there's a smaller bundle in the middle and a
20 bundle around the same size on the left and right. An exercise was undertaken in relation to the bundle on the left, trying to identify where Liquid Paper was used on those site time sheets, and where you can see the tags, that's each occasion where Liquid Paper was able to be seen on only that bundle, so not in respect of any of the other documents, just that bundle. If you had seen at the time – and I appreciate you didn't – but if you had seen that Liquid Paper was apparent on site time sheets kept at the university, would that have raised a concern with you about any particular practice going on within the CSU at the time?---I would have thought so, yes.

30 Now, the university didn't require access to those site time sheets, did it?---I don't believe that's the case. To the best of my knowledge I had always understood that those time sheets were available for inspection. Having been into the control room myself on many occasions, the time sheets for sign-on, sign-off were actually in the control room in an open manner, so if I wanted to go to one of those sheets, I could.

Sorry, I probably asked a bad question. So your understanding is the time sheets were in the control room and could be accessed by university staff at any time?---Yes.

40 But it's the case, is it, that a copy of the site time sheet wasn't provided to the university as one of its own records?---That's my understanding, even though they were kept, as evidenced by what you showed earlier, they were kept in the Campus Services Unit area.

Sure. And with the benefit of hindsight, is that something you think ought to have happened? That is, a copy of the site time sheet should have been

provided perhaps with the relevant invoice to the university?---Yes, I think that's a superior control.

THE COMMISSIONER: I think you've said – no, I'll leave it there for the moment.

MR ENGLISH: At paragraph 12 of Exhibit 105, you talk about an incident involving Mr Dennis Smith and a locksmith, and you go on to say it raised alarm bells for you. “The incident investigation lead to disciplinary warnings being issued to both Steve and Dennis.” Steve's the locksmith, is it?---No, Steve is Steve Sullivan.

Oh, okay. “As they attempted in my view to interfere in the disciplinary process. The outcome was that the locksmith's employment was terminated in February 2017 as his response to allegations confirmed that he had colluded with Dennis.” So can you just tell the Commissioner in a bit more detail what happened in relation to that incident.---As best I recall there were, during the process there's normally a time period which is provided to an employee who has been asked to answer allegations. In this case the locksmith was given a period of time in which to provide effectively a response to a series of allegations that had been made by the university, by myself. Part of those allegations were to do with secondary employment. During that period of time, internal audit continued to monitor emails that were moving between both Mr Smith and also the locksmith, and they came across a series of emails that appeared that Mr Smith was providing mark-ups of the intended defence to those allegations, and they were going to the locksmith's wife's private email address, and the internal audit provided to me the evidence of what was, on the face of it, collusion between Mr Smith and the locksmith, and the locksmith was in effect being coached as to how to approach the allegations and how to provide the defence. It was clear in the letter that was given to the locksmith that he was not to discuss or have any conversations with anyone regarding the nature of the allegations, and Mr Smith's defence at the time was that he was acting as a support person and from my perspective he had gone outside the boundaries of what the role of a support person was to be.

And you mentioned at the bottom of page 5 of your statement a disciplinary warning being issued to Mr – you corrected me, I'm grateful – Mr Steve Sullivan.---That's correct.

What was his role in this investigation?---Again, I believe that from evidence presented to me at the time, and I'm trying to struggle with recollection of it precisely, but I believe the nature of the warning with Mr Smith, sorry, with Mr Sullivan was the fact that he was aware that Mr Smith was coaching the locksmith.

THE COMMISSIONER: Did Mr Sullivan report to you?---Yes, Commissioner.

And was he your only direct report?---In, through the Campus Security Unit, yes, but I did have other direct reports. I think in my statement, Commissioner, I mentioned there's eight.

Thank you.

MR ENGLISH: So you said Mr Sullivan was aware that Mr Smith was coaching the locksmith, is that right?---That was my understanding.

10

And your expectation would have been if he became aware of that, it should have been reported to you, is that right?---That would be the right process.

20

Were there any other occasions – no, I withdraw that. I'll come to an example in due course and maybe that will be of better assistance to the Commissioner. On page 7 of your statement, you say in the second or the first full sentence, "The reason behind my suggesting to the ICAC investigators, who were collecting evidence, they may need to go to other staff members' computers was around my concern with the tightness of members of the CSU with SNP managers and the claims by the Uber driver that members of the CSU were complicit in the SNP practices he flagged." Now, two matters there. What do you mean by the tightness of members between the CSU and SNP managers?---My description of tightness there would be the fact that that unit operated as a silo and that often you would see that team together discussing matters, and I would have referred to that as being tight in that in an open-plan environment, which we have within the Campus Infrastructure Services, they were a team which were considered probably by the rest of the unit – in particular by me – that they kept to themselves. And I won't use the word, well, to a point where they would work as a group very tightly.

30

You say the Uber driver stated that members of the CSU were complicit in the SNP practices he flagged. You see that?---Yes.

40

Is that something you can elaborate on?---It has to do with earlier parts of my statement in which what he was alluding to was that he had been forced to accept, if he needed to overtime he was being asked to do that in a framework in which he was receiving cash in hand, and he intimated that there was – and I'm using probably the incorrect words, so this is the best way I can describe it – he was giving me the impression there was a club operating in which if you're in favour you would be looked after to be able to get overtime, and if you weren't in favour then you would be restricted to precisely your shift. And it all had to do with, in his words, again whether not, and I used the term that, I formed the opinion from the Uber driver from that trip that he appeared to me to be a person of high ethics and he was very concerned, and the reason he left the university, or left SNP, was the fact that he felt that he was being compromised around his ethics, where he was being asked to be part of what he referred to as a scam.

And when you say members of the Campus Security Unit, who do you mean by that? Do you mean University of Sydney employees I think is your words were complicit in this? Or this is just SNP or the guards?---He was implying that members of the Campus Security Unit, which is the University of Sydney employees, were complicit.

And did he name any names?---He did mention Smith. I can't recall other names but, yes, I do recall him mentioning Smith.

10

And did he say why in his view Smith may have been complicit in, as you termed it, a scam?---He gave me the impression that you couldn't do what was being done unless you had somebody supporting it from within CSU.

You go on at 15 of your statement, this one, which is Exhibit 105, to talk about your observation of behaviours of the staff members of the CSU and the SNP contractors, and you talk about poolside café meetings and the like. Can I just ask you this, to what extent, if any, is your observations in 15, is that just a function of the closeness of that working office environment?

20

---It's difficult to say in that the working environment that they're in in open plan had meeting rooms adjacent, so if you wanted to have a conversation that was away from other, you know, there are numerous, what would be legitimate what I would call security-in-confidence conversations that would be taking place within that unit to do with matters that they might be investigating or things that they're actually working on, that there was sufficient officers in that work space where you could have conducted those meetings. So to be conducting those meetings in a café environment had question marks on it for me.

30

But, I mean, I guess I'm asking you this. Do you think that there should have been a physical separation of the CSU members and the SNP contractors within that office so that they weren't all mixed together in the one open-plan environment?---In hindsight I would say yes. At the time the model that had been put in place was what I would refer to as an embedded staff model in which the SNP staff were actually filling functions in lieu of University of Sydney staff.

40

Because would you agree that there's no issue with two people from the same department, two workers from the same department employed by the university, going to have a coffee down at the poolside café or anywhere else on campus, is that fair?---I would have said that's more acceptable.

So in some degree are these workers replicating what they might observe going on in the campus in respect of other work environments?---Sorry, could I have the question again?

I mean, two people, if you've got an office environment and it's open plan and they work together, I mean, they're going to socialise and talk about things beyond just their work day, would you agree?---Yes.

And a closeness forms between, I mean, if you're spending a lot of time together, a closeness can naturally form in those circumstances, would you agree?---Yes.

10 Unfortunately you've got the situation here where the closeness forms between a contractor and an employee, where ordinarily that would only be between employees of the university, and I guess what I'm trying to say is perhaps that level of closeness wouldn't have formed if there was a wall or something in place and if meetings had to occur between contractors and university staff, that would then happen in the meeting rooms you've spoken of, rather than in the open plan environment, would you agree?
---Yes, I would agree.

20 THE COMMISSIONER: We've heard some evidence that there was a view – I'm not sure whether you shared it – but that the team leaders as such should be university employees. Is that something that you were aware of?
---Sorry, Commissioner, they should have been or were?

No, should have been.---I've, I've heard that, and in actual fact we are moving to changing our structure from team leaders to what we're referring to as duty managers, with those people being recruited, and it's in my statement they're being recruited as university employees.

Thank you.

30 MR ENGLISH: Can I just ask, at the university in terms of its present practice, is there still an open-plan environment where contractors sit side by side with university staff in the CSU?---There has been some changes to that. There still is some overlap because of the nature of the contract that's on foot at the moment. We still require team leaders and control room operators to be provided by SNP, so whilst that's still in effect then, yes, you will have the two in combination in the one area.

40 Has anything been done to stress or further stress the concern or prohibition about meeting say, for example, at the poolside cafes, meetings between contractors and university staff?---Yes.

What's happened in that regard?---That the meetings have been now held inside the CSU, and certainly the head of security and emergency management, Simon Hardman, is well aware of the expected practices in terms of where meetings should take place and the formality of the meetings.

Now if we can go to page 9, please, of Exhibit 105. At paragraph 20 you talk about the university going back to SNP and saying, “Demonstrate to us where you had approval from the university for SIG services to be provided.” And then at 21 you say, “Whether or not there had been verbal discussions and a kind of pattern of acceptance that has happened between the CSU and SNP, that is irrelevant from my perspective given that the authority to approve such an action should as a minimum include me.” And you say, “As far as I was concerned, contractually SNP required a written sign-off on SIG as a subcontractor.” You see that?---Yes.

10

There’s some evidence, and I’m referring to Exhibit 90 for the record, and the attachment, that SNP was of the view that it had approval from the University of Sydney to use SIG as a nominated provider under the contract to pick up the additional works, the surge works, the ad hoc works.---Sorry, it hasn’t come on my screen.

20

No, no, no, no. I’m just telling you that – that’s for the benefit of everyone in the room – that SNP, in particular Mr McCreadie, held the view that he had approval from the University of Sydney to use SIG as a nominated provider under the contract to pick up the additional works, being ad hoc work and surge work and the like. Do you say that’s wrong?---I say that the contract requires that to be agreed in writing, and I have not seen it anywhere agreed in writing.

30

Well, the evidence also shows that I think Mr Smith would routinely approve invoices for ad hoc work with the knowledge that those tasks were performed by SIG employees. Is that something that the Commission is to understand from your statement that should have come to you for approval before that payment was made?---No, my, my statement is basically saying I did not know that there was an arrangement between SNP and SIG.

THE COMMISSIONER: But you should have known?---Commissioner, it should have been revealed to me, yes.

40

MR ENGLISH: If we go to paragraph 26, which is on page 10, just to clarify, this is I think what the position should have been, that Mr Smith, sorry, if SNP requested the university to allow subcontracting to SIG, it would need to come to you, and you’d expect Mr Smith could not authorise that without formalising it under the contract if he was managing the contract to the letter, is that right?---That’s correct because I’m the delegate for the contract.

If we can go to page 12, please. There’s been some evidence about your views on the gifts and benefits policy and your exhortations over the years to staff members about that. You talk at paragraph 33 about a conversation you had with Ben Hoyle when Mr Hoyle said, “Dennis is a bit worried,” this is since the ICAC investigation, “because, you know, he thinks there could be issues over what he’s done,” and says, “This was because Dennis had

allegedly gone to a corporate box for the football or other events, and a boat cruise on the harbour.” Now, can you tell the Commissioner the basis for your understanding of that last sentence at paragraph 33?---That’s what I understood that Ben had said to me.

10 But beyond that, is there any evidence about that, that you’re aware of, or is it - - -?---So on the basis of what Ben had told me and I had heard mutterings, and I’ll refer to them as mutterings, from Simon Hardman that Dennis had made a number of comments to both of them, I asked them both to go to internal audit and actually do a prepared statement around what they had heard. So my understanding, and I, and I can’t confirm whether they did it or not, was that they met with internal audit and gave them their version of what I had heard, and I, to the best of my ability I’ve tried to recount what I understood Ben to have said to me.

20 If Exhibit 104 can be brought on the screen, please. This is your statement earlier in time of 29 January, 2019. If we can go to page 5, please. There you talk about the tender process for the security services contract in 2014-2015. And one thing you talk about in paragraph 16 is the need to get the objectivity that is needed, and this is in the context of a tender evaluation process.---That’s correct.

So how did you envisage – and I understand you had a role in that tender evaluation process for the security services contract. You weren’t a committee member, were you?---No, I was part of the Tender Review Board.

30 How did you understand that the relevant objectivity was going to be obtained for the purposes of the review process of the tenderers, of the tenders, sorry?---It would be my understanding, and certainly the practice that I was used to, is that you would do it through either one of two ways. You could have members of the Tender Evaluation Committee who had that independence and also objectivity, or you could use subcommittees who would provide expert advice based on the tender information back to the Tender Evaluation Committee. So you could do it either way.

And just bear with me one moment, please.

40 MR COLEMAN: Can I just have a word with Counsel Assisting very quickly, Commissioner?

THE COMMISSIONER: Sure.

MR COLEMAN: I’m sorry I wasn’t able to do this (not transcribable)

MR ENGLISH: If we can just have Exhibit 70 brought on the screen, please. Sorry, 168. So this is the tender evaluation plan for the security

services contract, dated 1 December, 2014. Down the bottom, if that can just be increased in size a little bit.---Yeah.

You're familiar with this document?---I am, yes, I'm familiar with the nature of the document.

If we can go to page 174, please. These are the committee members that you can see at the top of the page. Do you see?---Yes.

10 Only one of the members is external to the university. Is that right?---That's correct.

That's Mr Owens.---Yes.

Now, you gave some evidence about the need to bring in the objectivity in a tender review process. Which of these committee members, if any, did you understand could bring in a degree of objectivity to the process?---The last member, Dave Owens, who was the independent risk, he had a business Risk-e Business Consultants and was, I believe, the person that had been
20 selected by the tender plan to be providing independent advice on security matters.

Were you aware of any prior relationship between Mr Owens and Mr Smith?---No.

Is that something you believe ought to have been disclosed to you, if it existed at the time?---I think I make a general statement about my view on disclosures in, in my statement where I was asked the question by the ICAC investigators as to my view on that, and it's clear that any tender evaluation
30 process, there's a requirement for people to disclose anything that is of a nature that could influence the actual process, so members knowing each other on the committee, particularly if you've brought in an external person, I would expect to be disclosed.

If we can skip to page 179, please. You can see under the heading, "13.4 Assessment," "Tenders will be subjectively assessed by the Tender Evaluation Committee against evaluation criteria, using the evaluation methodology spreadsheet. Each Tender Evaluation Committee member will independently record his or her scores for each of the responses in the
40 document, any comments and issues will be recorded here." Do you see that?---Yes.

Is that a fairly standard clause in tender evaluation plans?---Yes, that's my experience.

Okay. And then each committee member then provides an acknowledgement to be bound by all of these clauses in the tender evaluation plan. Is that your understanding?---That's my understanding.

Okay. Would it concern you at all to learn that the evidence shows that Mr Smith and Mr Owens appeared to have met to discuss their weightings in respect of these tenders and that, at least insofar as Mr Owens is concerned, he forwarded his draft spreadsheet to Mr Smith for that purpose?---I heard that evidence when it was being provided, I was watching the stream. And yes, I was, I was taken aback.

10 When you say you were taken aback, what was the issue that concerned you in relation to that, can you please tell the Commissioner?---Well, from what I understood from the evidence, that would be a form of collusion in my view in that you had two people who were effectively looking to bias particular scores, whether that was in favour of one party or another, that's the impression I would have, is that there is one, collusion, and two, the potential for there to be a higher weighting being placed toward one of the tenderers over another. And I think, you know, when you look at the number of tenderers on the evaluation panel that could have a material effect on two parties being very strong, particularly the independent, and particularly the expert of the area, that they would potentially have the rest
20 of the evaluation committee fall in behind them.

And so you said you saw the evidence. You saw how Mr Owens's rating in relation to the issue of subcontractors seems to have changed from, I think it was an 8, drawn down to a 6 in respect of those tenderers that did not have a subcontractor component, and that was consistent with Mr Smith's final rating for those same tenderers. Did you see that?---I didn't see but I heard.

Okay.---Yeah.

30 THE COMMISSIONER: They were exactly the same, weren't they?

MR ENGLISH: Eventually when it was submitted. They weren't originally the same, Commissioner, and then they were the same on final version.

So in light of that evidence do you say that the 2015 tender evaluation process for security services contained the objectivity that was needed in that process?---I would have said that this action would have certainly put it into question.

40 THE COMMISSIONER: It really defeated the whole idea behind getting an independent team member in, doesn't it?---It does, Commissioner, yes.

In terms of proper tender evaluation would you agree that it was fundamentally flawed as a result of this?---I believe so.

Thank you.

MR ENGLISH: Go to page 9, please, that's of Exhibit 105, sorry, 104. At paragraph 29 you say fatigue worries you. "If somebody is being asked to effectively react in a situation if they're 16 hours into a day it's a very different guard that's going to respond than somebody who's eight hours into their day, and we have not in my understanding contracted for guards to be doing those types of hours, nor, nor do I believe that it is allowable under the award." Now, there's been evidence over the course of this public inquiry that fatigue limit requirements were routinely breached on campus in respect of the security guarding services provided, so that's one matter.

10 Are you aware of that?---From the evidence I've listened to, yes.

And does that, with the benefit of hindsight obviously, raise any concerns in your mind as to the effectiveness of the security services that were offered in terms of student and campus safety?---I think from two perspectives, yes. One perspective is that my understanding of the evidence is that guards were working excessive shifts which required them to actually sleep on duty, which would have given me a real concern, and I stand by what I've said here, which is the reaction time that we need from our guards is, the expectation is that they are fit for duty, and I would have thought fatigue

20 would put you into a place where there would be a question mark over your fitness to respond.

Yes. There's some evidence that guards would work I think even up to 36 hours straight at the university and sleep somewhere having someone cover their shift, use a disabled bathroom for a shower and have a shave and then go back to work.---Yeah.

And that's the evidence, was that what you're referring to?---That is the evidence I'm referring to.

30

Have you heard the evidence that in relation to the Camden Campus, I think in one particular example that was raised by SNP as a serious concern, it was learned that a guard had performed 15 consecutive shifts, one of which involved a bus run of students. Did you hear that evidence?---I think that was Emir? I did hear something about him driving buses and fatigue.

I don't think that was, I don't think, in fairness to Mr Balicevac, I don't think that was Emir.---Okay.

40 I think it was - - -?---No, so I didn't, I didn't hear that evidence.

Okay. But does that cause you any concern hearing it from me?---Yes.

Okay. And obviously the effectiveness of a guard to perform driving duties if fatigued is something that I imagine would cause you some worry?---Oh, I think anyone fatigued driving is just not, not on.

I want to ask you some questions about the KPMG review and report that was provided to the university in July of 2016. This starts on page 10 of your statement. Now, prior to this investigation had you seen the report? We can have it brought on the screen. It's Exhibit 71, page 198. Can that be - - -?---I'm familiar with that report now, but no.

Do you know who was responsible for providing instructions to have this report obtained?---I believe so, in that if I could indulge you to explain how we were structured, it would logically fit into that person's responsibility.

10

Please do.---Okay. So the way that we were structured was that I had an area which was run by my operations manager at the time, it was Kevin Duffy. That operations team was responsible for effectively a quality assurance compliance across the contracts that we had in place and it was Mr Duffy's plan that he had set out to me that he would be doing regular checks and balances of new contracts that had been put in place progressively. So I would have said that this would be a report that had been put in place by Mr Duffy with the intention of looking at compliance. I know of another report that he had done on cleaning at around a similar time where he had looked into the two cleaning contractors at the university, Menzies and BIC, and a similar report was undertaken at that time, and I was across that other report but for some reason I was not informed about this one.

20

So I think you've reconstructed that it would have been Mr Duffy in his responsibilities who commissioned or gave the instructions for the report to be prepared. Is it to be inferred from that answer that you did not communicate with him prior to your assumption that he took those steps? ---Not that I'm aware of.

30

Now, if we just go to page 199, you can see that there's a distribution list there. Now, Mr Sullivan I think you said reports to you?---That's correct.

What about Mr Duffy and Mr Sierra?---Mr Duffy reported to me, Mr Sierra reported to Mr Duffy and on this Morgan Andrews reported to Mr Sullivan.

I think the evidence is that Morgan Andrews, by 26 July, 2016, had left the university so - - -?---That was, that was the time of his, him being made redundant, yes, that's correct.

40

If we can just go to page 208, please. Do you see "Scope Exclusions?" --- (No Audible Reply)

"This internal audit was limited to assessing the processes and controls relating to SNP Security contract only. There was limited testing performed on subcontractor data. Contract compliance for the contract between SNP and their subcontractors was out of scope." Do you see that?---Yes.

So do you accept that that shows an awareness on the university's behalf that SNP Security was subcontracting some of its operations?---That would lead to that conclusion, yes.

10 And I mean I appreciate that you weren't consulted when this report was commissioned, but have you spoken to anyone since as to why a review of subcontracting arrangements was determined to be out of scope?---Not specifically because I think we've moved on significantly from that. By the time I was aware of this it wouldn't have made sense because we were already in the process of acting around the subcontractors, based on the fact that I still believe that there was no formal approval for subcontracting provided to SNP.

Is Mr Duffy still at the university?---Yes, he is.

20 Have you spoken to him about why this report was never provided to you? ---I have asked questions about whether or not, because this is an important item that I've been asked on several occasions, I needed to make sure that I hadn't indirectly been copied in on an email somewhere or there had been a copy of the report provided to me that I was unaware of, so I did a full and thorough, as thorough as you can, review of my diary to see if there had been a meeting placed in it to discuss this or whether there had been a copy of a report or an email or something which alluded to it, and there hasn't been anything. Yes, I've spoken to Mr Duffy. He doesn't understand why I wouldn't have been given at least a briefing on the conclusions that had come out of this report and his discussions with me have been that it's out of character for him, that he would have believed that he would have had some conversation with me.

30 So does he accept the responsibility for not raising this report with you, that is Mr Duffy?---Yes, yes.

40 What about Mr Sullivan, didn't he report to you as well, I think you told the Commissioner?---Yes, he did, but this, I, I, it would have been I would have thought something that Mr Sullivan should have considered reporting to me, but he may well have left it that it was Mr Duffy's area in that Duffy was the operations manager and he was responsible for this compliance work, I would have thought it was implied that Mr Sullivan would have thought that Mr Duffy would be keeping me informed.

Can we go to Exhibit 73, please, page 140. This is the university's statement of information in response to a notice issued by the ICAC. Have you seen this document before?---I have briefly seen it, in that I was required as part of the team that were working on the section 22 pulling it together, yes, I have had some oversight of it, but I wouldn't say I know that document intimately.

Were you asked to provide information that could be included into this document?---Yes.

Okay. So if we go to page 158, sub B at the bottom, it's about the KPMG report and who reviewed or examined the report within the university. It says it was so reviewed by Mr Sierra, Mr Duffy, Mr Sullivan and Mr Smith. Is that your understanding?---Yes.

10 And then 20, or sorry, 159, over the page, there's a recitation of the action that the university took as a result of the report, and see there's "C. Mr Smith and Mr Sullivan reviewed SNP's response and were satisfied with the responses and actions taken by SNP with ongoing monitoring of SNP's compliance to occur via monthly contractor meetings." Now, I think the evidence is that Mr Smith had left the university in June 2018?---Around that time, June or July he, he did leave to have an operation on his neck.

Okay. And Mr Sullivan's left, has he?---No, Mr Sullivan, sorry, yes, this is after, yes, yes.

20 Do you know when Mr Sullivan left?---Mr Sullivan left in January of 2018.

Do you know how the information was obtained by the university to – just excuse me, please. Do you know how the information was obtained by the university to make that comment at the second little C on page 159?
---Not precisely, no.

When you say not precisely, it appears that Mr – I'm just trying to find the date of the notice so I can be a bit more accurate.---Yep, sure.

30 But this was finalised on 10 September, 2018.---Ah hmm.

Your evidence is Mr Sullivan had left by January 2018, so one would assume he didn't provide - - -?---No.

- - - input into this response, and Mr Smith claims on his oath that he didn't provide, he was gone by the university by the time this report was being compiled.---Yes.

40 So just assuming that to be correct, that those two gentlemen were no longer at the university, do you know how this information was compiled to provide that answer in sub C?---If you can indulge me to take you through the process?

Sure.---So we, we set aside a, a secure room that we normally would use for tenders. There were a team of people who were asked to collate information according to the section 22 notice. We asked the divisional manager Corporate Services, Tony Fisher, to be the person who would coordinate the response. He was support by Ben Hoyle and supported by Jane Oakeshott,

who is our relationships manager, and we had oversight from Martin McLoughlin from internal audit. That team would meet every morning at around 8 o'clock, I would attend those meetings, they were for about a half an hour where we would go through and look at what information we'd gathered and from where, and we would look at where other sources might be for it so that we could be as thorough as we could in terms of reaching that information. Mr Sierra would have been asked to provide information, so it's likely that we would have got the chronology from Mr Sierra and we would have, and we would have also discussed it with Mr Duffy.

10

Just for the record, I'm helpfully instructed that the notice was issued on 16 July, 2018.---Yes, and I think we had two extensions of time that we requested from the Commission, which were granted.

So is it fair to summarise your position that a review was undertaken, documents were assembled in chronological order, and Mr Duffy and Mr Sierra provided comment in relation to sub C on page 159?---I believe that's where the input would have come from.

20

Now, just if we go back to Exhibit 104, please, on page 10, you say that "Not only should the KPMG report have come to you, you should have been the one who wrote to SNP, saying that we've got this audit report that says this and requiring that they show cause. I would then expect that SNP's response would be to you, not Dennis Smith or Steve Sullivan, and that it would be a formal response under the contract." You say, "I would have given them a breach notice had that report come to me." Now, I take it you're referring to, when you say "the report", are you referring to the document which is at Exhibit 71, page 286? Is this the report that you refer to in the last sentence on page 10 of Exhibit 104?---I, I would really have been meaning both reports, both the KPMG, because I mentioned that earlier, and then I referred to this as the response. I think between the two documents the fact that there's been issues identified in the KPMG response would have led to a show-cause letter under the contract and then I'm taking this as being the response from SNP to what effectively has been a series of audit queries from Mr Smith to SNP, and this being their response.

30

So the breach notice would have been as a consequence of KPMG's report? ---I believe there was enough in it to issue one.

40

Thank you. And then if we – I'll just read to you what's in paragraph 34 of your statement dated 29 January, 2019, and then we can leave this document on the screen. You say, "Having read the SNP response letter, I think it was a very poor response to the report given the gravity of the issues that were raised in the audit. I think there is a judgement error if somebody has closed out that thinking. The SNP response allowed them to close that audit off." So we've got the document on the screen, which is the response by SNP Security to the KPMG audit. In what regards did you believe that was a very poor response to the report given the gravity of the issues that were

raised in the audit?---I didn't think all of the issues that were raised in the report were actually dealt with in this letter.

Can I just draw your attention, if we can zoom in a bit, please. You see, for example, that the paragraph above the subheading, "During the audit, a single staff member from SIG was identified as having worked 15 days without a full day's break. This has been brought to the attention of SIG and corrective action to the future has been taken." Do you agree that that, other than really speaking to the nature of maybe even a motherhood statement, doesn't provide any particulars of what that corrective action is? ---No, I think that's just window dressing. I think it's similar to 1.1, the statement which says any overtime work is paid at the rate required either under the award or EBA, whichever is applied. Well, you know, which is being applied and where's the evidence that it's there? I would have expected that in a response.

Can the email which is Exhibit 90 be brought on the screen. If we go to the second-last page, you can see here on 8 August, 2016, Dennis Smith writes an email to Daryl McCreadie. Do you know who that is?---Yes, I do.

20

And a Mr Fields at SNP Security.---I don't know Mr Fields.

And you can see, have you seen this email before?---No, I've only just, I think you've used it in some of the evidence discussions to date.

Yes.---Because it looks familiar as being Dennis working with Daryl to effectively craft the response.

Well, that's right. If we go up one page, you can see that there's an email from Mr McCreadie, who says in his second paragraph, "Dennis had a read of the report and said that he had no major issues regarding what the auditors had highlighted." Just taking that statement on face value, assuming that to be the face, Dennis had no major issues, what do you say that reflects about Mr Smith's judgement in response to this report?---Oh, I think there's a serious error of judgement.

30

Do you think there's anything more serious, it's evidence of anything more serious than an error of judgement?---Again, I could draw a number of conclusions from it, but for me this would have been a serious judgement issue. If you had skipped over the 15 consecutive days being worked and a number of other things in that letter, and the KPMG report, and thought you'd had a satisfactory answer to say pretty much she's right, mate, don't worry about it, I just think that that's an error of judgement.

40

Does it say something about Mr Smith's competency, to your mind?---I couldn't form a view on Mr Smith's competency just on this one issue.

Well, if we go up another page, you can see that a Ms Mately says to Daryl, “Tammy will prepare a formal response to the client,” which is the letter we’ve just seen at page 286 of Exhibit 71, and Mr McCreadie says, “Hi, Tammy, before you do, can I please send you some notes? I’ve been working on some notes with Dennis Smith that I can send through in response to KPMG’s audit.” Now, what, if anything, does that say to you, that Mr Smith took the time to sit down with Mr McCreadie to work on notes so that SNP could respond back to the university in response to KPMG’s audit?---Well, it certainly blurs the line between who he’s working
10 for.

Is that a convenient time, Commissioner?

THE COMMISSIONER: Certainly. We’ll adjourn till 11.30.

SHORT ADJOURNMENT

[11.17am]

20 MR ENGLISH: Mr Robinson can come back to the witness box and if the
email that’s Exhibit 90 can go on the screen, back on the screen, please. So
we’re just looking, that’s the page. We were just on this page, that’s Mr
McCreadie’s email on 9 August at 12.50 where it says he’s been working on
some notes with Dennis Smith and if we go up one page, please. You can
see that Ms Iselt says, “Sure, send them through Daryl,” and Mr McCreadie
responds, this is on 11 August, 2016 at 8.58, “Working on the doc today,
just having trouble converting from PDF to Word so can insert comments.”
And then he provides his notes in the later email at 13.50 on that same day.
30 If we can just bring the notes up, please, which are also part of Exhibit 90.
Just so you’re aware, these are Mr McCreadie’s notes. You can see where
the issues have been broken up, they have the black drafting and he’s
provided a note underneath in blue, where it says DM and I think Mr
McCreadie’s evidence was that he discussed each of these issues and it runs
for five and a bit pages. Each of these issues he discussed with Mr Smith
before typing up this response, you understand?---Yes.

Now, if I can just – on the first page, you’ll see under sub A, this is what I
was putting to earlier, “DM, it was explained to KPMG that as a business
we have to manage overtime costs and that we have approval from USYD to
40 use SIG as a nominated provider under the contract to pick up the additional
works. Do you see that?---Yes.

I asked you some questions about that and you’ve really answered them but,
Commissioner, I’ve been asked by Mr Coleman to tender another document
on this. I might come back to it, I don’t quite have copies yet but I’ll just
note for the record that’s something I’m intending to do. If we can go over
the page, please, you can see the main black paragraph, the first one, “On
review of sign-in/sign-out records,” do you see that?---Yes.

And if you just read that to yourself for a moment, please. And you see Mr McCreadie's response, "This one is a concern. I'll go over the records to identify who it was and see what break they had after that period and what I can do to prevent it from happening again." Do you see that?---Yes.

10 So on Mr McCreadie's evidence he discussed that response, or at least that issue, with Mr Smith and then you'll recall that on the actual letter from SNP, I read you that paragraph that read, "During the audit, a single staff member from SIG was identified as having worked 15 days without a full day's break. This has been brought to the attention of SIG and corrective action to the future has been taken." I think your evidence was that answer was window dressing. So here we've got a circumstance where Mr Smith is aware that Mr McCreadie holds a concern about this and we've seen that Mr McCreadie says he'll check the records to identify who it was and see what he can do to prevent it again and then the only response that comes back, on your evidence, can be referred to window dressing. What do you say, if anything, about Mr Smith's understanding or response to this particular issue in circumstances where, I'll show you shortly in a moment, it seems
20 that he was of the view that on balance all questions raised by KPMG had been adequately answered?---Well, I don't think they've been adequately answered in my view.

Commissioner, I'm gratefully assisted by my learned friend, Mr Bender, with an email that I'd ask to be brought on the screen and tendered. I'm sorry I didn't question you about this earlier, I wasn't aware of it. I was asking you some questions about the formulation of Sydney University's response.---Yes.

30 Commissioner, I tender this email.

THE COMMISSIONER: Well, there are two but - - -

MR ENGLISH: Oh, sorry, this email chain.

THE COMMISSIONER: Oh, there's another page too, is there?

MR ENGLISH: Yes. So what it is, it's the first email in time is from Ms Iselt to Mr McCreadie, it's SNP's response which Mr McCreadie then
40 forwards on to Mr Smith and then Mr Smith forwards it up the chain it seems, though Mr Sullivan and then Mr Sullivan on to Mr Sierra and that's on, at least the final email of the chain is on 26 August, 2016.

THE COMMISSIONER: All right. That'll be admitted in to evidence and marked Exhibit 128.

#EXH-128 – EMAIL CHAIN FROM STEVE SULLIVAN TO RYAN SIERRA AND DENNIS SMITH TITLED ‘FWD: SNP RESPONSE TO SYDNEY UNI – KPMG AUDIT’ DATED 26 AUGUST 2016

MR ENGLISH: So if we just focus on Mr Smith’s email to Mr Sullivan, if that can just be increased in size a little bit. It’s about point 6 of the page. Mr Smith says, “I have read the SNP formal responses. On balance, they have answered the concerns raised by KPMG.” Now, the fact there’s
10 evidence that Smith sat down with McCreadie to assist him in the formulation of SNP’s response, what, if anything, does that say to you, Mr Robinson, about the integrity of that sentence in Mr Smith’s email, “On balance, they have answered the concerns raised by KPMG”?--I mean, it leaves me very concerned, certainly. In terms of integrity, again, I think I answered this question before the break, which is that I think Mr Smith has actually blurred the lines in terms of who he’s working for by, in effect, assisting SNP with their response because he’s not actually now acting, I think, dutifully for the University of Sydney.

20 And Commissioner, I should note for the record, and I’m grateful to my friend, Mr Bender, who cross-examined Mr Smith on his response to this and Commissioner, that’s at T943.10 and it was put by Mr Bender to Mr Smith that his answer was false in relation to the assertions contained in this email.

THE COMMISSIONER: Thank you. Just one thing. Mr Smith was manager of security operations and one of the matters raised in the response was the fact that a particular guard had worked 15 shifts straight. In relation to that, and perhaps more generally, would you have had an expectation
30 that, as part of his duties as manager of security operations, he would have checked the time sheets from time to time?--I, I would have, I would have thought he would have done a number of things in terms of checking. One of those would have been to actually work through with McCreadie over what the roster looked like and who was on the roster. So I think there’s two checks, Commissioner. One is firstly, who were the staff that are being made available to the university because Mr Smith prided himself of hand-picking, in his words, the guards that would be working at the university and he would always represent to me that he was very thorough in making sure that those guards had been properly trained and inducted to be able to work
40 at the university because in his words, he set quite rigid standards in terms of their availability. So it would be implicit and I thought it was implicit that Mr Smith was discussing with McCredie, who were the guards that were going to be performing shifts and I would have thought the flow on from that would be it would be quite easy then for him to check time sheets because he would be effectively doing, you know, selective checks to say yes, I knew such and such a guard was meant to be on that shift, yep, the time sheet’s there. I can see that that’s the guard and I would have thought, in the time that he had been at the university, he would be experienced

enough to be able to understand whose handwriting, whose signatures, whose security IDs were there because these weren't people changing every day. This was a, a, you know, pretty much a set guarding group who were hand-picked.

By him.---By him.

Yes. Thank you.

10 MR ENGLISH: I'd appreciate if that can just be brought back on the screen, please, the email which is Exhibit 128. You'll see the past paragraph of Mr Smith's email, he says, "Later in the year, as part of my monthly KPI meeting, I will double check on the main items raised during the audit and ensure compliance in continuing." Do you see that?---Yes.

Now, I appreciate this email wasn't forwarded directly to you, it seems to have ended at Mr Sierra but were you ever made aware of any compliance checks in monthly KPI meetings to ensure the items raised during the audit were sufficiently dealt with on an ongoing basis?---No. I don't believe they
20 were taking place.

Have you heard the evidence about the ability or otherwise of the university to measure, in particular, KPI 5 of the contract, regarding building patrols?
---Yes.

And I don't know if you heard the evidence of Mr Ledford who said that he couldn't create statistics in a report that would show compliance with all buildings being patrolled as required because there's too many buildings and instead, he was instructed by Mr Smith to prepare a report that only
30 showed a much lower percentage, in the order of probably less than 10 per cent of the buildings. Did you hear that evidence?---I did hear that evidence.

And what does that say to you about the sufficiency of KPI monitoring under the 2015 contract in relation to that KPI number 5?---Well, it would appear to me as though it wasn't being monitored.

And do you say that the university was adequate, in those circumstances, was the university able to adequately satisfy itself whether or not a breach of
40 KPI 5 had occurred?---I think it goes to your first question, no. If we're not measuring it then I don't see how we would be able to ascertain whether the KPI was being met.

Commissioner, can I just ask my learned friend a question? I'll come back to it. If we go back to Exhibit 104.

THE COMMISSIONER: I think he's got a copy.

MR COLEMAN: Excuse me. I've got two additional ones if that's helpful.

MR ENGLISH: Look, I think we'll try and have it loaded onto the screen.

MR COLEMAN: Sorry.

MR ENGLISH: That's probably the best thing to do. Go back to Exhibit 104, page 11. You talk there about an assurance framework for subcontractors. Do you see from paragraphs 35 and onwards? Do you see that?---Yes.

Now, I'll get to it shortly, but in your new statement, a new request for tender for security services has gone out.---That's correct.

I've tried to have a look in that statement to satisfy myself, but in the new and updated request for services, or request for tender, is there provision for assurance framework for subcontractors?---Not, there is a similar requirement to the original in terms of an approval that needs to be given on the subcontractors and criteria under which the subcontractors might be approved.

So there's not an express provision within the RFT that deals with requirements. It's, what, is the university going to assess its approval to use a subcontractor on a case-by-case basis, is it?---Mirrored against what's the expectation on the, if I, if I call it the main contractor. So in other words if the main contractor had a set of responsibilities in terms of certain arrangements and compliances, then I would see that it's implied that they would be mirrored across to the subcontractor. So as an example, if the main contractor was required to meet all requirements under EBAs and awards in terms of the payment of guards, the expectation would be that subcontractors would also need to confirm that they were signing up to that.

And is your understanding that some written assurance would be obtained from either the contractor or proposed subcontractor or both in relation to such compliance?---Yes.

Now, at paragraph 39, you deal with radios and GPS tracking and technology that can be used to verify physical locations, and you expand upon that in your third statement, which is Exhibit 106, I appreciate this. Mr Smith gave some evidence that he was of the view he was restrained by law from using information of that nature – that's swipe cards, GPS tracking and CCTV footage – to verify a guard's whereabouts on campus. What, if anything, do you say about that opinion.---Well, I've heard the evidence and I have not been provided anything to date which would suggest that that was the case. I think that from my perspective there is a requirement, particularly when it comes to surveillance, to actually notify the individual that may be the subject of surveillance, and my understanding is that that can be done through the process of onboarding guards, that they effectively

sign up to the fact that we will be using various types of monitoring to that. Until I have information, evidence to the contrary, that's the path that we have been pursuing, which is to use these technologies. Certainly in the RFT, the request for tender, that we've had out to the marketplace, there hasn't been any resistance from proponents who have showed interest to being able to deploy those technologies.

10 And is your evidence that those technologies were able to be deployed in respect of the 2015 contract?---I believe some of those technologies were definitely there. Some of them were altered. An example, there were biometric key locks on the lock boxes where guards would go to get keys which would help them, which they needed to use to lock and unlock the university. Those biometrics were taken away and replaced by card readers. The difference between the two is that a card reader, I can give you my card and you can go and use my card on the card reader to get to the lock-up box, but if you've got to do a biometric, then it's pretty clear that we, if we've identified you properly and we've got your biometrics in our system, there isn't a workaround.

20 THE COMMISSIONER: Do you know why it was changed?---I have asked that question and I haven't had a satisfactory answer, Commissioner. I've been told that it was all too difficult because of the volume of people that were going to the lock boxes in that it's not just security, it's also cleaners, and that trying to keep up with the number of people that needed to be pre-recorded with the biometrics was an issue, and they believed that because they had already issued them with individual swipe cards, that they could track them via the swipe cards.

30 MR ENGLISH: It's now the case, is it not, and I think you detailed this in your statement, that sign-on and sign-off, sorry, we're competing with a window cleaner now.---Yes.

40 Sign-on and sign-off data at the university for security cards is not to be monitored by way of time sheet but by way of, is it fingerprint analysis? ---Well, my understanding is that you're still required by the Security Act to actually keep a hard copy sign-on, sign-off. That's, that's a, a legal requirement, so we can never replace that unless there is a change to the Security Act, and, and again that's the best of my knowledge. I, I take it that that's the, the case. We now have biometrics in place, and both SNP and also Wilson contracting who are, Wilson Security, who are providing services to us, both are providing, have got their own biometric data. We've now rolled out the university's own biometric system so that we can actually now effectively put all of the guards and cleaners onto our own system, and that way we can get the data directly, and our intention is to cut across from the contractor using their data. And you've got a situation at the moment in the control room, you've got two biometric readers side by side. One is SNP's, which is their requirement to be able to monitor what their people are doing. At the same time, those guards are also signing in on

the university's biometrics and we're using that as a trial to see whether or not that's a helpful way of putting controls in place moving forward.

If we can go to page 12 of Exhibit 104, please. You talk at paragraphs 42 and 43 of line marking. You say you wouldn't have tolerated McCreadie undertaking line marking services at the university. Now, Smith says he was aware that McCreadie was, and Balicevac, were performing those tasks. What do you say he should have done, if anything, with that knowledge?
---Well, at least alerted, he should have alerted Mr Sullivan or Mr Hoyle, depending on what time it was, which, which of those two gentlemen was actually in that role at the time, and they should have alerted me to it because there's, there's a number of issues in this, as you'd expect. There's one issue about secondary employment and whether or not, I don't know if McCreadie and Balicevac have got any approvals within SNP for being able to do this work. But, secondly, I'm not sure they've got the qualifications to be actually undertaking that work. When it was, when that work was agreed to be added into the contract it was on the basis that prior to it you'd have a situation where the university would need to have a project manager actually coordinate between SNP, who needed to do the traffic cordoning off of the areas that needed to be line marked, and then bring a separate contractor in to do the line marking. What we were finding was there were issues in that coordination. It made sense to actually let SNP coordinate what they needed to do in terms of the traffic control people cordoning off the area and getting the contractor in to do the work. That was where the efficient was, not to say that we could get it done cheaper because we were going to actually use SNP supervisors at night, the site manager and the 2IC. And if they're doing this at night, then what am I getting in the morning in terms of a site manager and a 2IC ready to run the operations that they should have been running?

30 Can I just ask you this. Mr Sullivan left in January 2018.---Yes.

Was that based on any performance issues or was it his own decision to leave the university?---No, it was that we had, we'd changed the role to a deputy director role, it was a role that required a different set of capabilities. Mr Smith was offered the opportunity – sorry, Mr Sullivan was offered the opportunity to run for that role. He wasn't successful as a candidate. Mr Hoyle who now is in that role was the successful candidate and Mr Sullivan's contract, with was a three-year fixed-term contract, expired in
40 January.

Okay. Thank you for that. Just lastly in relation to this statement on page 14, please. You talk there about contractors and contractors' margins, and at paragraph 49 you say, "What is a decent margin is a difficult question." And you talk about why that is, and I think it's fair to say, because it can come down to a subjective evaluation by the contractor and you might not be aware of certain commercial considerations that they might be aware of in pitching.---That's correct.

Now, do you know if any evaluation of the legality of the ad hoc, or I withdraw that, the hourly rate for ad hoc guarding services by SNP was ever conducted by the university?---I'm, I'm going on hindsight, which is that no, to the best of my knowledge I have not seen any evidence that there was a comparison of rates that were being provided against particular awards, and that's something we've identified as being a weakness and it's certainly something that we have moved to change in our current procurement processes to actually have a check done of the intended rates that are being used to ensure that they have the ability within that rate to comply to awards.

And how are you ensuring you've got the, given the difficulties that you identify in 49, how are you ensuring that you've got the sufficient knowledge or capability to properly review a contractor's proposed rate? ---So what we're doing is, we're using a combination in the – and again I can only talk about going forward rather than looking backward, certainly the things that we're doing going forward is that we have an industrial relations expert who's providing advice in terms of the information we need to consider in terms of the all-up rates that are being used and then over the top of that we're using a quantity surveyor that is doing an analysis across the tenders to make sure that there is sufficient money in the overheads and margins that the contractor is signing up to that would allow them to effectively do the job.

If we can go please to Exhibit 70, page 250. This is an email from, at least the final email in time is from Ms Davis to Dennis Smith on Friday, 20 March, 2015. If we go back to page 251, please, back in time, you can see at the bottom there Ms Davis is emailing those members of the Tender Evaluation Committee for the security services contract. She's asking for a bit of a favour. And you can read that, and if we go over the page, I'll just let you read what Ms Davis asks. And then if we go back to page 251, you can see Mr Smith, it cuts over from the other page, but Mr Smith responds directly to Ms Davis on 20 March, 2015 at 2.16pm, and you can see in the third bullet point he identifies the out of contract rates. Do you see that? ---Yes.

And says, "It should not be underestimated as a long-term saving for the university. They appear to run a tight margin here, however over the life of the contract they would make a profit. The university would make a massive saving in the long term accepting this rate."---Yes.

So that's Mr Smith's response in relation to at least the rate to be charged. And then if we go to page 253, this is an email from at least the last in time, Ms Davis to Mr Owens, and if we go to 255 you can see it's the same email that Ms Davis circulated amongst the committee. And then if we go to 254 you can see that Mr Owens wrote back to Ms Davis, "Does this include interview and documentation provided?" And then Ms Davis writes back.

Says, "Dennis has given me some good points on 32.57 out of contract rate." So that's repeated.---Yes.

10 And if we just go to 253, you can see the first dot point, "Other security companies that applied for the contract gave a graduating increasing scale for after-hours rates. SNP gave the one flat rate, which as discussed has the potential for a substantial saving for the university over the life of the contract. We asked Dennis for an indication of this amount on short notice but it was not insignificant." So it seems to be suggesting that SNP was the only tenderer that offered a flat rate as opposed to all the other tenderers saying, well, it would depend what day of the week it is or what time. To your understanding, I mean with that knowledge, was that never looked into at all, whether this flat rate was something that was actually sustainable, given the different pay grades that existed under the award?---Not to my knowledge, I don't believe there was any comprehensive exercise undertaken to understand whether or not on the sort of run rate that you would expect in the non-main guarding contract works, that this rate would either put you positive or negative.

20 If we can bring up, please, Exhibit 106, which is your third statement, Mr Robinson. On the second page you start from paragraph 8 talking about the steps taken by the university to develop processes in respect of procurement and contract management, and you say in the first sentence of paragraph 8, "There's always room for improvement in the university's internal processes, including in relation to contract management and procurement. And the issues that have come to light in the public inquiry into the 2015 contract have obviously highlighted deficiencies in the process by which SNP came to be appointed and by which SNP's performance of the contract has been assessed." Now, one thing I'm not sure if you've dealt with in this
30 third statement is whether you accept that one of the problems in the awarding of the 2015 security services contract was the failure to undertake a proper risk assessment regarding the risks applicable to the contract itself? ---Yes.

So that wasn't done in 2015. Is that right?---I mean I think there were some risks that had been considered in the evaluation process, but not a formal risk management process, no.

40 And one of those risks that wasn't formally considered in that process involved the underpayment of guard wages?---That would be correct.

And the concomitant issue of tax avoidance that may relate to that issue? ---That's correct.

And so, sir, can you tell the Commission now what is the university doing in the current procurement process to address the issue of low profit rates and to ensure that guards are paid award wages and their legal entitlements?--- So I'm, to my earlier statement there's a number of things we're doing. One

of them is that we're evaluating the rates in the tender process and we're doing that using effectively a person who has industrial knowledge, who can go through the awards and make sure that the allowances that are being made are sufficient to be paid. We've got a quantity surveyor that's looking at the tenders overall to make sure that there is again another check about profitability. And the third area of this is, as was the case previously, we're asking for declarations to be made by the contractor at the time of tender that their tender does comply and allows them to meet their EBA or any of the award conditions of their staff. And the expectation will be that they will have to sign that off progressively each time they do a monthly claim to certify that they have paid their staff accordingly. Not a dissimilar practice to what we already have in place, particularly in the building industry.

I take it you're aware that the evidence from this public inquiry shows that the time sheet fraud principally occurred in the area of ad hoc or surge work.---Yes.

Now, Mr Smith gave some evidence that ad hoc work had no budgeting constraint and was requested purely on a risk assessment basis or criteria. Do you agree with that?---Can I elaborate?

Yes, please.---Yeah, okay, so the process that would happen is that we might have, we might have an issue that's coming up. In fact there are, I think, and I was looking at chronology the other day, there's somewhere between four and 10 events a month that take place in which we would need to do something in the way of ad hoc guarding. So if I could just take something as simple as a protest that we've been informed on, so it might be that the NTEU is planning a protest around a particular issue. We would then provide that to the Campus Security Unit. They would normally pick it up through either posters that the NTEU would put up, or the NTEU would get an approval from police to do a march or whatever it would be, and we'd find out about that. That was then given to Mr Ledford as the primary risk manager and it was expected that Mr Ledford, with Mr Smith, would come up with an operational plan for that disruption, and they would decide on what the number of guards would be that would be sufficient to mitigate the risks associated with that particular event. That recommendation would then go to Mr Sullivan. Typically Mr Sullivan or Mr Hoyle would give me a briefing on that and would either basically say we're going to have 10 guards because we think that's necessary. So that's how they came about the risk process to assess what the ad hoc requirement would be. That was one way. The other area on ad hoc guarding was that it was a user pays system, so if you were booking a venue at the university and you might be doing a controversial activity, one is the Liberal Party, Young Liberals often have a debate where they'll invite an ex-prime minister onto the campus, and again that will come through as a request through our venues management area. They will hand to Campus Security that request to say, look, this is something which we need to do a security assessment on, and the security assessment may come back and say we recommend that there

are four guards needed for that activity. That would then be given back to the client – in this case the Young Liberal Society – to say, “Are you happy to pay for these four guards for your event? Because the university requirement will be that you have to have security.” And that would lead to effectively a work order for that amount of guarding, which would be paid for by effectively the person making the booking.

10 At paragraph 17, which starts on page 3, you talk about an increased internal capability, an example of which relates to a new contractual regime of billing monthly based on task-by-task performance, which is pre-planned based on a 10-week planning cycle. You say that this ultimately results in the university receiving greater value from services contracts and performance assurance against the university’s requirements. This regime is now required in the university’s tender process for contracted services. How does that example that you speak of place greater controls, if at all, around the area of requests for ad hoc guarding services?---Well, again, I think you could have controlled the ad hoc guarding in the previous regime had you been diligent. So I think there was enough ability with the systems that were in place there that, had you wanted to control it, you could have
20 controlled it. So this is effectively endeavouring to tighten things up in, and it’s more to do with the base contract, which is where, the base contract was effectively, if I could put it as bluntly as a body hire arrangement in which there was a set requirement to provide a particular individual for a certain number of hours for a certain number of days. It didn’t take into account what might be the seasonality of the university. It didn’t take into account a whole lot of things. What we know is that we have peaks and troughs to do with around semester. We’ve got greater risks at certain times. We can be more predictive in terms of the way that we ask for guarding services if we’re serious about wanting to control that as a, as a service.

30 I’m wondering if page 81 of the Exhibit 106 can be brought on the screen, please. Page 81, down the bottom right. Thank you. So this is schedule 5 of the security contractor management guide that’s exhibited to your statement, which is Exhibit 106.---Yes.

40 And I just want to raise with you, this is dealing with performance management framework and monthly risk and reward calculations. And you can see – and please correct me if I’m wrong – that it says a KRA performance score. Is that the same as a KPI?---It’s key responsibility area, so similar.

And so if the contractor is meeting its key responsibility area by reference to this score, it can, if it’s a hundred per cent it can add a little premium onto its invoices of 2.5 per cent, but if it’s not meeting those responsibility scores, the university can deduct payment from invoices, is that right?---My, my reading of it is that, yes, that’s the hundred per cent bonus but between 90 and 100 per cent there is also a 6 per cent agreed percentage that is at risk, so that there is a receive or not receive around 6 per cent, depending on

where you perform, whether it's less than 80 per cent, in which case you would be in breach of your contractual obligations, and this suggests that that could be grounds for termination. And then greater than 80 per cent, you've effectively met your requirements, so you get your full invoice without any discount, and if you do above 90 per cent you effectively are entitled to a bonus.

10 And so just measuring the KRA performance score, I mean, where does the data come from and who compiles it for that purpose?---There are a series of KPIs that are on other pages within that guide, which set out clearly what they need to be providing.

And so I guess my question is - - -?---Yes, sorry.

20 - - - is it the contractor who provides the data or the report by which the KRA performance score is measured?---We're doing it two ways, which is, yes, they need to be demonstrating that they're meeting them, and then we have a compliance team that have been set up in side Campus Services who will effectively verify and validate all of the data that they've got by running effectively the same information.

So your satisfied that the university has a sufficient framework to ensure that any applicable discount on service does not encourage the misrepresenting of KPIs or KRAs to ensure profitability of the contract?---I think we have a regime that's been set up that allows you to do it, and the issue will be now about us ensuring that that compliance takes place.

30 And I think you deal with this at page 7 of your statement, which is 106, if you can go back to page 7. So at 32, you're talking about contractor monthly reports and I think there's annual reports as well at 33?---That's correct.

40 And so the university has a framework around evaluating the honesty and accuracy of the information provided in these reports, does it?---Yes. I would add, I would add one thing though, which is that we are trialling a lot of technology here so that we can try and come up with what we think is the, the best way in which we can do that validation. So the, in my statement, I talk about the use of a number of technologies, which again, are work in progress, we're trialling them at the moment. We're, we're seeing good results, we're seeing contractors in the request for tender actually providing us with some quite sophisticated ways in which they can give us data and information that allows us to do a much better job of being able to verify that they are, that the guard that you've asked to be doing the service is actually there and signing in and out appropriately and that there's checks and balances of what they're doing during the day.

Commissioner, that's my examination of Mr Robinson. Oh, sorry, before I do that, I should deal with Mr Coleman's request. Commissioner, I've been

asked to tender this document. I've got sufficient copies for you and the witness now. Unfortunately, it can't be brought on the screen but I can have a document that's referred to there in broad on the screen. I hand that up and make sure there's no marking on this.

THE COMMISSIONER: Thank you. Are you going to tender that?

MR ENGLISH: I am, yes.

10 THE COMMISSIONER: It will be marked Exhibit 129.

#EXH-129 – EMAIL CHAIN FROM SRINATH VITANAGE TO C MILLAR OF SNP SECURITY TITLED ‘ERFT/2014/151 – PROVISION OF SECURITY SERVICES’ DATED 23 JULY 2015 WITH ATTACHMENT BEING A LETTER FROM GREG ROBINSON TITLED ‘RE: LETTER OF INTENT – PROVISION OF SECURITY SERVICES’ DATED 29 JUNE 2015

20

MR ENGLISH: I'm told the email can be brought on the screen now. So this is an email from Mr Vitanage. Do you know who he is?---Yes, I do.

What's his role at the university?---Well, I would have described him, well, he was, his full title was as it says in the email, senior procurement specialist.

Thank you, thank you.---Sorry, for CIS, in that he was provided to us on behalf of the procurement services team to be an imbedded resource who would work on specifically campus infrastructure services tenders.

30

So here he's writing to a Mr Miller from SNP Security saying that the University of Sydney's pleased to announce that SNP has been successful to provide the following services. If we go to what's attached, it's a letter which comes from you and is signed by you on the second page and you say in the first paragraph, "Thank you for your submission to our request for tender for the provision of security services at the university." Now, if Exhibit 69, starting at page 150 can be brought on the screen, please, starting with 150, please. So this is the request for tender for security services submitted by SNP to the university. If we go to page, I'm told, 166

40 there's some subcontractors identified, 1.7, if we go over the page, please. Complete Linemarking and then you can see S International Group and if we go over the page there, you can see it's said that the annual value was circa 2.6 million annually through SNP. Now, you gave evidence earlier about your view that under 4.5 of the contract, that still needed to approved by the university and I think by you.---That's correct.

Does that, having seen these pages, that is 150 and 166, I think, to 168 of Exhibit 69, does that change your evidence in any way?---No.

Thank you. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Bender.

10 MR BENDER: Mr Robinson, my name is Bender. I appear for the University of Sydney. On that topic that Mr English was just asking you questions about, to clarify, I think you would accept, wouldn't you, on the basis of the documents that Mr English showed you, that the university was aware during the tender process that SIG was being proposed as a subcontractor in the SNP contract?---Yes. I think that (not transcribable).

By is it correct that your position is that, as a formal matter under the contract, in your view there ought to have been some further written formalisation of that status?---If I could, please - - -

20 Sure.---In a tender process, we would get all sorts of things coming through in the office that various proponents would make. We don't necessarily take up everything that's in a tender document. One of the things we expressly say in the tender process is that what goes in to the contract that is agreed as a result of the, the process, because what we're going here is effectively selecting the preferred proponent to then go into what I would refer to as a commercial legal negotiation. Yes, we provide them with a copy of the contract, typically in the tender process so that they can let us know what exceptions they would want to the contract but as far as I'm
30 concerned, there is no further reference to the tender once you move to the contract and it's quite specific that just because you've said in a tender a particular offering that unless it transpires in to the actual contract itself, then that's not taken up. So my view is the contract did allow for SNP to have come back and formally submitted to the university to have SIG accepted as a subcontractor but as far as I'm concerned, that has not happened.

And you gave some evidence about legal restrictions that may or may not exist about the use of CCTV to monitor the guards who are working for the university. After the Uber driver made the representations to you that
40 caused the university to be aware of some of these matters, are you aware of whether or not internal audit in fact did use CCTV to check on what was going on with the SNP guards?---Not just on that occasion am I aware of where internal audit have actually asked for CCTV footage to be bookmarked or used in terms of an, an investigation but it is my understanding that they did use CCTV to try and identify patterns of where guards were coming in and out the library during that investigation.

And were there other occasions on which internal audit did that?---Yes.

When were they?---Oh, look, it was, it would be quite regular that if there was a complaint that had been lodged around a whole series of different activities that go on at the university, there are so many, it could have been that there was an accusation of an assault or there could have been a confrontation and in that case, they would ask within, typically, it's a 21 day period in which the CCTV footage is able to be bookmarked and you, to use that information outside of that period of time, you're typically taping over because it just requires so much data. So they would often ask for
10 bookmarks. We would get requests from the police and from a whole series of different people around the use of CCTV footage. The evidence that I have heard during the enquiry is correct in that before releasing any footage, we would, as a matter of process, refer it to the Office of General Counsel to make sure that we weren't stepping across any privacy rules terms of who we provided that evidence to and in what format.

That was to release it to a third party, not to review it yourselves?---Correct.

And certainly when internal audit was reviewing the SNP and SIG guards' activities after your conversations with the Uber driver, you certainly weren't aware of any legal restriction that would prevent them from doing that, are you?---No and it was the suggestion of the Uber driver to use the CCTV as a method by which you could ascertain what he believed was enough evidence that there was an issue with what guards not being provided.
20

And given their function and status in the university, you would expect, wouldn't you, internal audit to be careful about those matters?---Well, internal audit actually, in our structure, is part of the Office of General
30 Counsel so yes.

Do you recall at the start of your evidence, you were asked some questions about what occurred by way of audit after your conversations with the Uber driver?---Yes.

One of the questions you were asked was whether you thought internal audit ought to have reviewed the time sheets. Do you remember that question?
---Yes.

40 And you said you thought they should. Do you remember that?---Yes.

You had been asked before that, some questions and your responses referred to a limitation on the investigations that the universities were undertaking due to an instruction from ICAC. Do you remember that?---That's correct, yes.

What was your understanding of that limitation on the university's ability to investigate?---Probably it was probably more my ability to actually do

anything with the disclosure that I'd made. It would be my normal practice to work in conjunction with the internal audit to actually investigate matters that have been brought to my attention. In this case Mr Phillips, first of all, Stephen Phillips advised me that there was, this was, the area that I had flagged as a disclosure was something that had been under current investigation by the ICAC and that we'd been asked not to do anything with it. He expressly asked me not to do anything. We then referred the matter to internal audit, internal audit likewise confirmed to me that I was to take no actions.

10

So when you answered that or you agreed with the proposition that internal audit ought to have reviewed the time sheets at that point, were you taking into account the instruction from ICAC, or was that just a general statement of what you thought ought to have been done by way of investigation, regardless of anything that the university was told?---If it had been left to me to be doing the investigation it would have been one of the things that I would have done. As I say, I'm not privy to what investigation was undertaken by internal audit, effectively I was closed out of that for obviously appropriate reasons, given the Commission's investigation.

20

You gave some evidence about the onboarding of guards, again on the topic of what could be done in respect of CCTV footage. Is that the induction process that guards go through when they start to work at the university?---There's, there's a number of things, which is that, yes, it's my understanding that the guards are required to acknowledge that they will be working in an environment where surveillance, basically surveillance will be undertaken, be it through swipe cards, GPS on radios, all the things that I've alluded to in my report as, in my statement, sorry, as being tools available to us to endeavour to seek compliance, that they are notified of that, and they're also well aware that the sign-on, in the sign-on area where they either do their biometrics or they actually physically sign in, there's CCTV cameras monitoring that.

30

Thank you, Mr Robinson. Thank you, Commissioner.

THE COMMISSIONER: Can I just raise a matter with Mr English before Mr Coleman proceeds. I don't have my hard copies of this witness's statements with me, but does he address the issue of SNP's desire to get rid of SIG and Mr Dennis Smith's involvement in that process?

40

MR ENGLISH: No.

THE COMMISSIONER: I'd be assisted perhaps if you can get some views on that.

MR ENGLISH: I can. That's Exhibit 36, page 330. If that can be brought on the screen.

THE COMMISSIONER: Did you become aware that SNP were proposing to get rid of SIG as their subcontractors?---Only, Commissioner, as a result of the evidence that I've heard over the, over the time of the inquiry.

Right.

MR ENGLISH: There's an email on the screen now. Have you seen this? You probably haven't because my understanding is it doesn't come across the live stream, even if you're listening.---Yeah, I wouldn't have seen this to the best of my knowledge, but certainly I've heard a number of things about the content.

All right. Well, if that can just be increased in size a little, please.

THE COMMISSIONER: Perhaps if you can just read it to yourself.

MR ENGLISH: Yes.---Yeah, I'm happy I've got the general thrust.

20 Just so you understand the context, perhaps if we go back to page 317, you can see that McCreadie is informing people he works with at SNP Security that he's just called Mr Smith to advise SNP was in the process of re-evaluating the use of SIG as a supplier and the need to push forward with an alternative supplier. Do you see that?---Yes.

30 He forwards that on to McCreadie, sorry, McCreadie forwards that on to Smith and copying in Balicevac on 10 April, 2018, saying, "Heads up, still nothing in writing from SNP to advise what it is they would like to do." If we go over to 324 you can see that Mr Walizada from SNP Security emails Tommy and Scott who are with SIG to tell them that there's official notification that their services are no longer required at certain sites, including the University of Sydney, and then a clarification email is sent to say that the last day will be 8 May, 2018, including at the university. Now, that's forwarded by Mr Balicevac to Mr Smith and then there's a further email from Mr McCreadie saying, "Scrum down later." And that's from McCreadie to Balicevac and Smith. Then you can see later that day an email passes on page 328 between McCreadie and Smith with Mr Roche's number.---Mmm.

40 There's some more email traffic between McCreadie and Smith, and then we end up back on 330 where it appears that, well, it doesn't appear, Mr Smith drafts an email to Daryl McCreadie of the content you can see on 330 and over onto 331, but that just says, "For urgent consideration." And McCreadie says, "Seems fine, not confrontational, just factual." And then that email is ultimately sent to Mr Roche.---Yes.

Now you're aware of that context and you've seen the content of the email, that is Mr Smith's email to McCreadie at 12 April at 2.14pm, what if

anything do you say about the process that McCreadie and Smith, and to a lesser degree, Balicevac, were engaging in on this occasion?---Again if you'll indulge me, I wouldn't mind putting a couple of bookends into this to help you with what my understanding of what might have led to this occurring. During this period of time, if I could just take you back to the fact that I have a disclosure which is made on 14 March, 2018 in which we've talked about the fact that I've given that information to internal audit who have alerted ICAC to that situation. On the 18th I believe of April is the day in which I'm asked to assist the Commission with the collection of documentation at the university, and this is in the period in between the two. Mr Hoyle has started at the university in, in and around March, somewhere near the time of the Uber driver disclosure. He doesn't know anything about it. Somewhere in April, I don't know the exact date, but I believe it is around the 10th or 11th of April, Mr, Mr Hoyle with Mr Hardman go in an SNP vehicle from our offices at the university at G12 to the Charles Perkins Centre and during that drive they talk to the driver just about things in general. As Mr Hoyle being new on the ground habit to probe particular things that were going on. He came back to me there and about that time and said to me, "Are you aware that there's subcontracting going on?" And that was the first time I'd heard anything of it. There was potentially a reference to it in the disclosure from the Uber driver that I didn't pick up, he was talking about different sort of practices and I, it didn't twig to me at the time that there could have been subcontracting, but at that time certainly Mr Hoyle became aware and certainly did Mr Hardman. I believe that Dennis Smith would have become aware of the fact that Mr Hoyle was aware of the subcontracting taking place and that Mr Hoyle would have been having a conversation with SNP, in particular, I'm not sure who with, but it certainly wouldn't have been with McCreadie, potentially Mr Roche, about the fact that we've got subcontracting going on.

30 How do you say that you believe that Smith would have become aware of the conversation between Hoyle, McCreadie and potentially Mr Roche?
---Oh, because it's in Mr Hoyle's nature to have asked him the question.

So that's going on in the background. And what about Mr Hardman? Do you have any understanding as to whether or not he was aware of the steps that Smith was taking leading up to and drafting this email on page 330?---I, I wouldn't know.

40 Now, you can see if we look at the email, the first bullet point in the second series of bullet points, there has not been one breach of the KPIs for operations guarding at this site since the inception of the contract in 2015.
---Yes.

I drew to your attention the fact that Mr Ledford said on Mr Smith's instruction he was only reporting on 10 per cent of buildings in relation to patrols. Just assuming that for a moment, what do you say about the contention that there hadn't been a breach of KPIs for operations guarding

at the site since September 2015?---So as the person who has the delegation of authority under that contract to issue SNP with a breach notice, it would have typically come to me and be signed by me. I don't believe I signed a breach notice in that period of time that's referred to.

THE COMMISSIONER: I think you said a little earlier that the material contained in the KPMG report would have been sufficient to issue a breach notice.---Yes, I believe so, Commissioner.

10 MR ENGLISH: You can see in the fourth bullet point Mr Smith says, "There are issues, as you know, with the Telstra side of the business and I do not want to add to that noise going to the new director with the final year of contract being next year." What do you understand about the noise that Mr Smith's talking about with the Telstra side of the business?---I, I wasn't aware of any. I think he's referring to the new director is actually the new deputy director, being Mr Hoyle, rather than being me because I, I'd been at the university for over six years by this stage.

20 All right. And then you say, he says, "Given all the above, I'm requesting business as usual for this university in terms of the ad hoc supplier. We accepted the tender of the lodgement of S International as the subbie." What do you say about that, those two sentences there. Does that - - -? ---Well, I don't think that Mr Smith was in a position to actually write this email without certainly having had a conversation and established that position with, as a minimum, Mr Hardman and Mr Hoyle would have argued that should have involved a conversation with me because this was not the university's position at that time. In fact, Mr Hoyle's position, which has played out, was very different to the notion of keeping SIG.

30 THE COMMISSIONER: The effect of Mr Smith's evidence was that he wanted to keep SIG, the subcontractor, in place for operational reasons and also that if they were pulled out at short notice it would be catastrophic for the university. Do you have a view on that?---Yes, I do, Commissioner, because I think I've got a real example of where that was attempted and what the ramifications of that were. So I do believe that Mr Smith is correct in certain aspects of it, which is that there's been, in evidence provided to date, discussion around what's a reasonable time to onboard a guard, and just if you have a look at the, at, which I know has been discussed at the Commission, if you look at the timing of what it takes to actually get a
40 guard what I'll call service ready for the University of Sydney, it's not one day. Now, under pressure from Mr Hoyle, SNP did in fact withdraw SIG's services and replace them with a different subcontractor, Multiworks. Multiworks arrived on the campus, different vehicles, different uniforms, effectively no training, and that caused turmoil in that we had a lot of issues where there was no communication with staff and others. As you would expect, we had a lot of feedback through our student body, particularly through Honi Soit, which is the student newspaper, where they were asking questions of who the heck are these people who've turned up here with

these different uniforms and different cars, and I believe that those guards were not service ready. Having said that, SNP did have oversight, which was oversight in the control rooms and with their team leaders, that did provide us with some level of continuity. But if you'd changed the whole lot, it would have been turmoil.

10 MR ENGLISH: Well, you might recall I showed you an email from Mr Walizada that was sent on 10 April, where he said, "The last day will be 8 May," so that's sort of roughly 28 days. What do you say about a period
10 such as 28 days to effect a turnaround of the guard force on campus, only in relation to the subcontracting?---I would have thought that was reasonable because I think there's a period, as I've provided in my evidence, that there needs to be, I think, the right checks and balances made on the subcontractor to ensure that the subcontractor's capable of doing it. Because again you just don't know what you're getting until you've got it and, you know, I would want to have done a lot due diligence to understand who this group were because, you know, we get a lot of information from SNP about, you know, their corporate scorecard and a whole range of things to understand
20 the size and scale of them as an organisation and their track record. But, you know, SIG, as we've, as I've found out through this process, could be just a, a body hire company that is off to the side that, that is just really finding whomever and providing them forward as a, as a guard, whereas I certainly think the checks and balances we would do on SNP in terms of what we would have done through the tender process should be equally applied to the assessment of the subcontractor.

30 THE COMMISSIONER: And could that be done within four weeks?
---Yeah, I believe so, yeah. With the information being provided, Commissioner, it probably can be done within one week. But I think it goes to the training of the guards and the actual changeover, so I wouldn't have expected 28 days to decide whether you were happy with the subcontractor. I would have thought more like seven days to do your investigation and then you'd have three weeks to do transition.

And that should have been sufficient.---There would always be - - -

40 It might be tight, but - - -?---There would always be risk, and, and I would be placing reliance in that. I mean, at the moment there's a transition, transition out phase which we talk about in the RFT where it's desirable to have three months to six months, and that's when you're changing the whole security provider over. And we've just been through an experience of changing out the managing agent at the university, and we had a three-month transition, and when we got to the end of that transition I would like to have had another eight weeks if I could have got it. So in a full transition I would have said no. If it was that you had continuity of effectively the site managers and duty managers and control room operators, then I think you could have changed out a subcontractor in 28 days.

MR ENGLISH: And what do you say, I don't think I asked you this, but what do you say about Smith working, it seems on the evidence, with McCreadie and Balicevac to send this email directly to Mr Roche?---Well, again, it would be a consistent answer to my earlier one, which is I'm not sure who Mr Smith saw himself working for, given that that was not the position of the university at that stage to effectively, you know, coerce SNP to hold on to SIG.

10 They're my questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Bender, do you have anything arising from that?

MR BENDER: No, Commissioner.

THE COMMISSIONER: Mr Coleman?

MR COLEMAN: Yes, thank you, Commissioner. Mr Robinson, my name
20 is Coleman and I appear for SNP Security. Now, I think you've been in your position at the university since 2012.---That's correct.

And at that time SNP were providing the security services at the university, I think.---That's correct.

Were you aware whether at that time they were using subcontractors at the site?---I didn't believe they were using subcontractors.

30 So can I ask some further questions about the tender process. Well, before I do that, when was it you say that you first learned that SNP were using the services of SIG at the university?---Well, it's either of two occasions. In my evidence I gave just before, I believe there could have been some part of the conversation with the Uber driver on 14 March, and then when Mr Hoyle made me aware after his trip in the vehicle to Charles Perkins Centre, which was around 10, 11 April, I think.

40 Well, that's the actual utilisation of SIG. Were you aware through your role in the tender process that it was proposed that SNP use SIG as subcontractors?---No, there was nothing in the, in the tender board review package or information that was provided to me as a tender board reviewer that would have led me to say, yeah, okay, there is explicitly here a requirement to have SIG as a subcontractor, because if I had - - -

Not a requirement, a proposal.---A proposal, no, well, I didn't know of, I mean, the first time I've seen the SNP tender proposal has been in the collection of evidence as part of the section 22 notice that we were provided.

I see. I was going to ask you about that. What would you have seen, then, in your role as being a member of the Tender Review Board?---Typically it's an electronic, so it's an electronic submission. I think I talk to it in my statement, Mr Coleman, in that - - -

10 Perhaps, but if you could just indulge me.---Yeah, no, I, sorry, so basically the tender evaluation is loaded onto a tender software assessment tool, which comes with a set of recommendations to the Tender Board. There's a series of documents which are attached to that. It's not typical to have all of the tenders attached. It would be typical just to have the synopsis of the scoring and where the evaluation team had reached its conclusions.

I see. And in Exhibit 129 that we looked at, your letter, which is the letter of offer, where you say, "Thank you for your submission to our request for tender," that doesn't indicate that you saw the submission?---That's correct.

20 So you had not seen any information, is this your evidence, which indicated that SNP had proposed to use subcontractors, including SIG, if it was successful on the tender?---To the best of my knowledge, the first time I saw that was as a result of putting the section 22 information together.

From time to time in your role would you have had cause to discuss with Mr Smith the provision, how the contracted security services were going? That is, were SNP doing a good job or something like that?---Those conversations would have been had more with Mr Sullivan, who was my direct report responsible for this area, and effectively Mr Andrews - - -

30 Morgan Andrews?---Morgan Andrews, in his role as head of security. So we had meetings where we would discuss the performance of the contractor. It was rare until probably 2017-18 for Mr Smith to be in those meetings.

By the way, who's Mr Sierra?---Mr Sierra is the deputy operations manager at the time, so he was reporting to Mr Duffy in the Corporate Services area.

As I understand the evidence, it indicates that the following university personnel were aware from the time that SNP started performing the contract, I'm talking about the 2015 contract - - -?---Yes.

40 - - - that it was using SIG as subcontractors. So it's Mr Smith, right.---I believe he would, yeah.

Mr Hardman when he came on board.

MR BENDER: I object to this as a concept. I mean, is this a question about the witness's understanding of the evidence that's been given in the Commission?

MR COLEMAN: I'm going to make a suggestion to him once I've put these matters to him.

THE COMMISSIONER: I didn't quite hear the objection, Mr Bender. Can you repeat it?

MR BENDER: Well, I'm wondering if the question is the witness's understanding of the evidence that's been given on other days in the Commission.

10

MR COLEMAN: I'll put it a different way. I want you to assume the following members of the Sydney University staff were aware that from the inception of the performance of the contract in 2015 that SNP was using SIG to perform subcontractor services, okay?---I want you to assume that Mr Smith knew, Mr Hardman knew, Mr Andrews knew, and Mr Sullivan knew at least. Would you accept? Just make that assumption.---I can't make an assumption on that.

20

Well, from when Mr - - -?---So I have no evidence to say that that's the case.

THE COMMISSIONER: I think you're just being asked to assume it for the moment.---Okay, yeah, I'm happy to, I'm happy to play hypotheticals, Commissioner.

MR COLEMAN: That's right. I'm just asking you to assume it.

THE COMMISSIONER: It is hypothetical, that's - - -

30

MR COLEMAN: Well - - -

MR BENDER: And can I ask what date we're talking about, because Mr Hardman only came into the picture (not transcribable)

MR COLEMAN: Well, obviously from when Mr Hardman became employed.

THE COMMISSIONER: You go ahead, Mr Coleman.

40

MR COLEMAN: Thank you, Commissioner. So I just want to understand your position. You gave evidence in answer to questions from Counsel Assisting that as far as you were concerned, because there was no written authorisation by the university, and I take it you say that you, for SNP to engage SIG as subcontractors, that therefore they weren't authorised and they were in breach of the contract. That's your position as I understand it. Is that correct?---That's correct.

Did you take advice before, in reaching that position, or is that something you reached on, of your own accord?---That's just my evidence.

I know it's your evidence but I want to know did you take advice in reaching that position or did you reach that position of your own accord?---I believe I've reached that position of my own accord.

10 So you've reached that position notwithstanding on the assumptions that I've put to you, if the assumptions I've put to you are true, that the contract was being performed for the last three years by SNP using SIG as subcontractors in the performance of its operations. Do you understand the distinction I'm making?---To be honest, no.

20 I want to suggest to you that the contract was in fact performed by SNP using SIG as its subcontractors for three years with the knowledge of very senior Sydney University employees. Do you accept that?---The only thing I will accept is evidence that I've heard during this Commission hearing, which is that it is abundantly clear to me that Mr Smith was certainly aware that there was subcontracting happening.

All right. Now I want to ask you some questions about the KPMG report that we've heard about. When did you first become aware of that report? ---Again, the first time I came across that report was at the time of collecting evidence on behalf of the Commission.

And we can bring it back up if you like, but would you accept from the parts that Counsel Assisting took you to that it referred to the use by SNP of SIG as subcontractors?---Yes, that's contained in that report.

30 And I think the report was dated July 2016?---I'll take it that it was.

Right. And who should have provided the report to you?---Well, there are several people who could have provided it to me. I would have expected as a minimum Mr Duffy, I would have thought that Mr Sullivan could have reported it to me had he not felt that Mr Duffy was providing it to me. They would be the primary two as my direct reports.

40 So I think we will bring it up if it's convenient. I think the one that Counsel Assisting took us to was Exhibit 71 at page 198, if that can be brought up, please. Thank you. You'll see on the front page there, 26 July, 2016. ---Yes.

If you flick to the next page, and Counsel Assisting took you to this page, the distribution was to Mr Duffy, Mr Sierra, Mr Sullivan and Morgan Andrews, and we know that Mr Smith saw it.---Yes.

Would you regard it as a systemic failure in the procedures of the university that this report was not brought to your attention by those persons?---As

I've said in my evidence, I believe they should have brought it to my attention, particularly as the person who was delegate for the contract.

Was that something they just should have known or was there, is there some sort of procedure or mechanism by which they ought to have known that they should have brought to this to your attention?---Well, as part of fulfilling their duties as a direct report to me under their position descriptions, it would be implicit.

10 THE COMMISSIONER: Just common sense, isn't it?---It is common sense, Commissioner.

MR COLEMAN: Common sense. So if common sense had been followed, you would have become aware, and those persons had performed their duties, you would have become aware of this report in July of 2016? ---That's correct.

Right. Now, I think you said that had you become aware of the report you would have issued a breach notice to SNP.---I thought there was sufficient
20 in here to do so.

Was that a breach notice under the contract which would have been capable of remedy or would you have regarded it as a breach notice by which the contract would have been terminated?---I believe it could have been resolved by remedy.

And if you'd become aware of this report in July of 2016, would you have taken further steps to satisfy yourself and make investigations or cause investigations to be made about the use of SIG as a subcontractor?---Yes.
30

And would you have taken steps to investigate or cause investigations to be made as to the processes used by SNP, including – I withdraw that, SIG, including rostering of staff?---Where, where it had been flagged in the report that that would be important, yes.

Well, wouldn't you have wanted to know, because this would have highlighted to you for the first time that SNP was using SIG as a subcontractor. Correct?---Yes, it would have.

40 So wouldn't you have wanted to understand more about the role of SIG as it performed those subcontracting duties?---Yes, and in fact I would have asked for SNP to go through a process by which – because I would have imagined that their remedy, that they may well have put to me, and again, Commissioner, I'm playing hypotheticals as well, is that if I had knowledge of this report and the gaps that had been identified by the auditor, then I would have been asking SNP how did it come about that the subcontracting is going on without you having followed the mechanisms under the contract. I would have imagined SNP would then have made application to me in

their remedy to consider the use of either that subcontractor or an alternate subcontractor.

All right. But also the report identifies issues with respect to rostering deficiencies as SIG?---Yes.

10 And identifies issues with respect to – I withdraw that. So would you have wanted to be satisfied that the rostering system used by SIG and in turn SNP for the provision of the services under the contract was satisfactory insofar as you were concerned?---Oh, there's a lot in that report that I would want to run to ground.

And would you accept that if you'd done that there's a fair chance that you would have said to SNP, you're not to use SIG as a subcontractor?---That might have been a conclusion.

20 But certainly you would have insisted on there being appropriate measures for SNP if it was to use SIG in terms of ensuring that its rostering processes were satisfactory to you?---Well, what's flawed in that line of questioning is that that suggests that SNP didn't have a set of obligations to be making sure that they were performing the guarding services in accordance with their contract, so just because they've subcontracted to SIG, in my view wouldn't let SNP off the hook for making sure that they were compliant.

30 I'm not suggesting that that's the case at all, I'm suggesting that you would have wanted to have understood what at least SNP was doing or had done to satisfy itself that SIG was, for example, had adequate rostering systems in place. Correct?---Yes, but also paying the, you know, paying employees to the award and that there were no fatigue issues and all the things that are effectively being flagged there, I'd want to understand why on SNP's watch, for want of a better term, these things weren't being, you know, examined and SIG being held to account to deliver services in accordance with the contract.

And who at SNP would you have addressed these queries to?---Well, it would be my normal process to write to the managing director as the normal course of the administration of the contract.

40 I see. And that's Mr Roche?---Yes.

Commissioner, I see the time. I will be a short little while.

THE COMMISSIONER: That's okay.

MR COLEMAN: Convenient to you?

THE COMMISSIONER: We'll adjourn till 2.00.

LUNCHEON ADJOURNMENT

[1.02pm]