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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION GERDA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 28 FEBRUARY, 2019

AT 9.30AM

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

MR ENGLISH: We'll continue with Mr Vitanage, Commissioner.

THE COMMISSIONER: Sure. Come forward. I can't recall whether you took an oath or an affirmation yesterday.

MR VITANAGE: Affirmation, I believe.

THE COMMISSIONER: I'll have that administered again.

THE COMMISSIONER: Thank you. Mr English.

MR ENGLISH: Mr Vitanage, is it the case that you wish to take a section 38 declaration?---Yes, I do.

10 That's a matter that I've been informed of by Mr Vitanage this morning, Commissioner. I don't know if you have a copy of the Act available.

THE COMMISSIONER: Yes, I do, yes.

MR ENGLISH: Two sections. Can I just ask, Mr Vitanage, do you want that declaration to apply to your evidence yesterday as well as what you continue to say in evidence today?---Yeah, if it's allowed.

Okay.

20 THE COMMISSIONER: I'm not sure it operates that way, frankly.

MR ENGLISH: Well, Commissioner, can I make some submissions on that.

THE COMMISSIONER: Yes.

30 MR ENGLISH: 37(4) provides that "Nothing in this section makes inadmissible any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer." Now, that doesn't say "did not object", so that seems to suggest that there's, in my respectful submission, an opportunity for or a consideration for the witness to object at any time during their evidence. And if that's read with 38, which then allows you, Commissioner, or any person presiding at the compulsory examination or public inquiry, to declare that all of the answers given by the witness - - -

THE COMMISSIONER: Yes.

40 MR ENGLISH: - - - are regarded as having been produced on objection. So, again, not that it was produced but regarded as having been given or produced on objection by the witness, and then there's accordingly no need for the witness to make an objection in respect of each such answer or document or thing. So in my respectful submission, the witness can make the objection at any stage and you, Commissioner, have the power to declare that all answers given by the witness may be regarded as having been given or produced on, given on objection, and that would cover yesterday's evidence. And I'm informed that my learned friend Mr Bender

has looked for authority on these provisions and hasn't been able to find any. He's nodding.

10 THE COMMISSIONER: I would have said, my preliminary view is that "given" really is a reference to answers given after the declaration is made. But, I mean, maybe that's a – can I say two things. One is that on the basis of what I heard yesterday I would be very surprised if there was anything to be concerned about, but whether there is or there isn't will be a matter for the end of the day, and whether or not the declaration I will make now
10 protects you is really for another day. If I was to tell you that it protected your answers yesterday and I turn out to be wrong, that would be pretty unfair. So what's happened yesterday has happened, but as I say, unless Counsel Assisting has a different view, I'm not sure anything yesterday ought be of concern.

MR ENGLISH: I certainly have no intention of making, on the evidence I've heard from this witness, any adverse submission against him in any way.

20 THE COMMISSIONER: All right. Well, then, you've heard that. So I'll make a declaration now and see how we go.---Okay, okay.

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.

30 **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.**

40

THE COMMISSIONER: Thank you, Mr English.

MR ENGLISH: Mr Vitanage, yesterday we were discussing the risks of subcontracting in the procurement process. You recall that?---Yes.

I just want to ask you about a couple of other potential risks and whether they were discussed during the procurement process. The first is the risks

concerning guards working in contravention of fatigue limit preventions. Is that something that was ever discussed amongst the Tender Evaluation Committee members during the procurement process?---I don't recall specifically discussing the element of fatigue, but I recall there's a, there was a criteria in the request for tender documentation about, I guess, how they're going to deliver the services. So if it, if there, if it was highlighted there, we would have discussed it, but from memory we didn't, I don't recall discussing the fatigue factor.

- 10 And what about risks concerning the prevalence of fraud and corruption in the security industry generally? Was that ever raised?---At that time, like I said, I wasn't the industry expert. It wasn't raised to the Tender Evaluation Committee in terms of what's, what's happening in, in that sense in the market, so we basically just went through the tender process and assessed all submissions with what was submitted and then proceeded to clarify and go down that evaluation process.

Now yesterday you gave some evidence in relation to the procurement strategy.---Yeah.

20

And you said that some work had been done in respect of subcontractor risks and that strategy. Do you recall that?---Yes, I do.

And you weren't quite sure whether those risks had been formally written into an updated version of the strategy.---Yeah. Yes.

We've just been assisted with some information from the university overnight.---Ah hmm.

- 30 Are you aware that the university's developed and implemented a risk assessment tool to assist in understanding project and procurement risks in its procurement processes?---I, I, like I said yesterday, I'm not in that, that section of procurement services. I've only been hearing that there's, there's a work that the quality governance and planning section does. Yesterday I had a brief conversation with the chief procurement officer and he did mention that they have developed that framework and the risk, the risk aspect. But, yeah, I don't work directly in that area, so - - -

- 40 So is it, and if you don't know, you don't know, so a risk assessment tool which evaluates subcontractor risk has been developed within the university? Is that right, to your understanding?---Only, I, I know there was, there's definitely focus on it in terms of the strategy around that aspect in the university. Like I said, I don't work in that area but I've been told yesterday that they have, they've developed or they're developing it.

And whether or not that's been formally drafted into the actual strategy, you're unaware, are you?---I'm unaware of that, but I feel it will definitely come into the strategy going forward if it's not there.

THE COMMISSIONER: Has this risk assessment tool been – I’m not asking you, I’m asking Counsel Assisting – do we know whether it’s been documented?

MR ENGLISH: I’ve just been given a document. So I might just tender this if I can, Commissioner. A copy for you and the witness. This is what we were provided with overnight by the university.

10 THE COMMISSIONER: And how was it described by the university?

MR ENGLISH: A risk assessment tool.

THE COMMISSIONER: Thank you. That will be marked Exhibit 137.

**#EXH-137 – UNIVERSITY OF SYDNEY DOCUMENT TITLED
‘GUIDELINES FOR USING THE RISK ASSESSMENT TOOL’
DATED 11 NOVEMBER 2018**

20

MR ENGLISH: And we can hand that round to – it can be brought on the screen, thank you. All right. So it’s been brought on – you can see, Commissioner, in its soft copy version it’s an Excel document on the screen.

THE COMMISSIONER: Yes.

MR ENGLISH: So there’s a background there, do you see, Mr Vitanage?
---Yes, I do.

30

Is this a document you’ve seen before or not?---I haven’t seen this before.

And you can see instructions for completion. There’s a bit of a flowchart there as to what has to occur.---Ah hmm.

And then if we go to page, Commissioner, it doesn’t have a page number, but if we go to, it’s the fourth page and that’s it on the screen now.

THE COMMISSIONER: Yes.

40

MR ENGLISH: You can see that there are, under Organisation, Risk Appetite and Tolerance, Integrity and Excellence, there is a reference to “Could the procurement process involve probity risk, subcontractor management?”

THE COMMISSIONER: When was this created?

MR ENGLISH: That might be a question Mr Bender can answer.

THE COMMISSIONER: Yes. Mr Bender, I'm not expecting you to answer it now, but can you find out when that was protected?

MR BENDER: Yes, Commissioner.

THE COMMISSIONER: The properties of the document suggest it was on 11 November, 2018, but if you can provide confirmation of that, that would be helpful.

10

MR BENDER: Yes, Commissioner.

MR ENGLISH: I'm instructed, Commissioner, that that's the only reference to subcontracting. Perhaps if Mr Bender can assist with that too if there's any further reference than what I've drawn your attention to on the fourth page, which can be seen on the screen now in red, under A.

MR BENDER: Yes, I'll get those instructions as well.

20

THE COMMISSIONER: Can I ask you this. I know it's not your document. What would you understand the probity risks to be, where a subcontractor's been engaged?---Knowing what I know now, it is about treating them fairly and making sure they get paid the award wages, that they're not, there's not misconduct happening in terms of how they do their job and just, just in terms of subcontractors, yeah, I, that we don't want to, we want to make sure that they're financially stable as well, so it doesn't impact the contract. We don't want anything untoward happening to them.

Yes.

30

MR ENGLISH: Thank you, Commissioner. The document properties indicated that this document – that is, the spreadsheet – was made, I think, on 11 November, 2018. Have you been on leave from the university from around that time?---I was on leave on 30 November. That was my last day. I think the idea with this type of document is because our section is split into category management and sourcing, so this looks like it would go into the sourcing process, so it'll, it'll be one of the templates that the sourcing team would be using going forward. I think that's what it seems to be.

40

And it's a document that applies throughout the university, rather than just Campus Infrastructure Services, is that your understanding?---This looks like a university-wide, so for all projects you'd have to look at that.

THE COMMISSIONER: And by sourcing, do you mean sourcing a service provider?---Yes, goods or services, yeah, so it should fall into that risk, risk framework of that sourcing process.

Thank you.

MR ENGLISH: If we just go back to Exhibit 137 briefly. The fourth, yes, that's the page there on the screen. The Commissioner asked you some questions about the risks of subcontracting. Assuming that is the only entry there, "Could the procurement process involve probity risks, subcontractor management," would your evidence be that it'd be wise to perhaps step out what some of those risks are so they can be specifically evaluated in this document?---Absolutely. I think knowing what we do know now, it, it needs to be more detailed. And I know that we've, we've, in, in the, in the bigger projects in the facilities maintenance space now, that we are looking much more, there's much more scrutiny on that subcontract element.

If we can go back to Exhibit 136, which is your statement, page 9, page 51, please, Mr Vitanage. You speak about the tender evaluation plan and you say the critical part, in the second sentence, is "how you're going to do it and the people involved in the committee and the weightings, that is really the crux of the document". When you say the crux of the document, what are you referring to there?---So we're, we want to make sure that we bed down who the Tender Evaluation Committee is before we unlock any of the responses. We want to make sure that the weightings of each of the criteria are all approved by the Tender Evaluation Committee and that the criteria is also locked in so it doesn't change after we open the tender.

When you say the weightings are approved by the Tender Evaluation Committee, as I understand it, there's ratings from 1 to 10 and they're grouped by two, aren't they?---I, in this, it varies from project to project but I believe that in this one it was grouped in that, in that way.

So when you say determining the weightings, do you mean when you come together as a committee to determine – just can you clarify there what you mean? I just don't quite follow.---Yeah. So the, the weightings would be, for example, if you want to ask if one of the returnable, the criteria in your tender would be demonstrated experience and providing security services, we would, not procurement, we would have, we, we'd facilitate a discussion but we would say what do you think out of 100 per cent, how much do you think that should be weighed.

I see. So the weighting for individual criteria?---Yes. Up to 100 per cent.

So now the specific rating for each tender across the criteria?---No, that's done individually on your own assessment of your submission.

Thank you. If we can go to page 13, please. Paragraph 82, "For the mandatory checking of master licence and insurances, those were checked from the document submitted." Was there any check of SIG's master licence and insurances?---So, from my knowledge, I think they were just, it went on what SNP submitted. I didn't, so, because I was just a Tender Evaluation Committee member, the project manager may have, may or may

not have checked it, but from, if I, if I would say I, I think they're just focussed on what SNP provided in the response, so that's why - - -

But SIG – sorry, I withdraw that. SNP identified SIG as the subcontractor for guarding services?---Yes.

10 And information as to the master licence and insurances from SIG could have been sought by the university?---It could have been, it could have been, I'm not, I wasn't part of, so there's a mandatory screening process before we go into the assessment phase, so if the, if the licence were provided in, in that submission, they would have been looked at and ticked off, I'm certain, if they were requested by, from SIG.

Please excuse me a moment, Commissioner. I'm just wondering if Exhibit 37, page 21, can be brought on the screen. This is an email from Ms Lynn Li at SIG Services to SNP operations, do you see that?---Yes.

20 And it says, "Please find the GIO workers' comp certificate of currency, 2015/2016."---Yes.

And if we go over to page 22, you can see there that the certificate of currency for SIG for the period 31 August, 2015 to 31 August, 2016 identifies that it has coverage for 25 workers with a total wage bill of \$237,255?---Yes.

Have you ever seen this document before?---I can't recall seeing this one directly.

30 Well, do you accept if you had – I withdraw that – if the university had obtained this document it could have performed an analysis of the number of guards being supplied through SIG as compared to its coverage by reference to its certificate of currency for workers' compensation?---Yes, I agree. If, if, if this was provided in part, part of the overall package in that mandatory section, there, there should have been a bit of a, there should have been a review of the numbers of workers, workers compared to the wages and so forth.

40 But do you agree that it's reflective of the fact that, at the start, the strategy document doesn't identify subcontracting risk and therefore this risk falls through the cracks, so to speak, through the procurement process and the contract management process as you move forward?---Yes. Like, like I said yesterday, at that stage in, in 2015, '14/'15, the, the risk of subcontractors wasn't really highlighted to the Tender Evaluation Committee. So usually when we were preparing the procurement strategy it was just, it would have been a risk under a heading in that, in that section. So agree, we, we need to be, we should have been more, had more, should have more scrutiny on subcontracting.

If we go over the page to page 14 of Exhibit 136, please. Exhibit 136, page 14, please. Paragraph 83, you say, "At that stage," and I think you're referring to the time when the procurement process was under way, "the university did not have a code of business ethics or business practice for suppliers." Is that still the case?---I think probably in, in that, that, that lot of the statement, in, that I, in this, that's reflected in this statement, I probably wasn't a hundred per cent clear on what the question was from the, the, the ICAC interview. If, if, if you look, if you're asking about whether we send out, like, a how suppliers should perform or behave while working at the university, is that, is that the question that you're asking now?

Well, I'm just asking if you know whether the university currently has a code of business ethics or business practice for its suppliers?---Probably, probably, I'm probably not sure on that one. I, yeah.

And would you agree that such a code, again, would need to ensure that whatever the university's business ethics or practices for suppliers are, applies also to subcontractors supplying to those suppliers?---Knowing what we know now and, it most definitely has to incorporate that element.

20

Perhaps I can make a request through Mr Bender, if there's such a document now in existence?

MR BENDER: I'll get those instructions as well.

MR ENGLISH: Now, paragraph 85 you talk about cleaning and security being high-risk contracts.---Ah hmm.

What was your understanding of the risks around those two areas, starting with 2014 when the procurement process was on?---For both cleaning and security?

30

Yes.---So with security, my, from the obvious, obviously with security is that it's just, you have a security service provider to make the university a safe place for students and staff to, to, to be there and to learn there and to teach there. So if there's, if there's not enough coverage and if the security contract isn't, isn't going well and has not performed properly, then there's big risks around, I guess, the, the wellbeing and the safety of students and, and staff. So that's why the contract in terms of security is, is quite a high-risk contract when we want to re-tender it or tender it.

40

So at the time you perceived a risk in the contract, not just insofar as the contract itself could contain risks, but risks that were posed to the overall security of everyone who was on campus?---Yeah, pretty, that, that's, from, yeah, exactly. So just - - -

And does that extend to risks posed to campus assets as well that security are there to monitor and patrol? Is that something that you considered at the

time?---I guess that, that makes, that's pretty, that makes sense in terms of, that would be part of the security services scope, so they would have to go and ensure that there's no damage to buildings in part of their patrols or to stop it from happening.

10 But in 2014 you said you considered that risk to persons on campus was an important factor. Did you, as a committee member, consider like risks to university infrastructure if guarding wasn't performed adequately, for example?---I think, I would say it would fall under the overall safety of the university, and that would fall also into the wellbeing of the assets as well. It's, we probably looked at that in that, in that umbrella.

If we go to page 15, please. You speak about Mr Owens in paragraph 88. You note that it was a complex tender. You say, "I think if someone like Dave Owens had more time and subject matter expertise within the CIS," sorry, "or the subject matter within the CIS had more time, then probably we should have improved the specifications."---Ah hmm.

20 Just firstly, Dave Owens, you say if he had more time or subject matter expertise. What do you mean by that?---I think I was referring to, because the contract was, has expired and then we had a six-month extension, we were, there was, there was a, there was time pressure in getting a new contract in place because there was no, after six months, after that six months extension there's no contracted security coverage to the university. So I guess at that stage, like, I, I'd, I, Dave Owens has provided to the Tender Evaluation Committee as a, as a subject matter expert, so I guess if he had some, if he had a bit more time to run the tender, we could have improved the specifications of each of the services that we're looking for, or we, CIS could have recruited or had personnel within, within the ranks that
30 were much more, in, in much more understanding of that security services and environment to help us with specifications.

Is it fair to say from that answer that you feel either due to a lack of subject matter expertise or time pressures that the risks associated with the tender weren't fully explained to the committee before or during the process?---I think there, there were, there were, there were definitely risks that we knew about and were told about, but in terms of the risks of the, for example, the subcontractor risk, that wasn't, that wasn't really, wasn't the focus. We, we did ask for it in the tender specifications and we reviewed the responses and
40 we had clarifications, and once we did that we continued with the assessment. But we, yeah, the Tender Evaluation Committee wasn't really, it wasn't a consistent thing that presented to us about a subcontractor risk or assessing.

You say at 89 – just before I get to that, you've mentioned subcontractor risks in the context of 88 and you said, "We should have improved the specifications." Are there any other specifications, looking back now, you think could have been tightened up for the purposes of the tender?---I think

we, we probably, because we had four services in that one tender and one was, for example, line marking, which is a bit obscure. For example, we probably would look to review that because I don't know how that really falls into security and security services, and we, even, I remember questioning that as well but it was, I think there was a contract expiring and then they put that together. But I guess just, yeah, just tightening, tightening up the specifications within, in all those, the actual three aspects, the guard services, the, I think it's just sort of the technology element, security technology, and cash, cash collection was pretty straightforward. But
10 definitely guard services and the CCTV, that sort of electronic security aspect. If we had more time we could have had a better scope.

89, you say the likes of Dave, that must be Mr Owens, and Dennis, Mr Smith - - -?---Yes.

- - - and Bob Deakin, the former facilities services manager, would have been more influential in terms of providing feedback about the hourly rate for guards from SNP. So what are you saying there? That those persons contributed to that discussion?---So we, we, I remember during the process
20 we had a, we had a few discussions around the flat hourly rate. So I definitely would have questioned how come SNP had a flat rate while the others were increasing throughout the year. So the feedback we were provided by Dave and Dennis and Bob, because they, they work in the facilities services and, and security, well, not Bob, but Dave and Dennis would have some experience with the security market, we were told that a, that it, that, the feedback we got from the clarifications was satisfactory.

The flat rate was satisfactory?---Yeah, for, yeah, that's what we were told, that it was manageable and we, we just continued with the assessment.
30

If I can just draw your attention to the last sentence on page 17. You say, you're talking about the process and then you say, "So I think there are things that were highlighted in the interview where, as the Tender Evaluation Committee, we should have been notified of some of the risks of those things, but at that time it was a very different scene and scenario and the campus was very different, so I think it was not as a high priority as it is now." Now, I think you've given evidence about those risks that you should have been notified about, but can you tell the Commissioner what you mean by saying it was a different scene and scenario on campus and therefore it
40 wasn't such a high priority as it is now? What contributed to you forming that view?---I believe in terms of the security contract or the security scope, procurement, procurement were responsible for assisting CIS in, in getting a new, new contract and going to tender. So when we discussed the strategy and the risks, we weren't, we weren't constantly being asked to review the subcontractor risks and the issues with payments and, and rosters and things like that, so we, we came into the, into getting into the new, getting to renew the contract with, with feedback that the current contract was, was generally working fine and that these are the things that we needed to improve. So

that's what we focused on, and we also wanted to bundle some of the services to get, to get more value for money commercially, so that's, that's the way we approached it at that time.

You said the current contract was working fine. Was that with SNP Security, the current contract?---I, I believe so. They were the - - -

The incumbent?---Incumbent.

10 So who told you that the current contract was working fine?---It was just discussions within the working group and probably the likes of, it would have been the Morgan Andrews, the Dennis Smiths, the Bob Deakins, so when we were just discussing it with the CIS personnel.

Well, it couldn't have been Mr Owens, could it - - -?---No.

- - - because he wasn't there to experience the current contract.---No, he wasn't there.

20 And was there a discussion when it was said that the current contract's working fine that the current contract back then involved subcontractors? ---There may have just been a mention that there's an element of subcontracting, but not, not in a great detail.

All right. Thank you, Commissioner, that's my examination.

THE COMMISSIONER: Thank you.

MR COLEMAN: No, thank you, Commissioner.

30 THE COMMISSIONER: No questions, Mr Bender?

MR BENDER: Not from me, Commissioner.

THE COMMISSIONER: No.

MR BENDER: No.

40 THE COMMISSIONER: All right. Thank you very much for your assistance and you're discharged from your summons and free to go.

THE WITNESS: Thank you.

THE WITNESS EXCUSED

[10.10am]

MR ENGLISH: The next witness is Wayne Andrews.

THE COMMISSIONER: Just one moment.

MR BENDER: I have gotten instructions to some of your questions, Commissioner which will assist now.

MR ENGLISH: Oh, I'm sorry.

10 MR BENDER: In relation to the risk assessment tool, my instructions are that it was developed in the second half of last year and that the date in the document appears to be right that the university provided to ICAC.

THE COMMISSIONER: Thank you.

MR BENDER: And that it was formally launched when the university reopened in January after the Christmas holiday.

THE COMMISSIONER: Thank you very much.

20 MR BENDER: I'm also instructed that there is a document that is not in final form yet entitled Statement of Supplier Expectations that may be relevant to some of these issues. That has - - -

THE COMMISSIONER: And you're happy to provide that?

MR BENDER: I haven't seen a copy yet. I can get it and perhaps discuss it with Counsel Assisting if that's convenient.

30 THE COMMISSIONER: That's fine.

MR BENDER: Thank you.

THE COMMISSIONER: Thank you.

MR ENGLISH: Call in Wayne Andrews.

THE COMMISSIONER: Come forward, Mr Andrews. So will you take an oath or an affirmation?

40 MR ANDREWS: An oath.

THE COMMISSIONER: Take a seat.---Thank you.

Mr Andrews, would you please for the record just state your name and your occupation.---Yes. My name is Wayne Andrews and I'm the chief financial officer of Sydney University.

10 Thank you. You are unrepresented, I understand?---That is correct.

Let me just explain a few things about your rights and obligations as a witness before this Commission. As witness you must answer all questions truthfully and you must produce any item that I require you to produce during the course of your evidence. You can object to answering a question or producing an item. The effect of any such objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings, or, subject to two exceptions, in any criminal or disciplinary proceedings. The first
20 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, including most importantly an offence of giving false or misleading evidence. If you give false or misleading evidence to this Commission it is a very serious matter, a very serious criminal offence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials, and because of your employment with the university 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
30 a finding that the public official engaged in or attempted to engage in corrupt conduct.

Now, rather than you taking an objection to each question as we proceed and then answering it, I can make a declaration pursuant to section 38 of the ICAC Act that all your answers and anything that you produce during the course of your evidence will be regarded as having been given on objection. Would you like me to make that declaration?---Yes, please, Commissioner.

40 Thank you. 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 this witness during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

10 **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 THIS WITNESS
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: Yes, Mr English.

MR ENGLISH: Thank you. If I can just start by tendering Mr Andrews's
statement of 12 July, 2018.

20 THE COMMISSIONER: Thank you. That will be admitted into evidence
and marked Exhibit 138.

**#EXH-138 – STATEMENT OF WAYNE ANDREWS DATED 12
JULY 2018**

30 MR ENGLISH: And if that can be brought on the screen, please. Mr
Andrews, you've stated your name and your occupation for the record. Can
you just tell the Commission what qualifications you hold, please?
---They're a Bachelor of Business in, from University of Technology
Sydney, a CPA, Masters of Applied Finance at Macquarie University.

And how long have you been working at the University of Sydney for?
---Almost three years.

And before that have you been in academia?---No, I've been a chief
financial officer in commerce.

40 I'd like to ask you some questions firstly about the process of
acknowledging invoices prior to their payment and what you refer to as
vouching in your statement.---Yes.

If we go to page 2, it says the chief procurement officer reports to you.
That's Mr Allen?---That's correct.

So are you working with him to ensure that the system of vouching before
invoices are paid is satisfactory across the university?---Yes.

If we look at paragraph 9, you say, “The invoices from SNP Security go to the accounts payable team currently resident in CIS but reporting through finance at the university. The normal course of events is that the appropriate authorities would accompany the invoices, acknowledging that the services had been received and that they’re due for payment.” Now, what are the appropriate authorities you refer to there in relation to the SNP invoices?---So there would be two things. One of them would be somebody who is proximate to the activity taking place verifying that the service was actually received and performed, the other is for a financial delegate to
10 approve the expenditure of the funds, in other words, are the funds available to expend and delegated to be spent.

Now, you spoke firstly of someone who needs to be proximate enough to the activity to confirm that the services have been received and performed. Is there a distinction between receiving the services and having them performed?---If it’s a service it would be performed. I was probably using comprehensive language. So for example if we were to procure a computer then goods would be received.

20 Well, that’s an easy example because one can see the computer on a desk at any time.---Yes.

Correct?---That’s correct.

Now, in respect of security guarding services, one receives an invoice saying on its face that guarding services have been received by the university - - -?---Ah hmm.

- - - but the question whether they’ve actually been performed is something
30 that’s been inquired into over the course of this investigation. And can you tell the Commissioner who it was to your understanding that would ordinarily provide the assurance that the services had been received and performed? This is for security services using SNP and/or subcontractors. ---Yes. It would be, and I won’t get the title exactly right, but it’s the head of security in CIS.

Was that person a Mr Andrews or a Mr Sullivan or a Mr Smith, do you know?---I’m sorry, I don’t know their names.

40 And what does that person have to do to satisfy someone in accounts payable that those services have been received and performed? ---So the people in accounts payable are simply looking for the appropriate person to have signed off the invoice. To give you some context, they pay over 100,000 invoices a year, so what they’re looking for is verification that that activity has been performed, they’re not re-performing the verification activity. So they’re only really looking for the signature.

And is it an expectation that the division which had the services rendered would perform a more thorough analysis of whether the services were actually performed before the relevant delegate signed off?---Yes. We would expect that they'd have a process in place to absolutely satisfy themselves that the services had been performed before we paid for them.

Now - - -

10 THE COMMISSIONER: When you say you have an expectation they'd have a process in place, on what do you base that expectation?---So the requirement for an invoice to be paid at the university in general, not specific to guarding services, is that the person who receives the services or goods is declaring to us that those services have been received. In order to do that they must have a process in place to satisfy themselves. Now, that will need to be contextually appropriate. As I mentioned a little bit earlier, it's quite different to receive a physical good that you can see from a contracting service.

20 But are there any guidelines that they receive as to what the process should be?---No because the university does a great many things which are vastly different and each one will have to be contextually appropriate.

But are there any checks carried out, particularly with a large contract such as this, the supply of guards or guarding services, are there any processes in place which would check and verify that what is in place at the ground level, to check the delivery of services is up to standard?---So that would be a matter for the contract manager, the, the area that is procuring the services. What I can say is that we are in the process of reforming our entire procurement process, including one of the steps that we're taking is in
30 dealing with the handover of a contract to a contract manager. So importantly, identifying who the contract manager is but in giving the contract manager instruction on what is involved in managing the contract. That historically had not happened.

Thank you.

MR ENGLISH: You spoke of the person receiving the services providing a declaration that those goods or services had been received. I mean, is it in the form of a declaration or is it just a signature on a piece of paper?
40 ---Signature on a piece of paper. So there's a, what they call in the university, a green stamp, which identifies the authoriser.

But it doesn't, for example, say I, insert name, declare that - - -?---I don't think so. I can't remember exactly what it says but I, I don't think it says that.

There's been some evidence before this inquiry that in a period from at least 2016 to April 2018, the person responsible for approving invoices, Mr

Dennis Smith, wasn't on campus after 3.00pm during the week and was not on campus – unless called onto campus for an issue – on weekends, and in those circumstances he had no direct visibility, nor did the university by way of supervision, as to whether the services which were ultimately billed to the university had been provided. Now, just assuming that from me and assuming that there was this green stamp on these invoices, what does that say, in your mind, about the process of verification that was in place at the university as to the receipt and performance of security guard services?---So putting those facts together would suggest to me that the person that was signing off was not actually performing that verification and was either signing perfunctorily or incorrectly.

THE COMMISSIONER: But he says that, and I've got some sympathy for this, that he was employed to perform certain hours and beyond that what he did was just to ring in and seek assurance that the guards that were supposed to be there would be there. It seems to me that that is a process which is fundamentally flawed. Do you agree?---Yes, I do.

MR ENGLISH: And in fairness to Mr Smith, he did give evidence that he actually asked for further resources to be deployed by the university in terms of internal recruitment and that was met, at least that proposal wasn't accepted. So on his evidence, he went to some lengths to obtain extra supervision but was knocked back. I mean, what does that say about the processes that he was expected to sign off on, given the absence of resources in that area?

MR BENDER: I object.

THE COMMISSIONER: Why?

MR BENDER: That question's predicated on the fact that evidence was true.

MR ENGLISH: Well, if my learned friend - - -

THE COMMISSIONER: Well, it's not just Mr Smith who gave that evidence, it was evidence from - - -

MR ENGLISH: Mr Sullivan, I think.

THE COMMISSIONER: Yes. That it was an issue raised and I think Mr Sullivan said something to the effect that it was a resourcing problem and he was told there weren't sufficient resources to do it.

MR BENDER: I respectfully agree that it was Mr Sullivan's evidence, but with respect - - -

THE COMMISSIONER: Well, isn't it the university's position that when Mr Smith went home at 3 o'clock in the afternoon that it provided resources to check what was going on after 3 o'clock?

MR BENDER: Not other staff members at the university at that time. But the issue as to whether that was raised with senior management, or the answer was there isn't enough in the budget for it, I respectfully submit, is not uncontroversial.

10 THE COMMISSIONER: No, I'll allow the question.

MR ENGLISH: I've got to remember it now, Commissioner. So - - -

THE COMMISSIONER: It was a while ago,

MR ENGLISH: So Mr Smith gave evidence that he'd go home at 3 o'clock and he was available by phone but he wasn't on campus unless required. He also gave evidence that he'd raised the need for further recruitment of internal team leaders, he said, one purpose of which would be to supervise
20 contracted guards. And Mr Sullivan spoke of a like request being raised but due to operational, and he included budgetary constraints, it never went ahead. Now, given that that issue had been identified within the division – that is, a lack of supervision – and at the same time Mr Smith is, it would seem, still performing the task with the green stamp, what does that say about the adequacy of resources at the university, at least insofar as CIS is concerned, as to the process of adequately vouching for the receipt and performance of security guard services?---So I'll preface my answer by saying that the management of CIS and frankly all activities outside of the
30 finance are not in my purview, so I don't have proximity to exactly what's going on in CIS for these circumstances. What I would say about budgets and commerce in general is that the application of resources is always a matter of priorities. So the question of whether or not resources are sufficient is never really the right question, it's where the priority of the resources that are provided is placed.

THE COMMISSIONER: I would have thought when student and staff safety are an issue, it would be a fairly high priority or should be, do you agree?---Yes, I wouldn't disagree with that.

40 MR ENGLISH: I mean the evidence – and I don't expect you to be aware of this – but the evidence from Mr Smith was that he was of the view that he couldn't rely on CCTV data, GPS data or swipe data to verify the location of guards. So in the circumstances I've just described to you, there was effectively no checking of whether security guards were performing their task outside of the hours of 3 o'clock in the afternoon and on weekends, and I just suggest that that is a flawed procedure from which invoices can be approved and paid pursuant to a green stamp. Would you agree?---I think you need to separate the verification of the receipt of the services from the

controls over the payment of the invoice. So did, I didn't know anything about this investigation until after I was interviewed by ICAC but I did, it did cause me to go off and look at some of the documentation that was forwarded through, but on the basis of the documentation that I saw, and it was only a small sample, it appears to be perfectly in order. It is not possible for the accounts payable team and the function of paying invoices to re-verify the receipt of goods, given the volume that I mentioned earlier, over 100,000 invoices a year. So I don't disagree with you that there is, was, if the facts that you describe are correct, a flaw in the verification in that particular area but I think to suggest that there was some downstream control that could have addressed that deficiency is incorrect. I think if the facts - - -

THE COMMISSIONER: I can, sorry, you go on.---I think if the facts are true, then there certainly is a deficiency. I think the place to address that deficiency is at the point of verification.

I don't think Counsel Assisting is suggesting that anyone within accounts staff should or could verify that the services had been delivered, but then again, the university knows that Mr Smith is not on-site beyond 3 o'clock, so the university knows that to the extent he provides verification of services provided after 3 o'clock, it's problematic.---So the university knows, there's a suggestion that knowledge is ubiquitous. The knowledge certainly must have existed somewhere inside CIS. It certainly wasn't known to me, and not known, as far as I would imagine, to the university at large.

Yes, thank you.

MR ENGLISH: But I guess this is what I'm trying to drill down to a bit. You say it's not ubiquitous, the knowledge within the university, but at the same time CIS and other departments shouldn't be treated as silos, I'm sure you'd agree.---Yes.

And there does need to be, would you agree, communication between your department in accounts payable with the various other departments of the university that incurred the costs to ensure that their processes of vouching and ensuring that services are provided for adequately actually occurs, so you've got confidence in accounts payable that when it comes up the line there is a sufficient process in place to ensure integrity of payment.---That's why, as I have already stated, I would not expect the people in accounts payable to go fishing for and examine the quality of the processes in each of the departments that receipts goods to them. Given that they do pay 100,000 invoices a year or more, what they are looking for in the process of control is verification that that occurred. If somebody incorrectly falsely verifies that that procedure has been undertaken, I wouldn't expect them to go and investigate that.

THE COMMISSIONER: But on one view this is not a question of falsely verifying, it's a question of somebody verifying when they couldn't possibly be able to verify. So I accept that accounts payable may not be responsible for that but is there anyone within the university who takes it upon themselves, to the best of your knowledge, to verify that the processes of verification are adequate?---Yeah. So the management, well, firstly we have an internal audit function, which is quite effective, but the management in each area is responsible for the conduct of the activity in their area.

10 Yes. Okay.

MR ENGLISH: It seems, maybe it's my fault for asking it in terms of, phrasing the question in terms of an accounts payable process, but there seems to be a lack of communication between higher levels of finance at the university and the individual departments to ensure that their verification systems are adequate, would you agree?---No. I don't, I think it is finance's role to set up a system of internal control and the means by which they can, we can satisfy ourselves that an activity has been undertaken with some evidence in the documentation that's provided to us. But I would not
20 imagine it feasible, given the scale of the university and the complexity of the university, for finance to examine the vouching process, verification process in each, each area of the university.

Well, do you say that the means of financial control for the process of ensuring proper vouching of invoices in the CIS division in the period from 2016 to April 2018 was adequate?---If the facts that you've provided me with are true then, no, it is not accurate.

30 One issue that has become apparent over the course of this inquiry is that the university, other than by way of physical inspection of site time sheets for security guards, did not request a copy of the site time sheets for its own records. Now, one way to ascertain whether guarding services had been adequately performed, one would think, would be a reconciliation of those time sheets with other material, for example, invoices and the like. Were you aware of that, that site time sheets that were generated and kept within the Campus Security Unit weren't provided in a carbon copy to the university?---No, I wasn't, nor would I expect to become aware of it. That's a fairly distant process from my office.

40 Maybe at a specific level, but at a larger level isn't it common sense that the university should retain a copy of the site time sheets that say which guards performed which functions on its campus?---If I was managing that process, that's what I'd do.

So that was a deficiency, you accept, in respect of the procedures of the CSU at that time?---If you're asking for my opinion, I think that is deficient.

And if we can just go to page 3 of your statement, paragraph 12, in fairness to you, you say that you would have expected the variable invoices to be supported by time sheets or something equivalent to a time sheet.---Yes.

And who would you have expected to, if that was provided, who would you have expected to hold that information and analyse it if need be?---So the management of security who are supervising the guards in, you call it CSU, I call it CIS. They're, I think they're the same thing.

10 I think CSU is within CIS.---Yeah.

And so you would have expected site time sheets to be signed off by somebody who is knowledgeable enough to be aware that the services were provided. What do you mean by that?---So if I were designing the process – and I didn't design the process, nor am I responsible for it – but if I were I would expect that you'd either need to be present to observe the activity occurring or have some other form of evidence to satisfy yourself that the activity occurred. And I have subsequently become aware that the university had some technology in place that could have done this and
20 wasn't employed. I only know that now. I didn't know at the time.

Over on page 4, you say at 14, "I'm prepared to acknowledge the university is not at best practice yet in relation to invoice payment processes." What are the deficiencies you're able to identify?---So when I arrived at the university it became apparent to me that the university had some very poorly configured and legacy technologies and some quite, some processes and policies that weren't fit for purpose. It basically hadn't been refreshed with the appropriate systems and controls for some time. So in 2017 I started a, a process of reform with the chief procurement officer, not limited to accounts payable because the payment of an invoice is the very end of a
30 comprehensive process which commences with the letting of a contract. We have started to, since 2017, implement a comprehensive reform which involves the replacement of the systems, the rewriting of the policies, the development of tools to support the procurement process – an example of which was presented a little bit earlier – and, importantly, elevating the authority of some of the governance committees that look at this process, for example, the Tender Board, which previously I think performed a, performed a relatively perfunctory role and is now, I sit on the Tender Board now, and performs a much more diligent governance role.

40

Can I just ask another question. It's probably something I should have asked before. When you spoke of the process of someone vouching for the receipt and performance of services or goods and services, and a delegation to approve payment of the funds, is that meant to be two separate people or can one person perform both?---It can be, it can be one and the same, and the university's process is a little bit arcane in that they're using paper to do this, which is one of the purposes of the reform. What would happen in a normal contemporary system is that this would be done electronically, that

the receiving of goods would happen electronically, it'd be matched with a purchase order, approved by the person with the relevant financial authority, and receipted by somebody who is sufficiently knowledgeable to evidence that the goods were received. So your description of the paperwork is analogous to what would, and, and my expectation is analogous to what would happen in a contemporary systems-based process from procure to pay.

10 Shouldn't it be two separate people who perform those tasks?---Not necessarily.

Well, in the example of fraud and corruption, one who can authorise, who has the sufficient delegation to approve the payment of funds can also be the person who vouches for the receipt and performance of good and services in circumstances where they may not have been provided.---Actually, the true delegation for the financial disbursement of funds has actually occurred when the purchase order's approved. The university system's a little bit odd in that that also occurs because of doing it manually with this green stamp on paperwork, but in a contemporary system what you're expecting to see is
20 the, a proof of the purchase order is actually approving. For example, if we have a contract that over its life will cause us to expend \$10 million, the Finance and Audit Committee is approving the expenditure of those funds.

THE COMMISSIONER: But presumably they do that on the assumption that, whether it's good or services, they're delivered?---Yes, absolutely.

Yes, thank you.

30 MR ENGLISH: One issue that's arisen in this inquiry is the risks posed by subcontracting and failure to take into consideration those risks over the course of procurement and contract management stages. Does that same issue pose risks in terms of accounts payable? And I ask this because the invoices supplied by the contractor, in this case SNP, contain item lines in respect of works performed by the subcontractor. So is there a similar risk that exists in accounts payable relating to the payment of invoices where part of that invoice relates to work provided by a subcontractor?---Not in
40 accounts payable. As a result of the reforms that I described a little bit earlier on, we are enlivening everybody to the concern and risk around subcontractors, but the verification of the performance of subcontractors is not something that I would expect to occur in accounts payable. In fact, the appointment of, the acceptance that a subcontractor is appointed I would expect to occur at the point that the contractor is managed. So I believe in that particular contract, in all of our contracts I think, there's a term to the effect that we need to approve the appointment of subcontractors. Accounts payable would reasonably assume, and I certainly wouldn't expect them to vouch, that if subcontractors are, information is included in an invoice, that that approval had been given by the contract manager. I wouldn't expect a level 6 accounts payable clerk go off and verify that.

I mean, on some of the invoices that are presented to the university, is there – I withdraw that. In respect of the invoices presented to the university, is there any analysis performed beyond the division level on the face of the invoice whether the works are performed by the main contractor or by a subcontractor?---No.

10 On page 4 of Exhibit 138 at paragraph 17 you talk about the Tender Evaluation Board and say that, “The board looks at the process and satisfies itself that value had been achieved and that there was the right sort of probity in place regarding the process. The board recommends the contract for signature to the Finance and Audit Committee.” Do you see that?---Yes.

It goes on, “As part of this process, the Tender Evaluation Board summarises the procurement method and stated why it’s appropriate for the committee to approve that contract. The committee would probably authorise me and the vice chancellor to sign the contract.”---That’s correct.

20 If we can just bring on the screen please, Exhibit 71, starting at page 3. So this is an email, I think, perhaps is it from your predecessor?---Yes, it is.

Concerning the brief for the security services contract and there’s a proposal there in bold. Have you see this document before?---No.

If we go over, we can see it’s a proposal to the, or a recommendation I think to the Finance and Audit Committee that the contract be signed, is it not? ---Yes, it is.

30 If we go over to the next page, you can see here it’s the submission and the recommendation is that the Finance and Audit Committee approve the appointment of SNP for delivery of all four services at the costs identified. And if we go over the page, there’s some costings identified. It goes on to say, “The contract covers the following aspects,” and then there’s the bullet points. There’s some increases in costs noted and some forecasts and some comparisons and then what the KPIs are. If we go over the page again, and then a summary at the end. Now, that document, and this is going to the Finance and Audit Committee, doesn’t outline any of the risks that were presented to the university in respect of the awarding of this contract. Would you agree?---I read it very briefly but that appears to be the case.

40 Should it?---I think if, in a significant contract of that value, then I would expect to call out the significant risks and how they’d been acquitted, yes.

For example, subcontracting’s not mentioned here, any risks associated with subcontracting, nor is any risks associated with an awareness of fraud and corruption in the security industry at all. Are they matters that, under your watch, you’d like, to see in a document such as this go to the Finance and Audit Committee?---Well, certainly in light of these proceedings, that, we’d

be alive to that concern. What you, I would be thinking more broadly, not just about security guarding services but we, we procure literally thousands of different lines, security guarding services is one of them. So we'd have a different risk profile for each piece of procurement and that is actually the point of the risk assessment document that was produced late last year and published this year, was to enliven the Tender Evaluation Committee to the risks. Also to incorporate strategies of dealing with those risks in the procurement strategy and, and keep, keep then on the front foot in the Tender Board as we assess those things. Now, now that that risk assessment's in place, it's much easier to highlight the risks that have been identified and produce those in this document. So that was a long-winded way of saying yes and an explanation about how we would go about doing it.

Thank you for that. So are you aware in relation to the security services contract there was what's referred to as contract guarding services and then there was an additional service which was surge or ad hoc requests for guarding services?---I wasn't aware of that, but that is common. I can imagine that requirement.

So that's common amongst divisions of the university?---No, it's, it, I can imagine that being a logical requirement in that type of contract.

Okay.---So the university runs functions in the evenings, it has events that need to be managed at different times of the year. If you had only a fixed supply of guards then you wouldn't be able to accommodate those, those requirements, so it seems perfectly logical but I wasn't aware of it.

Insofar as the finance team deals with payment of invoices, was to your understanding there any differentiation between its review and payment of invoices for contracted hours as opposed to the ad hoc service requests? ---No, there wouldn't be. What they're looking for is the verification that the person proximate to the service, who's in a position to vouch that it occurred, is verifying that.

Some of the invoices for ad hoc guarding services could get quite high. Is the determination of whoever's got the delegation to, I think your words, if I can just go back to them, the delegation to approve payment of funds in respect of those invoices, does that purely work on a scale as to a monetary amount that - - -?---It's in, it's in dollars, yes.

And is it by reference to a person's position within the university?---The university has a delegation of authority document, quite a voluminous one, that describes the authorities of all of the officers at the university.

And that is pegged at a dollar amount as opposed to a different type of product or service that may be procured. Is that right?---So it is at the moment. One of the reforms that we're working through is a redrafting of

some of the policies and procedures around predominantly procurement, I don't think it would affect accounts payable, to put a risk assessment across the approach to certain types of procurement and the handling of certain, procuring certain types of services. So it's quite possible that you'd acquire something for two, there used to be threshold I think of \$200,000 before procurement would be actively involved in a sourcing activity, and I'm giving you an example, it's not specific to this, it's quite possible to secure something very benign for \$200,000 and at the same time procure something that's quite risky for \$100,000. For example, I had the
10 interesting experience of looking at the profile of some of the sourcing that we're doing and realised that we were buying a couple of hundred thousand dollars' worth of marijuana for research. That obviously sits in the higher risk category.

And so there's an adjustment being made, is there, in respect of delegations to take into consideration what's actually being purchased, not just its value?---Correct. And we're in the process of rolling that out. So this reform project started in 2017, it hasn't finished yet. So there's some things we've done and there are some things that are planned.

20

All right. That's the examination, thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Coleman?

MR COLEMAN: I have no questions, thank you, Commissioner.

MR BENDER: Thank you, Commissioner.

Mr Andrews, as you know, my name is Bender. I appear for the University
30 of Sydney. In one of your answers you said words to the effect that the scope of university's operations are such that the systems for checking that invoices are paid needs to be contextually appropriate.---Yes.

Can you give some examples of what you mean when you say that there needs to be some appropriateness in the context?---Yes. So as I mentioned a little bit earlier, guarding services is just one of many, many things that the university procures. It's not well understood that the university isn't just a place where teaching occurs, it's a very complex conglomerate that turns over about \$2.5 billion a year. It is involved in activities predominantly
40 driven by research that range from running agricultural farms through to running IVF clinics, and a whole raft of things in between. Obviously the types of things that we procure in each of those areas is vastly different and because of that complexity, including things like buying marijuana, and because of that complexity each, each area that is vouching or verifying the receipt of goods would have a different procedure appropriate to the complexity and risk of the thing that they're procuring. So for example, if we're running an IT project it's very likely that we would procure services of IT subcontractors. There would be a process in place similar to the

guarding service to verify that the subcontractors had performed their services.

To your mind does that variety and scope of operations in which the university engages pose challenges to contract management and if so, what are they?---Well, it does. As I, as I said, if I could contrast the university to a normal commercial, so we turn over \$2.5 billion, we'd be a top ASX country, company if we were listed. The difference between the commercial setting which I'm used to and the university is that in a
10 commercial setting, typically a company of that size does only one or two things, they do it very, very well, they can have standard procedures to address those one or two things, which is what makes those big corporations very efficient. The university does so many things that it to some extent requires a vast array of process and procedures to deal with that complexity and diversity.

And in forming that view about the difference between the corporate sector and the tertiary education sector, have you drawn on your own experience in the corporate sector?---Extensively.

20

And what is that experience?---So, as I – sorry, what was my - - -

Yes, what is that experience?---Oh. So I've been a chief financial officer or chief operating officer or vice president of finance spanning large corporations for 27 years or so.

And what are some of the larger ones you've held those roles in?---So Brinks Security was my first CFO/chief operating officer role, vice-president of finance for Oracle Corporation, chief financial officer/chief
30 operating officer for Computer Science Corporation, now tagged DXC.

Thank you, Mr Andrews. Thank you, Commissioner.

THE COMMISSIONER: Thank you.

MR GIVORSHNER: One moment, please.

THE COMMISSIONER: Sure.

40 MR BENDER: While that is occurring, I can indicate that there is no, I'm instructed, other policy or strategy document dealing with subcontracting risk at the procurement strategy level.

THE COMMISSIONER: Thank you, Mr Bender.

MR ENGLISH: I've got nothing arising.

THE COMMISSIONER: Okay. We just might have Mr Givorshner.

MR ENGLISH: I'm sorry.

THE COMMISSIONER: Yes.

MR GIVORSHNER: Nothing, Commissioner.

10 THE COMMISSIONER: Nothing. Okay. Thank you very much for your assistance and I'll discharge you from your summons and you're free to go.

THE WITNESS: Thank you.

THE COMMISSIONER: Thank you.

THE WITNESS EXCUSED

[10.58am]

20 MR ENGLISH: Commissioner, the final witness is Dr Spence. I see him up the back of the court and I'm eager not to delay him, but I'll just ask if we could have a short five-minute adjournment before he's called.

THE COMMISSIONER: Well, do you want to take the morning tea adjournment now and then, and then we'll finish?

MR ENGLISH: If that's convenient with you, if that's convenient with you, Commissioner, yes.

30 THE COMMISSIONER: And how long do you anticipate you'll be with Dr Spence?

MR ENGLISH: I've been criticised for proffering such estimates, but 40 minutes to an hour.

THE COMMISSIONER: Okay. Thank you. I'll adjourn.

SHORT ADJOURNMENT

[10.59am]

40 MR ENGLISH: Thank you, Commissioner. If Dr Spence could come to the witness box.

MR BENDER: And while that's occurring I thought I might clarify the remaining issues about which I was seeking instructions.

THE COMMISSIONER: Sure. Come forward, Dr Spence.

MR BENDER: One is that I'm instructed that there is no specific code of conduct in the university in respect of business ethics and the most relevant document in that respect would be the general code of conduct, which is called the Code of Conduct. I can't say positively that it's not in one of the volumes online, but I have suggested to my learned friend Mr English that it should be tendered in part because it deals with gifts and I did ask Mr Smith about it. The other outstanding issue is I mentioned to you earlier,
10 Commissioner, that there was a draft statement of supply expectation that may be relevant to some of the matters that have been the subject of questions today. My instructions are that it is still an embryonic document and the university's position is that the Commission would be entitled not to take account of it at this stage.

THE COMMISSIONER: Would be what?

MR BENDER: Entitled not to take account of it at this stage, and therefore I don't propose to produce a copy.
20

THE COMMISSIONER: When you say it's in an embryonic stage, do you know what that means? You may not.

MR BENDER: I don't. I haven't seen, I haven't seen a copy. My instructions are that it's unlikely to be helpful, but of course if it's called for I'll produce it.

THE COMMISSIONER: Of course. We might leave that for the moment. I'll have a word to Counsel Assisting later on in relation to that.
30

MR BENDER: Thank you, Commissioner.

MR ENGLISH: We're just making an inquiry as to the code of conduct, Commissioner. If it's not in evidence, we will tender it.

THE COMMISSIONER: Certainly. Dr Spence, will you take an oath or an affirmation?

DR SPENCE: An oath.

THE COMMISSIONER: Dr Spence, just allow me to explain your rights and obligations as a witness before the Commission. As a witness you must answer all questions truthfully and you must produce any item described in your summons or required by me to be produced. You can object to answering a question or producing an item, and the effect of any objection is that although you must still answer a question or produce the item, your
10 answer or the item produced can't be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings.

The first exception is that this protection does not prevent your evidence from being used against you in an offence under the ICAC Act, most importantly, an 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. The second exception only applies to New South Wales public officials, and I
20 understand you're the vice chancellor of the university?---Ah hmm. That's right. Ah hmm.

Well, you fit the bill.---Right.

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. Now, I can make a declaration that rather than you having to take an objection to each question, then having to answer it, I can make a
30 declaration that all the answers you give or any items that you produce are covered by that protection. Would you like me to make that declaration?
---Yes.

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
40 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.

MR ENGLISH: Dr Spence, can you just state your full name for the record, please.---Yes. I'm Michael James Spence.

10 And you're the vice chancellor of Sydney University?---I am.

What qualifications do you hold, sir?---So what academic qualifications do I hold? Is, is that the question?

Well, yes, let's start with those. I'm sure it's quite a list.---So I have a Bachelor of Arts with a double honours in English Italian; a Bachelor of Law, Laws with honours; a PhD, a DPhil in Law; a post-graduate Diploma in Theology. Both of those from the University of Oxford. And I'm currently a student at the University of Sydney doing a post-graduate
20 Diploma in Languages.

Do you have any qualifications or expertise in the area of governance?---So I have experience in the area of governance in that for most of my career in one way or another I have been involved in running academic institutions in positions of academic leadership. So I was variously the, had positions of responsibility in relation to management at my college at Oxford and then the Law Faculty at Oxford and, before I took my current role, was head of the Social Sciences Division of Oxford, that is a quarter of the university there, and was a part of the governing body of that institution.

30 I've seen some documentation to show that you were a member of the Finance and Audit Committee at Sydney University.---Yes.

Are you still a member of that committee?---I am.

Now, have you been kept informed of the evidence as it's been adduced at this public inquiry?---Yes, I have.

40 I just want to run through some aspects of that evidence and then ask you some questions.---Certainly.

It may take a little while, so just bear with me. The evidence shows that a company S International Group, that I'll refer to sometimes as SIG, which was the subcontractor to SNP Security at the university, was running two sets of books, and that the purpose for doing that was to avoid payment of tax, superannuation payments and employee entitlements, all of which was illegal. Are you aware of that?---Yes, I am aware of the evidence that's been adduced in, in this Commission.

Now, the total payments from SNP to SIG from December 2015 to April 2018 was in the order of \$7 million, but that wasn't just purely from the university. That was in relation to other sites as well. Did you hear that information?---Yes, I did.

10 Now, the evidence also shows that S International Group was offering its illegal cash wage payment service to other companies – not in respect of Sydney University, I should say – and the fee that S International Group was charging for that service was reaped by the company's principal, Mr Taher Sirour, who was effectively stealing GST moneys that were collected and owing to the Commonwealth. Were you aware that he was offering that service to other companies?---No, I was not.

20 Now, for taxation purposes, the evidence shows that S International Group's weekly wage bill was in the order of \$12,000. However, by its own spreadsheets, what it was paying off the books to its guards was actually in the order of 10 times that each week. Were you aware of that?---No, I was not.

And that off-the-books figure included naught by way of employee loading payments as was required under the relevant award, which is the Security Industry Services Award. And on top of that, when certain security guards asked Mr Sirour to be paid legitimately with entitlements and for tax to be withheld, he on most occasions rejected that request. Were you aware of that?---No, I was not.

30 MR BENDER: I'm sorry to interrupt. Just to be clear, throughout this process it might be helpful if Counsel Assisting could confirm that all of these questions are questions about whether he's aware of the evidence.

MR ENGLISH: Well, that's right. This is what – I thought I made that clear.

MR BENDER: I'm just clarifying.

MR ENGLISH: I'm just – yes, we'll come to the main question. I just want to, this is some of the evidence that's been adduced in this public inquiry.

40 THE WITNESS: So certainly I have received a daily summary of the evidence that has, that's been adduced in this inquiry, and I have read it. You're asking me very specific questions about whether or not I recall things in relation to what happened to GST or whatever, and, and truthfully I don't currently recall those things.

MR ENGLISH: That's all right. I'm not trying to have a memory test. What I want you – either I'm interested to know whether you've been told

that, and if you haven't, I'm just trying to inform you of what the evidence is, that's all.---Right. Okay.

Now, the evidence also shows that Mr Sirour, through SNP's second-in-charge at the university, that's a man by the name of Balicevac, sought to buy – and that's the word that was used in the evidence – sought to buy a number of staff from SNP Security and the university. Were you aware of that?---So again, I'm sure I read it in the summary but I'm, yeah.

10 Yes. Three SNP employees, who each had Sydney University email addresses, were effectively bought by Mr Sirour. He was paying them weekly cash payments, and gifts and benefits were offered by Mr Sirour to – and it seems at least on one occasion, perhaps more, accepted by – university official Mr Dennis Smith. Were you aware of that?---Yes.

Now, the evidence also shows that Mr Sirour unsuccessfully made attempts to buy Mr Smith's manager, Stephen Sullivan, and the director of Campus Infrastructure, Greg Robinson, and there's absolutely no suggestion that those two men played any role in those corrupt attempts. Were you aware
20 that Mr Sirour had those intentions?---No, I was not.

Now, the time sheet fraud, have you heard that phrase being used over this inquiry?---Yes. Ah hmm.

Yes. Now, this investigation has uncovered that that was planned and executed by the three corrupt SNP employees Balicevac, McCreadie and Lu, and it occurred in circumstances which may have been obvious to any reasonable person acting in Mr Smith's position. Now, I just want to show you the most egregious example of the fraudulent claims at the university.
30 This was for the week ending 30 October, 2016, during which time, I'm sure you're familiar, there was a protest at Kirkbride.---Ah hmm.

And those protesters were evicted.---Ah hmm.

That involved liaising with New South Wales Police for that purpose.---Ah hmm.

And there was also a power shutdown on campus in that week. If we can please go to Exhibit 40, page 334. So what would happen is these persons,
40 Mr Lu, Mr Balicevac and, on occasions, Mr McCreadie would send a time sheet through to S International Group, even though they were working for SNP. This is Mr Lu's time sheet for the week ending 30 October. If we go over the page, you can see what he does is say that he's to be paid a certain number of hours for shifts that he's signed in under a different name, and on occasions he's splitting that with other people from the SNP team at the university. And if we go to page 336, you can see that Mr Lu there claims a total of 155 hours in pay for security work at the university this week, and

that's on top of his rostered equivalent of 38 hours or something in that order.

What the Commission's done, if we can go, please, to Exhibit 76, page 12. And I should say this is the most egregious example of the fraudulent conduct in this particular week. So what the Commission's done is grouped these claims by Messrs Lu, Balicevac and McCreadie on a day-by-day basis over the course of the week and stretched out in a horizontal fashion the hours that they were paid for. The blue indicates they were paid by SNP for their regular shift, and the orange shows a shift in relation to which they were paid but a different name was used in the roster fraudulently.

So you can see Mr Lu has claimed for the payment in the evening of the 25th, Monday, for three concurrent shifts. So clearly the university, I think you'd agree, is not getting what it's paid for there. It's expecting three bodies on the ground and it's at least only getting one. And I'll come back to Mr Lu's evidence on this in a moment about whether he actually turned up to do the work. And that's all in relation to the eviction at Rozelle. So the eviction took place on the 25th, it happened in the morning, and then there was a security concern that protesters might come back to that site and the protests could reignite, and so Mr Lu's claimed for the payment of three separate guards, notwithstanding the high-risk potential on that day. You can see on the 27th Mr Lu claims his team leader shift, which is on-campus, and at the same time claims the work of three guards out at Rozelle. So clearly he can't be in the same, two different places at once there. And if you look at the period from I think the 25th, the 25th through to the 27th, Mr Lu is claiming, on my maths there, three days in a row with one hour break. So I think Mr Lu's evidence, and this is from transcript page 230, was that it couldn't have happened that he performed these shifts, so he essentially agreed that he didn't do any of them.

If we go to Exhibit 40, page 78, this is the time sheet prepared by Balicevac for this same week, ending 30 October, 2016. He sets it out in a different manner but you can see his total at the bottom. He claims to be paid for 505 hours in a single week and he says that McCreadie is owed for 77 hours in that week, and you can see on some occasions, particularly Saturday, he identifies the names that he's signed in under. On other occasions he doesn't do that, but where he didn't do that – if we go over to Exhibit 76, page 13 – the staff at S International office would conduct a reconciliation of the time sheets and work out what name should be assigned to Mr Balicevac to be paid for these shifts, which go over the next page.

You're nodding along so I take it you're following that I'm saying?---I mean, if, if, if the sort of drift of the line of questioning – and I, I clarify this just because I don't want to give the wrong impression in my earlier answer – is am I aware of the egregiousness of the issue that ICAC has been dealing with, then, yes, it's simply appalling.

Well, I just would like to show you, if I can, just what Mr Balicevac did on this particular week. If we go over to page 15, you can see that, again, he's claiming, if one focusses on the Tuesday, to be at Kirkbride for this eviction and the next day he's claiming to be in at the university working whilst also doing eviction tasks at Kirkbride, and then in the evening doing more eviction tasks. And if we go down to the 28th, you can see that there was a power shutdown occurring, and over the page you can see a number of shifts that he claims, most of which are concurrent in relation to the power shutdown.

10

Now, just let me tell you, he said – if we go back to page 15 – he said in relation to the 25th and the 26th either he didn't turn up at all for those extra shifts, not his rostered shift, or if he did he would have been there for two or three hours and just gone home, and that's notwithstanding that high-risk activity that was occurring at the Kirkbride. And then for the 27th and the 28th, he said, "I probably attended for a couple of hours only." And then over the page, he said in relation to the morning of the 29th, he didn't attend and in relation to the afternoon, this is on the Saturday, "I just came in, not whole attendance." And on the Sunday he said, "I probably didn't turn up, I just turned up on Monday for my normal shift." So if you look at that, what this says is Balicevac was paid for seven days of straight work with six hours of break across 48 separate shifts and, you know, clearly fraudulent and clearly appalling. As you said, I think you'd agree.---Very much so.

20

So if I can ask you this, what does this evidence say about the effectiveness of Sydney University's security services, at least for the period from August 2016 to April 2018, with respect to the safety of student and campus infrastructure?---Yes. So I mean, there's, there's various ways into measuring that. So, we have been charged for services that weren't provided but we did not have alternative evidence that the services that were provided were inadequate in any way. In particular, we didn't have student complaints or complaints for people at events that security was an issue. In relation to the, the week you've talked about, the occupation of Kirkbride, there was very constant engagement with the protesters in a number of ways. The protest wasn't violent, the students accidentally broke a vase in the dean's office and could be seen on CCTV footage trying to put the vase back together again with superglue. So this, this, this was not a sort of Vietnam War protest and there was not during that period evidence that we had been, that, that there had been an issue of risk in terms of student safety because we were, precisely, being charged for more security that we'd actually been provided but there wasn't evidence that the security that we had was inadequate.

30

40

But the security that was booked to turn up on those occasions was done so pursuant to a risk assessment being performed of the relevant scenario, do you accept that?---Yes.

And in those circumstances, it's deemed that a certain number of guards were required to turn up on campus to fulfil a function for the interests of the safety of students and campus infrastructure, I might add, and those guards haven't turned up. Do you accept that?

MR BENDER: I object. There's a fundamental assumption that's been glossed over that all or substantially all of the requested services for which nobody turned up were genuinely required to preserve the safety of campus rather than, for example, lining the pockets of SIG employees.

10

THE COMMISSIONER: Well, we'll never know the answer to that but surely there was a significant risk and it's a matter I wanted to take up myself in a moment. No, I'll allow it. In fact, I'll ask myself, one of the measures you seem to have taken into account is that there were no student complaints, correct?---Or complaints from people who were so, for example, in relation to the Kirkbride occupation, I know that Greg and others were, Greg Robinson and others were actively monitoring the situation on a sort, a day-by-day basis and I was getting reports about what was going on at Kirkbride very regularly and there wasn't a perception there that the security presence was inadequate. Now, if, if, if, if the question is, can I say, hand on heart, that this has been not only an issue of financial risk to the university but also potentially a security risk, given the nature of the services that are being provided, of course I can't because, as Counsel Assisting has said, we must have at some point determined that particular services were needed, and I don't know enough about every situation in which those things arose and every one of the time sheets to be able to say, hand on heart, that there was never an issue of student risk, and that's obviously something out of this whole sort of ghastly affair that we take very seriously.

20

30

Well, just on that, if you put Kirkbride to one side for a moment, and the protest, the fact that you didn't get student complaints may be no more than a measure of the fact that nobody was assaulted, for example.---It may be that.

Because you'd expect students to complain if they perceived a risk or suffered some unfortunate incident.---True but not only students, also, also people organising events. So people organising events at every level of the organisation have particular expectations in relation to security and there wasn't, during that period, the sort of, you know, well, we'll expect security at this event and there wasn't security at this event or we'd expect four security guards and there was only one who occasionally walked past. So there wasn't an indicator that there was an issue of safety at risk during that period but I accept that, as a matter of strict logic, it must have been a possibility.

40

Thank you.

MR ENGLISH: Just expanding on that last answer, that it was a possibility, would you agree that it was fortuitous that there wasn't an issue such as an assault occurring on campus when there wasn't a full complement of the guard numbers that were expected to turn up in certain scenarios?---No. So Honestly can't agree that it was fortuitous because what we, what we don't know is, in relation to each of those events in which there may have been additional claims made, what the level of actual service was and whether or not that level of service was adequate, both in terms of our own assessment but also in fact. So I think it would be quite wrong, wrong of me to say that
10 it was merely a matter of luck.

But you're saying there the level of service was adequate. Is that your view, that the level of service being provided by SNP Security through its subcontractor in the relevant period from August 2016 to April 2018 was adequate?---No, that's not what I'm saying. What I'm saying is that we had at the time, that we had at the relevant period no evidence that it was inadequate, and that the, and, and, and that we have now no basis upon which to assess its adequacy or inadequacy given that there is some lack of clarity about, in relation to each, each even where we would expect there to
20 be security, exactly what security was provided and exactly what security would have been necessary.

You said that you had no - - -?---But I, but I, I mean, if the, if the general thrust of the question is, is it possible that in relation to fraud and the security issues, industry, there's not only financial risk but also potentially safety risk, well, I must axiomatically accept that, surely.

Sure. You just said, "We had no evidence of a lack of adequacy." Are you aware that the evidence is that after 3.00pm during the week and on
30 weekends there was no one to observe from the university whether these guarding services were actually provided as billed?---So there was no one from the university. At each, at each university event there are of course many people responsible for the event, and there may have been nobody there from CIS whose job it was to check whether or not there were adequate security people on the ground, but, but staff routinely report up issues of perceived problems.

There's been some evidence before the inquiry as to the university's procurement strategy leading up to the award of the contract to SNP
40 Security, and the fact that that procurement process, and in particular the procurement strategy document, did not contain a section on the risks associated with subcontracting. Were you aware of that?---I am now.

Now, we've been told today that a risk assessment tool, you might have seen it, with some functionality for subcontractors has been developed, but there is still not an incorporation, as it's understood today, of a strategy section within the procurement strategy of the university. Are you aware of

that?---Mmm. Can I, would, would it be possible for me to provide some context for some of these issues?

Most certainly.---So I think it would be fair to say that, it would be certainly fair to say that when I arrived at the university, its administrative systems were simply broken. My first year, there was a year we couldn't pay, a month we didn't think we could pay the salary bill. We had our, our research data processes were so ropey, in the first government research assessment exercise, we couldn't return 30 per cent of our research. We had 10 64 different student administration systems and staff taking information from one computer and typing it into another computer. So the administrative systems were simply broken. Moreover, there were issues in talent, particularly in relation to leadership, in each of the administrative areas, and there was a, there was, there were deep cultural problems in the institution to do with a certain complacency. And I came from a British university and they have a sort of post-war British "Let's save the dead light bulbs in case they one day become useful again," and I hadn't seen money squandered like I saw at the University of Sydney. You know, people flying business class to Canberra or, or, or, or Melbourne or Brisbane or whatever, 20 and I hadn't seen a lack of controls like I saw at the University of Sydney. We have – and ICAC has been actually a great ally in this. Our section 11 notifications have been really helpful because in everything from rolling back the fact that every second person had a credit card, to getting much better processes in procure to pay, we've been on a constant systems improvement and talent upgrading and, and cultural journey. And, and, and for me evidence of that has been that whereas for example the provost used to, when he first became provost, used to get the occasional complaint of serious misconduct, at any given point in recent years there have been a very large number of investigations going on of behaviour that's sometimes 30 been going on for years because people are seeing issues dealt with and the process is, is changing. And for me a big part of that was taking internal audit out of the office of COO, the then COO, and putting it into the Office of General Counsel so that it would have an independence and a rigour, upgrading the talent and the number of people operating in that area, and making sure that every five years on a risk assessed basis every area of the university was deeply examined, but also that they had a very rigorous process for dealing with whistle-blower issues. And sometimes we're up to, sometimes in recent years we've had, you know, 70 investigations, audits going at once, which is just hideous at one level, but another level to me 40 deeply satisfying because we used to have hardly any. So the things that the Commission has heard about this week, they're just, they are hideous by any measure. They're just hideous. Can I say hand on heart that there's not some hideousness about which I don't know yet? No, I can't. But I can say that the kind of process improvements that you've been hearing about, and the kinds that we've implemented in relation to each of the, in response to each of the engagements that we've had with ICAC over the past 10 years, haven't been trumped up for the purpose of keeping ICAC happy. They've been a part of a process of ongoing improvement, and I am very confident

that our current COO, Stephen Phillips, who has a lot of experience in control mechanisms as well, is really just going to take us to a new level in this space. Because as you pointed out at the beginning, my experience is essentially as an academic leader, and so what I have felt that I had to be was confident that I had really competent people running this side of our operations. Sorry, the context is just really important to me.

THE COMMISSIONER: No, thank you for that. It is important.

10 THE WITNESS: Because I think it's, I, I, I think it's really important to understand the journey we're on and to understand the fact that we, we've, we have genuinely, hand on heart, seen ICAC as our eyes in that.

MR ENGLISH: Thank you for that. Just discussing the journey for a moment, I mentioned that the procurement strategy document didn't contain risks associated with subcontracting. Today we were provided with, or overnight – I'm just wondering if Exhibit 137 can come on the screen, please – we were provided with a risk assessment tool. Mr Vitanage says it applies throughout the university, to his understanding. And it may not be a
20 final document insofar as the development of the risk of subcontractors to the procurement process exists. I just want to draw your attention to something in the document. So this is, as you can see, an Excel document. If we can go to the tab, the second tab, please. See, as we understand it at this stage, you might see in red a second entry. "Is there opportunity for supplier or subcontractor fraud?" Now, as we understand it at the moment, that's the extent that the university requires consideration of in the procurement stage at a university level, not within specific departments, but you're speaking of a process of change that's coming within the university, and no doubt that's true, but if you see this it is suggestive that more
30 specificity and a greater understanding of what those risks are may need to be embedded into a document such as this so that the people working on it can have a greater understanding of those risks and the framework required to convert them. Would you agree?---Yes. I think the, the, the, the issue, the material in the parentheses is presumably intended to be exemplary rather than exhaustive and I think it would be useful in the development of this tool if a longer list of either examples or a better test were provided.

Because the risks do manifest themselves in a number of ways from under – I withdraw that – from illegal payment of employees through to inability to
40 monitor the performance of the work or the services provided through to fraud and corruption, and really that's something I would suggest that needs, and I think Mr Vitanage agreed, some further detail in, and I think you might as well.---I think, so I, so I think it does, and particularly in an, in an environment where the monitoring of, of supplier non-performance, because of the very diverse and very technically diverse nature of our work, is, is often inevitably at a relatively local level.

Can Exhibit 71, page 20 be brought on the screen, please. This is the master services agreement between SNP and the university that was signed in December 2015. You can see that clause 4.5, Subcontracting?---(No Audible Reply)

10 The evidence of Mr Vitnage was that that represented the entirety of the subcontractor assurance framework in this contract, and the evidence of Mr Robinson, Greg Robinson, was that he as the delegate of the contract between SNP and the university was not aware that a subcontractor was
10 being used to provide security services on campus, he only became aware of that at around the time of this investigation. Now, that was notwithstanding that in the tender documents that were provided by SNP it identified that it would be using a subcontractor for the provision of guarding services. So what I want to suggest to you is that the risk associated with subcontracting has been overlooked the whole way, from the procurement side, it's not reflected in the strategy document, through to the contract where it has very minimal prominence, and through to the execution of the contract and its management. Would you agree with that?---So I, I, I, so I think that's a
20 of this horror, the issue of subcontracting is one we really need to look at carefully.

And what do you say - - -?---I think we do – no.

No, sorry, you go, I don't want to cut you off.---No, you can cut me off.

30 Against that body of evidence what do you say to the proposition that a series of corrupt and fraudulent practices uncovered by this investigation were, if no – I withdraw that – were at least in part due to the university's failures in respect of the procurement process and the contract as to the awareness of the subcontractor risk?---So I'm not being tricky, I just don't think I have my head around the facts in enough detail to be able to make an attribution of fault here, but if the broader tenor of your question is do I think the university has a serious issue it needs to look at in relation to subcontracting, then I most certainly do.

40 Well, if I can simplify it a little bit. You'd have to agree, wouldn't you, that the issues that I've identified with you in relation to subcontracting must have contributed to an environment that allowed those fraudulent and corrupt practices to go unnoticed?---Yes, that I could prima facie agree to.

Now, in July 2016, KPMG the accounting firm provided a report into SNP's contract compliance with the University of Sydney. Were you aware of that?---I am now.

Were you – you probably weren't aware at the time. Is that right?---That's right.

Now, can you tell the Commissioner, do you understand the circumstances by which big accounting firms such as KPMG are engaged to conduct compliance audits in respect of different divisions on campus?---Yes. So on the whole, the, those audits are organised through the Office of General Counsel and through the internal audit function. Because we have, because we have had so many things that we have been dealing with in one way or another, we've inevitably had to outsource quite a bit of investigation. Now, what, in relation to this particular report, I do not know who commissioned it because while on the whole the process is that it goes through the Office, through, through internal audit, it is open to individual parts of the university to commission this work.

I'll just have that report brought on the screen, please. It's Exhibit 71, page 198. That's the report itself. If we can go to page 201, please, you can see under the Summary of Observations there's a red box and an observation, "Practices exist to circumvent payment of overtime allowance to SNP staff resulting in non-compliance to the EBA." Do you see that?---Mmm.

And if we go to page 208, you can see in Scope Exclusions, "The internal audit was limited to assessing the processes and controls relating to the SNP Security contract only. There was limited testing performed on subcontractor data." And it says, "Contract compliance for the contract between SNP and their subcontractors was out of scope." Do you see that? ---Yes.

Do you agree that's something, that is the relationship between contractors and their subcontractors, is something that compliance reviews of this nature ought take into consideration at all times?---I do.

MR BENDER: I object. This is really descending into a level of detail about what external auditor ought to do, that is very far distance removed from the witness's role at the university. Now, these are - - -

THE COMMISSIONER: I've got two responses to that. The witness can say, I can't answer it, and the second issue I've got is that you don't represent this man, you represent the university.

MR BENDER: Yes.

THE COMMISSIONER: So how is this in your client's interest?

MR BENDER: Well, because what's essentially being sought is effectively admissions as to the processes of the university and if the approach is to procure those admissions so that a submission could be made that the university has accepted things, then axiomatically my client has an interest in it.

THE COMMISSIONER: Mr Bender, this is the vice chancellor.

MR BENDER: Well, that's quite, that's quite the point, Commissioner.

THE COMMISSIONER: Go on.

MR ENGLISH: I think I asked Dr Spence, do you think this is a matter that should have been within the scope of the report, that is that the practices between in this case SNP and it's subcontractor SIG?---So the right answer, with the benefit of hindsight, is obviously yes. What I don't understand, not
10 having been aware of this report until relatively recently, is why that it was out of scope in relation to this particular exercise and what it was that had triggered the exercise, what the, what, what, what the competing issues in
20 assessing what the appropriate scope was for this kind of work. That, that, for me to answer that really would be conjecture.

Sure, sure, that's fair enough. Can you go to page 200, please. While that's coming up, are you aware that reports of this nature, I assume they come with a reasonably significant price tag?---So, they vary in price depending upon the scope of the work and that has to do with then with the issue that
20 the Commissioner asked before, sorry, you asked but the Commissioner took up, about where the level of the university at which these audits can be, can be instigated.

THE COMMISSIONER: I think there's some evidence, isn't there, Mr English, that it might have been Mr Duffy that - - -

MR ENGLISH: Mr Duffy arranged for the commissioning of the report. Whether it went back to him, I don't know if we're quite aware of. It went to Mr Sierra.
30

THE COMMISSIONER: That's consistent with what the vice chancellor is saying that it can be commissioned within a division or department of the university rather than through general counsel and internal audit.

MR ENGLISH: So do I understand your evidence, Dr Spence, that a department can commission this autonomously without seeking external advice?---Provided it's within their, provided it's within their financial delegations, yes.

40 Okay. Now if we just look at page 200, you can see that there in the second last paragraph is a statement about the University of Sydney operating in an environment, do you see that?---Ah hmm.

Can you just read that to yourself, please. Is that a statement that you agree with?---Yes. Yes.

Now can we go to page 201, please. If you see under the heading Summary of Observations, “To accomplish the principal objective of working with a service provider.” Can you read that paragraph to yourself, please.---Yes.

Is that a statement you agree with?---Yes.

10 So, in those circumstances, particular as the vice chancellor of a university which operates in an environment where ensuring contractors engaged by the university are complying with the relevant regulations and award, do you accept that the employees of SNP and SIG who worked at the university and who have not been paid legally in accordance with the terms of the relevant industrial award have been exploited?---It’s not - - -

MR COLEMAN: That’s a very broad question, I object to it in that form. It really ought to be some specificity as to the - - -

MR ENGLISH: Well, I’ve taken the witness through the evidence - - -

20 MR COLEMAN: Well, you haven’t with respect to so called illegal payments or payments in breach of some unspecified award or EBA.

MR ENGLISH: I thought I did that at the very start when I took the witness through the practices of S International and the way it was paying its employees.

MR COLEMAN: I’m talking about (not transcribable)

30 MR ENGLISH: I’m sorry. Okay. If that’s where your objection is. The question’s limited to employees of S International Group. Do you accept that insofar as employees of S International Group – and, with respect, employees of SNP who were being paid by S International Group for overtime – who have not been paid in accordance with the terms of the Security Services Industry Award have been exploited?---So, I’m just trying to understand, I’m just trying to understand your question because it seems to me there are two possible readings. One is to say if it’s true that people should be paid according to the law, and these people have not been paid according to the law, is that insert some word for bad, like exploitative and the answer to that is a simply is a matter of logic, it’s got to be yes. If
40 you’re asking me am I across the facts enough to know whether or not all of those parts of the sort of logical process, whether or not the first two premises are, the first is evidently true, whether or not the second is true, the answer to that is no or at least not to the extent of knowing whether or not those payments, that behaviour was unlawful or worthy of some more colourful adjective such as exploitative.

THE COMMISSIONER: I think that’s fair enough.---I’m not being tricky, I just don’t know.

MR ENGLISH: No, no, that's fine.---I just don't know.

Look, the answer to your first proposition is the answer that is probably the question, is the answer to the question I should have put, so I'm happy with that response.---Okay.

Now, there's also a body of evidence that's been unearthed over this enquiry which shows that guards were, on many occasions, working on campus while in breach of fatigue limit requirements. Have you heard some of that evidence?---So I've heard of that evidence, I haven't heard it.

Have you heard of the piece of evidence that showed that a student bus run in, I believe, the Camden Campus was being performed by a guard on one occasion who'd worked up to 15 consecutive shifts in a row?---I had not heard that specific piece of evidence.

That would no doubt be evidence that concerns you?---Of course.

Again, fatigue is, Mr Vintage has confirmed this morning, is a matter that, despite the existence of security matter, security matter experts in the procurement process was never raised as a topic for consideration by the committee. Is that something that is fatigue risk that you understand has a particular focus or is gaining a particular focus at the university?---Fatigue risk in relation to occupational health and safety generally?

That's right, people working more than a number of shift hours than they're entitled to by relevant to, by reference to relevant industrial relations awards?---It's a kind of risk that in assessing occupational health and safety risk and doing occupational health and safety inspections is taken into account, yes, and indeed there's a kind of ongoing active conversation with academic staff who are always complaining that they are working too long and that that's having an effect on their effectiveness in one way or another.

And outside of the academic staff, is the issue of fatigue risk something that's taken into consideration, to your awareness, in the procurement and contract management aspects of the university?---So, so that's a question of fact at a level of specificity that I just don't know the answer to.

Okay.---I think if the drift here is, does the senior leadership of the university get what a big deal this is, not just in terms of financial risk to the university but also reputational risk and most importantly risk to the safety and wellbeing of our staff and students, and do we intend to respond to any report of the Commission in a way that demonstrates that seriousness, then the answer is just plainly yes.

You mentioned before previous ICAC investigations into the university. There has been, I believe, four such previous investigations, the first in September 2010, an investigation into undisclosed conflicts of interest of a

University of Sydney employee. Are you aware that that investigation considered, amongst other things, corruption risks in procurement in the Campus Infrastructure Services division?---I am. And there was as series of recommendations from that report which were implemented, and then there's been a series of things that have been done in addition to that. At each point in relation to the, those ICAC reports, the relevant area has had responsibility for implementing the report, but overseen by the Office of General Counsel, again because, as you say, we were keen that they should have a sort of external umpire role in this, and then there's been reporting through to the senior leadership of the university about their implementation, and the reporting through has, to be fair, not always been as systematic as it might have been, but it has been, but it has always been reporting through about the implementation of the recommendations.

The fourth of those investigations was into the conduct of a University of Sydney ICT manager in May of 2016. Are you aware that that investigation considered, amongst other things, the risks associated with subcontracting?
---Yes.

20 So in light of the fact that there has been this investigation into the university, this time involving the provision of contracted security guard services, are you able to confidently say that the university has an adequate handle on fraud and corruption control?---So that goes back to the issue that I was talking about before about a journey. I am confident now that the people responsible for, in particular, operations generally have a much better handle on things. I am confident that we have better control, better audit and, and, and corruption prevention systems. I am confident that we have significantly improved the ease of whistle-blower reporting, that we now have effective procedures both for students and staff to express
30 concerns. We still have a long way to go in fixing our administration. So, for example, we don't have an HR system. One of the other bits of context is that for 30 years the university did not invest in physical infrastructure, particularly in the sciences, and that was really affecting our ability to recruit, and so we made a decision early on to prioritise investment in what was really a business-threatening shortfall, the shortfall in adequate physical infrastructure, and to hold off on investing in some enterprise-wide systems, even where they were important for the university. So, for example, we still don't have a proper HR system. We have a payroll system, even though we have duties as an employer to many people that we don't pay, because they
40 work for us on a volunteer basis. And there are, so there's a way to go on this journey. And if, if your, if your question is can I say hand on heart that these are the issues that the university takes very seriously and that we're better than we were two years ago or four years ago or six years ago or eight years ago, and that the culture is shifting, and that we're moving from a kind of trust culture of, yeah, it's all right and everybody here is basically honest, to a much better trust and verify culture, I can say that absolutely hand on heart. Can I say that we're not going to discover something in a year's time about which I'm going to have to make a section 11 notification and maybe

sit here again? I simply can't. But that's, that will not be for a lack of genuine engagement in the university with these issues.

Are you aware whether the university has in place a fraud and corruption control plan?---So we do not have a fraud and corruption control plan per se.

10 Can I ask why that is?---Yes because it's been a part of our general approach to, to integrity at the university and governed by the code of conduct generally. Remember that the, the, a very significant world of dishonesty for us that doesn't fall within the remit of the Commission but would absolutely 100 per cent destroy our reputation as a university, is both, is academic dishonesty, both of student and staff. So we have tended to adopt an approach to improving, to building a culture of integrity generally rather than have a specifically fraud and corruption control plan. But again, if that's something that Commission thinks we ought to be doing, then we should certainly do that.

20 Well, I just wonder if Exhibit 68, page 19, can be brought on the screen, please. This is the Australian Standard on fraud and corruption control. If we go to page 39, please. You can see that it's recommended there, under section 2, planning and resourcing for a fraud and corruption control plan to be implemented and you can read that yourself, at least the sections in bold. ---Yes.

So it's really a matter that the Australian Standard's recommending what be occurring, would you agree?---On the evidence of the document, yes.

30 Commissioner, they're my questions of this witness.

THE COMMISSIONER: Thank you very much.

40 MR COLEMAN: I just have a couple of questions, Dr Spence. My name is Coleman and I appear for SNP Security. You were asked some questions by Counsel Assisting going to the possible risks to university students and infrastructure by reason of the fraud that was perpetuated. It might not surprise you to learn that like all good fraudsters, the fraudsters involved in this situation did their best to engage in the fraud in the manner that they wouldn't be caught. So, for example, were you aware that there was evidence that in order to best get away with the fraud, they would use the time sheet frauds or the different names for guards depending upon the time of the job or the location of the job so that they would less be detected? For example, they would do it mostly in the early evening or in the early mornings or they would use, if there had to be a lock-up, they would use one guard to do certain shifts and the evidence was also from one of the other fraudsters that if there was to be an incident which they thought would involve violence or a significant incident like that, they wouldn't perpetrate the fraud there by having guards absent. Having regard to that evidence and

accepting that it was given, does that cause you to add any additional comments to the Commissioner about the actual versus possible risks of a student and campus infrastructure?---So I've accepted, as a matter of logic, that there might be, that there might have been possible risk. The, one of the great things about universities is they are very noisy environments and if there had been, by our staff and our staff are inevitably involved in events where there is perceived to be a threat of violence or act of violence. If there'd been any perception that there wasn't adequate security, we would have known about it and we would have seen it in an increase in incident reporting because the incident reporting is quite thorough and the fact that we didn't, gave us no cause at the time to believe that there was anything irregular in the security arrangements at the university. And certainly, obviously we have reflected on these issues, not just since the beginning of here public hearing but since the point at which there was the initial disclosure and we made the section 11 notification, and one of the things that we have really combed the, combed the records about was evidence that in some way, students or staff were at risk and we, and we genuinely have not been able to find any.

20 Yes. Thank you very much. Thank you, Commissioner.

THE COMMISSIONER: Mr Bender?

MR BENDER: Commissioner, I would ask for a short period to get instructions on the basis that the witness is the senior representative of my client and that was afforded to Mr Coleman in respect of Mr Roche.

THE COMMISSIONER: Yes. Of course. How much time do you like?

30 MR BENDER: Five minutes.

THE COMMISSIONER: Let's make it 10 and so we'll come back at 12.30 and then finish it off then. Thank you,

SHORT ADJOURNMENT

[12.21pm]

40 THE COMMISSIONER: Thank you. Mr Bender?

MR BENDER: I don't have any examination, Commissioner.

THE COMMISSIONER: I'm sorry?

MR BENDER: I don't have any examination.

THE COMMISSIONER: Thank you.

MR ENGLISH: And there's nothing arising, Commissioner.

THE COMMISSIONER: All right. Thank you very much for your assistance and you're free to go.

THE WITNESS: Thank you very much, thank you.

THE COMMISSIONER: Thank you.

10

THE WITNESS EXCUSED

[12.29pm]

MR ENGLISH: Commissioner, there's some materials to tender.

THE COMMISSIONER: Yes.

MR ENGLISH: If I can start with some statements. There's a statement of Richard Allen dated 29 January, 2019. Can that be tendered, please.

20

THE COMMISSIONER: Yes. That will be admitted into evidence and marked Exhibit 139.

#EXH-139 – STATEMENT OF RICHARD ALLEN DATED 29 JANUARY 2019

30 MR ENGLISH: There's a statement of Sunny Gu, G-u, dated 6 December, 2018.

THE COMMISSIONER: Thank you. That will be marked Exhibit 140.

#EXH-140 – STATEMENT OF SUNNY GU DATED 6 DECEMBER 2018

40 MR ENGLISH: There's a statement of Isaac Yanni dated 19 November, 2018. Can that be tendered, please?

THE COMMISSIONER: That will be marked Exhibit 141.

#EXH-141 – STATEMENT OS ISAAC YANNI 19 NOVEMBER 2018

MR ENGLISH: Statement of Mahmoud Soltan dated 22 February, 2019.

THE COMMISSIONER: That will be marked Exhibit 142.

10 **#EXH-142 – STATEMENT OF MAHMOUD SOLTAN DATED 22
FEBRUARY 2019**

MR ENGLISH: Statement of Lincoln Nock dated 20 February, 2019.

THE COMMISSIONER: That will be marked Exhibit 143.

20 **#EXH-143 – STATEMENT OF LINCOLN NOCK DATED 20
FEBRUARY 2019**

MR ENGLISH: There's a volume of materials marked 1D Financial Analysis. Can that please be tendered?

THE COMMISSIONER: That will be marked Exhibit 144.

30 **#EXH-144 – PUBLIC INQUIRY BRIEF – VOLUME 1D –
FINANCIAL ANALYSIS**

MR ENGLISH: There's a further volume of materials marked 2.1 Gifts and Benefits. Can that please be tendered.

THE COMMISSIONER: Exhibit 145.

40 **#EXH-145 – PUBLIC INQUIRY BRIEF – VOLUME 2.1 – GIFTS AND
BENEFITS**

MR ENGLISH: And one further volume of materials marked 2.2 Gifts and Benefits. Can that please be tendered.

THE COMMISSIONER: That will be marked Exhibit 146.

#EXH-146 – PUBLIC INQUIRY BRIEF – VOLUME 2.2 –GIFTS AND BENEFITS

MR ENGLISH: Then - - -

THE COMMISSIONER: I take it that in relation to those, that others present here haven't seen them yet?

10 MR COLEMAN: Yes. I was going to say, we have no idea what they say, or I can guess who some of the people are, but I was going to reserve my position - - -

THE COMMISSIONER: That's okay.

MR COLEMAN: - - - and at least say if Counsel Assisting could inform us whether he's going to make any adverse submissions at least insofar as my client is concerned, based upon that material, that we would have the chance to respond to that. I mean I don't know what's in it, I don't know what
20 these, what these people say. I don't know who they are.

THE COMMISSIONER: Well, that's okay, you can reserve your position, but as I understand this material will be put on the portal or the website or
- - -

MR ENGLISH: It should go up on the public website now.

THE COMMISSIONER: All right. And that will be happening during the
30 course of the afternoon.

MR COLEMAN: Well, thank you.

MR ENGLISH: I believe so.

MR COLEMAN: Yeah, I understand that, but - - -

THE COMMISSIONER: Mr Coleman, you've reserved your position. If you want any of these people to be called then you can make application.

40 MR COLEMAN: May it please the Commissioner.

THE COMMISSIONER: That goes for anyone.

MR ENGLISH: Commissioner, there's an email that was received from Duane Ledford. You recall he was a witness. It was sent to Leonie White, who sits to my right, on Tuesday, 26 February, 2019. Can I tender that and hand up a copy, please. There's copies for legal advisors in the room.

THE COMMISSIONER: I think that's pretty uncontroversial.

MR ENGLISH: It's fairly uncontroversial, yes.

THE COMMISSIONER: Mr Coleman, do you agree?

MR COLEMAN: I haven't see it, Commissioner.

MR ENGLISH: Sorry, mind my back, please.

10

MR COLEMAN: Yes, I have nothing to say about that.

THE COMMISSIONER: That can be admitted into evidence and marked Exhibit 147.

**#EXH-147 – EMAIL FROM DUANE LEDFORD TO LEONIE
WHITE TITLED 'RE: ICAC OP GERDA – WITNESS LIST' DATED
26 FEBRUARY 2019**

20

MR ENGLISH: And then lastly there's the Sydney University code of conduct. My learned friend Mr Bender mentioned this earlier today. I'll just hand up a copy of that if that can be marked.

THE COMMISSIONER: That will be marked Exhibit 148.

#EXH-148 – UNIVERSITY OF SYDNEY CODE OF CONDUCT

30

MR ENGLISH: Thank you, Commissioner.

THE COMMISSIONER: Perhaps an application by any party to question any of the witnesses that have made statements that have been admitted in to evidence a moment about. The public hearing has finished and what I propose to do now is make some directions in relation to the filing of submissions. I don't anticipate, Mr Coleman, that if you have an application to ask questions of any witness it will affect that position. I'd rather resolve it now and then if there's an application we'll deal with it.

40

MR COLEMAN: Quite so. Thank you, Commissioner.

THE COMMISSIONER: All right. I direct that Counsel Assisting circulate his submissions to the affected parties by 5 April, 2019. I direct that he submissions of affected persons be circulated by 3 May, 2009.

MR ENGLISH: 2019, Commissioner?

THE COMMISSIONER: 2019, sorry, yes. I'm concerned that those submissions aren't made public during this process, at least. So what I'll do is, I'll make a suppression order pursuant to section 112 of the Act. I'm not intending in any way to limit the exchange of submissions between the parties but I don't want it to go beyond that.

MR ENGLISH: Yes, Commissioner.

10 THE COMMISSIONER: Being satisfied that it is necessary and desirable to do so in the public interest, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the submissions of Counsel Assisting and those of the affected persons, and that includes SNP and University of Sydney, shall not be published to otherwise communicated other than between Counsel Assisting and those affected persons and, of course, Commission officers.

20 **BEING SATISFIED THAT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT, PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, THAT THE SUBMISSIONS OF COUNSEL ASSISTING AND THOSE OF THE AFFECTED PERSONS, INCLUDING SNP AND UNIVERSITY OF SYDNEY, SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

30 THE COMMISSIONER: Anything else?

MR COLEMAN: Can I just ask a question about, do we send our submissions in response to Counsel Assisting to all affected persons or just to Counsel Assisting?

THE COMMISSIONER: I think if you can send them to - - -

40 MR COLEMAN: Counsel Assisting?

THE COMMISSIONER: Yes, or Mr Baine, yes, and we'll look after that.

MR COLEMAN: Thank you.

THE COMMISSIONER: And I'm quite certain that we'll make sure that everyone gets them.

MR COLEMAN: Thank you.

THE COMMISSIONER: And indeed, they can be made available on the restricted portal but they won't be made available on the public website.

MR COLEMAN: Yes, thank you.

THE COMMISSIONER: Anything else?

10 MR ENGLISH: Nothing further from me, Commissioner.

MR COLEMAN: No, thank you, Mr Commissioner.

THE COMMISSIONER: All right. Well, can I thank you all for your assistance and, so far as I'm concerned, the commendable degree of pragmatism and common sense that seems to have bound everybody which has allowed us to finish within the three weeks. That was very important to me and I thank you all. I'll adjourn.

20 **AT 12.37PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[12.37pm]