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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 20 MARCH, 2023

AT 2.00PM

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

THE COMMISSIONER: Yeah, thank you. We'll continue. Mr Nguyen, you're subject to the same oath you took at the commencement of your evidence to say the truth. Do you understand?---I understand.

Thank you, yes.

- 10 MS DAVIDSON: Commissioner, we'd been looking at a document that was in volume 24.1. If I could have that document, volume 24.1, page 99 brought up. I'm sorry, I think that's the wrong volume. 23.1, I apologise. So this is the document, Mr Nguyen, that we were looking at before, the procurement procedures manual, and you can see that from the little box down the bottom of the page. This page here is a description of the process for an estimated purchase value of above \$150,000. How did that process differ, the process for an estimated of over \$150,000 or over \$250,000 when the threshold increased differ from the process you used for a value of
20 between 10,000 and 150,000?---The, it didn't differ, it was the same. It sets out, you mean to open tender? So it would go through a portal which is V VendorPanel, or Tenders Online, I think. I can't remember which portal. Yeah.

So when you were using a - when the value was over \$150,000 you just said that it didn't differ?---As in didn't differ from when it jumped up to over 250, is it?

- I'm sorry. We're at cross purposes. My question was can you describe what the difference was in terms of the process that you followed between
30 what you did when you were procuring for a value of between 10,000 - - -?
---Oh, ten and, and then the - - -
- - - and 150,000 - - -?---Okay.

- - - or 250 after the threshold increased by comparison to the process that you were aware of needing to follow? Not what this document says but what you understood if the value was over that threshold.---Okay. So the, the process I follow between - so we'll do it in sections. So between 10,000 and 150 or 250 is the three-quote system. So I would go out for three
40 quotes, obviously to the people I know, to the subcontractors that, that I am,

that I am associated with, I guess you can say, and then just tell them “Price this and then I’ll give you the budget after.”

And in relation to the process if the value was over \$150,000, how did that differ?---Oh, so that would be open tender. So that’s going through our portal. So, that’s, I guess, you send all the, you, you do the planning, the, the documentation, the tender documentation, then you send it over to the Procurement Team and then they would upload it to, I think, VendorPanel or Tenders Online or something like that, and then it’s open tender. So
10 anyone that subscribes to the website, or register for the website, gets the email and then they can either, they could tender for it.

So you weren’t able to control the persons who - - -?---Exactly.

- - - bid or submitted a tender for that process.---Who bid, exactly. Yeah, so that’s right. So it’s open so you can have 15 subcontractor pricing the job.

And in terms of the assessment of a value or of a project that was over 150,000 or subsequently 250,000, how did the evaluation process differ, that
20 is, by comparison to what was required under \$150,000?---Oh, it would be the, I think it would, from memory it was, I think it was the same process. It think you’ve got, you’re given this, um, table, matrix that’s break down, and you score them.

Was there a requirement for there to be a Tender Evaluation Committee if the value was over \$150,000?---Yes.

And you see that referred to in step 1, that’s supposed to be, if you look at this page, it has to include at a minimum three people.---That’s correct. So I
30 think two on your team and one external, which is a Procurement member.

So that was also different from the process that you were following in relation to - - -?---Yes.

- - - under \$150,000?---Yes. So under that 150 was a, I guess it was just a, just a member of your team, just to I guess sign off on what you recommend.

You’ll see if you have a look at step 1 on the screen there on the third
40 paragraph there was somebody from the Procurement Team to act as a

probity advisor. Were you aware of that occurring in relation to tender processes for values of over \$150,000?---Above 150, yes.

You had experience of that occurring?---Yes. Yes. I would follow that, yes.

10 There's also reference to an external person potentially sitting on a tender. Did that occur in relation to any of the tender processes you were involved in during the time that you were at Inner West?---Not that I recall. I just recall it's just the team members so it will be just me and someone, my co-worker, and then it will be a guy from, a person from Procurement Team.

And in terms of the Tender Evaluation Committee, how would you describe your role relative to other members of that committee when you were sitting on a Tender Evaluation Committee?---So obviously I would, I would do it first, and then obviously convince the other person, the co-worker, say, "Okay. I reckon we should go with him because blah, blah, blah, blah."

20 And - - -?---So just favouring - - -

And is that a process that occurred also where the value was over \$150,000?---Yes, to a certain point, to a certain degree.

30 Where you say to a certain degree, what do you mean by that?---So I can't say, for example, say I, I know, so this is an example, so there's open tender. One of my, one of the companies I'm associated with, say, puts in a bid 800,000, and then another company, ah, another company I don't know put in a 400,000, obviously I can't give it to that 800,000, do you? You can't justify that value.

So is it your evidence that you attempted when you were sitting on Tender Evaluation Committees to ensure a result - - -?---That's favourable.

- - - that was favourable to companies with which you were associated?---If it's, if - - -

But you weren't always able to secure that result.---Exactly, if it's possible, that's correct.

40 And so when you say if it's possible, did that depend on the discrepancy between the different quotes?---Exactly, yeah. So if, say, for example,

another example is say one, one company came in at 200 and another one, well, the company I'm associated came in 205, I would have favoured the 205 over the 200 one. Does that make sense?

So you - - -?---Yeah.

You would favour companies with which you were associated even if their quotes were more expensive.---Yeah, to a, to a certain degree, as in to a, like, a - - -

10

And is it your evidence that you would make arguments in their favour relying on factors other than price in that kind of example?---That's correct, yes.

And do you recall whether you were able to be successful in making those arguments on occasion?---I, I can't recall. Unless you, if you remind me of what projects then I might be able to, yes, no, yes, no. It's been a while.

20 But is it your evidence that inevitably, to the extent that you could, you attempted - - -?---Exactly. If I could, yeah.

- - - to favour those companies with which you were associated when there'd been an - - -?---That's correct. If, if I could do it then yes, I would.

Right. And do you recall, I think you said you prepared things first for Tender Evaluation Committees. Did you regard your role as being influential in shaping the views of those committees?---Yes.

30 And would they usually follow your recommendation when you prepared a recommendation to them?---Yes, they would.

Do you recall any occasion on which they didn't follow your recommendation?---Not that I can recall, no. I think it's more of a reputation I built within council.

THE COMMISSIONER: Sorry, say that again.---Just I think it's just the reputation I built within council of doing, getting the job done.

40 MS DAVIDSON: So when you started running projects, working first at Leichhardt and then into Inner West, where did you find the contractors that you approached where it was not an open tender process, where you were

able, under the \$150,000 threshold to go to three contractors?---Oh, so originally it would be their, I guess, their lists. I would, obviously I don't know any, when I started council I wouldn't know any contractor. I would say, "Oh, who would you normally go out to?" And they would say, "Oh, there's four contractors. Go out to all four, all three of them" or whatever.

And when you say there's four contractors, were they approved suppliers or - - -?---I wouldn't, I wouldn't know if they were approved suppliers. They would just say, "Oh, okay. We usually go out to these guys, just get them to price it."

Would you ask a colleague that question?---Yes. Colleague, manager, anyone just, anyone that, yeah, anyone within the team.

And you agree that I think subsequently you came to approach contractors with which you were associated. What were the companies that you were associated with which you subsequently began to approach?---(not transcribable). So that would be Ballyhooly Civil.

20 Ballyhooly Civil. Yeah?---Yes. It would be - - -

And how was it that you came to know of Ballyhooly Civil?---Oh, because I worked with them during Glenfield Junction Alliance.

And did you have an association with particular individuals, did you know particular individuals who worked at Ballyhooly Civil?---Oh, yeah. I know a few, yeah. I know a handful there that worked there, yes.

And had you done any work for Ballyhooly Civil yourself?---No, not, not, not, not direct to Ballyhooly Civil. I normally, yeah, see, I normally, they normally give labour hire to me when I'm doing, say, working for, when I'm doing RJS Infrastructure.

Did you do any estimating work at any time for Ballyhooly Civil?---Oh, yes, yes. Oh, yes, now I remember. Yes, I've done a few estimating, well, quotations for them, yes.

And when you say you'd done a few quotations for them, was that preparing quotations for them?---That's correct. That's correct.

40 To submit to Inner West Council?---Yes.

And what was your motivation in doing that?---Just to get them in because I know they could do the work without any headache.

When you say you know they could do the work without any headache, what do you mean by that?---As in it's just, they, they're in there just to do the job, not to fluff around, not to hit you with variation or anything like that. So, at the point where - so there was a period where, I guess, this is a personal reason where my, my wife suffered from extreme eczema and she was bedridden. So I kind of was dealing at lot at home, a lot of pressure at home and, like, sleepless nights and all that stuff. So, and I needed to be at work. So I would just try and align people I know just do run the job for me where I was there minimal.

So did that mean that you were looking for contractors who wouldn't require you to actually attend the sites?---That, that's correct. Yeah. I could just be on the phone and say, "Is everything okay?" (not transcribable) everything is fine.

20 And so Ballyhooly Civil was in that category, you didn't need to attend? ---Exactly. I knew they will do their job. Any issue they will just take care of and that's it and then it's just - - -

So when Ballyhooly Civil was working on a job did that involve you doing less supervision work that you would otherwise have to have done? ---That's, exactly. That's right, yeah. So, it would be less supervision and I could spend more time at home or doing personal, family things.

30 And so was it the case that during that period of time you attempted to spend as much time at home as you could?---That, that's correct. So I would, I guess, I would lie that, on that work but really I'm at home or going home to drop off the kid to day care or, you know, being, you know, just being at home as much as I can, yeah.

Are you able to say what that period of time was?---Oh, I can't recall. As in the time frame or as in the - - -

40 The time frame.---Oh, so I think 2017. Yeah, so this was when my wife got sick and then our, our second born was born with, again, severe eczema as well. So just looking after those two was a big, big burden.

And when was your second born child born?---2017.

So was it throughout 2017 that you were engaged in the process you've described of trying not to attend or, I think you said lying about attending?
---Yes, that's right. Just trying to balance, I guess, work and home. You know, just see, be there for the, for the family and also be there for work without not being there for work.

10 Were you attending Inner West Council offices and sites at that time?---Oh, yeah. So I would, so the way I would, would do it is I would be there in the morning, you know, show my face so that everyone thinks I'm there and then I would just leave for a few hours just to, I guess, you know, family errands, just dropping off, you know, my son to day care or going home and seeing - because sometimes I would get a message from my wife saying, oh, she's, like, she, she, you know, she's just a bit depressed and then I would just run home just to be there and then to see her, oh, how is she doing, you know, and then just run back to work. So - - -

20 And during that period of time was anyone at Inner West Council aware that you were engaged in work practices of that nature, that is not attending work when you were supposed to be attending work?---I don't, I don't, I, I'm not too sure, but I think they did suspect I did, I was missing a lot but they think it might be site-related, gone to site, you know?

Do you recall having any discussion with anybody about your whereabouts during that period?---Maybe. The, I think the person that would know my situation, but don't know the full situation I'm in is probably Lojine.

30 Lojine?---Yes.

Is that Lojine Frost?---Lojine Frost, that's correct. Yes.

And what was her role?---She was assistant project manager.

And was she assigned to work with you during that period?---Yeah, so I was a mentor, yes.

40 So Ballyhooly I think you said was in the category of contractor that you - -
-?---One of the contractor that - - -
- - - regarded as reliable?---Reliable. Yes, that's correct.

Did you receive any payment from Ballyhooly?---No. Nothing at all.

Did you receive any other form of financial benefit from Ballyhooly Civil?
---Not, not from Ballyhooly Civil.

All right. So what were the other companies with which you were associated?---So, then, this is where SDL Projects come in.

10 SDL Projects?---Yes.

And who was involved in the management of SDL Projects?---So that was, so that was Seng Laphai and Monty, Monty Nguy.

Monty Nguy?---Yeah.

And he worked for SDL for a period of time?---That's correct.

20 And we'll come back to that. What were the other companies that you were associated with?---That will be Constructicon, which is owned by Monty - -
-

Constructicon?---Yeah.

That was Monty's company?---That's correct.

And what were the other companies?---And then it was Marble Arch, so that's Aidan Cox's company.

30 Yes, and the others?---And then there was, what, Sanber Group, but that was the one - - -

Sanber Group? Is that RJS Civil?---RJS Civil, yeah, but that was a more one, one or two off work, 'cause I didn't like using them.

Whose company is Sanber Group?---Sanber, so Raja's company.

And you didn't like using them?---No, no. They're - - -

Why is that- -?---'Cause, 'cause obviously it was between myself, Nima Abdi and Raja Sanber. They will just get too greedy, as in, they'll keep pushing, pushing, pushing.

Pushing, pushing, pushing in respect of what?---As in, say, they were given work, say, like, the \$4,000 work. They'd say, up it, up it, you know, make it, like the 4,000 look like a 7,000 and then 7,000 look like a 10,000, so make me feel a bit uncomfortable, but I still did, anyways.

10 They wanted to charge you more money in respect - -?---Yeah.

- - - in respect of work that the Sanber Group was doing?---That's right, yeah. And then, then there's been a few times where I just said, "I don't think it's worth that much, you know, someone's going to know."

You mentioned Nima Abdi there. Did he have a company or involvement in the company as well?---Yeah, so JTG Services, so that's, so they didn't do any work for Inner West Council but payments, I think payments had been made.

20

As in payments had been made to them by Inner West Council?---They, that's correct, yes.

Is that Jessica Tosh's company?---Yes, that's correct.

Did they perform work as a subcontractor to other groups, that is, other companies with which you were associated?---As in, perform? What do you mean perform?

30 Was there work that they either subcontracted to other groups or provided to Constructicon, for example?---Yeah. So the, so the, I think, I remember there was one job where I think Monty did work for them, so they were just, I guess, so, yeah. There, there will, there will be JTG and then JTG would hire Constructicon to do the work and they will get, there, there's a little bit of, I guess, profit margin in between.

And would that involve then profit accruing, as you understood it, to Mr Abdi?---That's correct, yes.

40 Were there any other companies that you were associated with that you were involved in asking to provide tenders or request for quotation during

your time at Inner West Council?---Well, they're, they're the ones I can remember, unless you - - -

Was Innocon another one?---Yes, Innocon was the first one, 'cause Monty was part of the, was one of their shareholders or the directors.

10 So was Monty's time at Innocon an earlier period than when he worked for or when he had his own company, Constructicon?---That, that's correct, so it was Innocon first and then Constructicon came after. So I think he had a falling-out between the, the, the members of, for Innocon and then he started his own, he went out on his own.

And during the time that you were employed by Inner West Council, did you ever advise anyone who worked there of your association with any of those companies that we've just gone through?---No.

20 I think you've given evidence that you didn't declare any conflict of interest in relation to them.---That's correct. I didn't declare any conflicts of interest.

Did you arrange for those companies to be added to the Inner West Council systems, that is, as suppliers?---That's, that's, yes. Yes, I did.

And in doing that were you required to consider whether you had any conflict of interest in relation to them?---Yes, there was a box that ticks if you, if you had any conflict of, or if you're associated with them which I didn't, didn't tick.

30 You never ticked that box.---That's correct.

Do you recall receiving any training in relation to conflicts of interest during your time at Inner West Council?---Truthfully, I don't recall. Maybe I had. I don't recall.

Were you aware that you had conflicts of interest at the time that you were adding them - - -?---Yes.

- - - to the - - -?---I was aware, yes.

40 In relation to approaching companies that you were associated with, do you recall when that started to occur?---Maybe back in 2016 was, beginning of

2017. I can't, yeah, it wasn't 2015. I know that for sure, because that's when I started. I didn't know who was working who or, yeah, so it might be the back end of 2016, beginning of 2017.

So when you say back end of 2016, that was before the creation of Inner West Council. Is that right?---That's correct, yeah. I think it was 2018 was, 2017 was when Inner West Council - - -

10 And so it was before you were in the property project manager role. Is it your evidence that you were still nevertheless managing projects, I think you said more on the civil side, which you were at Leichhardt?---Yes. So, that's right. That's correct.

20 Could we have displayed on the screen the Innocon Table 4 Summary. Chief Commissioner, Mr English referred to a number of summary tables or to a presentation of evidence by way of summaries. There are a large number of individual projects and I don't intend to take the witness through each one of them but this is a summary table which will be brought up on the screen and copies will be provided to the relevant legal representatives in relation to each of the tables to which I am to refer. I have a copy to hand up for you, Chief Commissioner, if that would assist.

THE COMMISSIONER: Thank you.

MS DAVIDSON: Mr Nguyen, this is a summary of projects that Innocon performed for Inner West Council.---Yes.

30 Do you see the first one listed there is the Hannaford Community Centre kitchen refurbishment in August 2016?---Yes. Yes.

So again that was in the period before you became property project manager at Inner West.---Yeah.

So this would have been a Leichhardt Council Project, I assume.---That's correct.

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

40 Now, this, correct me if I'm wrong, seems more like a building than a civil project. Is it nevertheless the case that you were involved in managing

some building projects at this time?---Yeah, that's, that's what I said. I said, so I was doing more civil than building but I was still doing building.

You were still doing some building.---Yeah, so 80% was civil and 20% was building. So there's been odd occasion where I would help the Property Team out to do the building side because they were short-staffed, well, they've always been short-staffed.

10 So was Innocon the first company with which you had an association that you introduced to Inner West Council work so far as you can recall?---That, that's correct.

And was that because Monty Nguy was employed there?---That's, that's correct.

And was your relationship with Monty?---Oh, we just, I guess, uni mates. Just - - -

20 You'd known each other since university?---That's correct.

Had you worked together in some capacity?---No, we, no, we never worked together, yeah. So we just mates, yeah.

And so at this time, that is, in August 2016, do you remember what Monty's role was within Innocon?---He was a contract admin.

30 Was he a director of the company as well?---I, um, I'm pretty sure he was. Well, there was three directors, I assume there was three directors. So he was one of them.

And he was one of them.---He was one of them, yes.

In relation to the Hannaford Community Centre, you can see there this was a project that you recommended?---Recommended, that's correct.

Are you able to read the screen there? Is that - - -?---Oh, yes. Yeah. I have one here as well, so - - -

40 You have one there?---Yeah.

Excellent. Did you manage that bidding process, do you recall?---Yes, yes, I did.

And the other competitors' tenders who are listed there, are they companies with which you had any association?---No association. They're, they're, they've done work for council before.

10 And so do you recall how it was that Innocon came to be successful in relation to that project?---I, I've, that one I think I gave them the lowest price and I said, "If you beat the lowest price, then the job's yours."

So if we can pull up volume 24.1, page 33. See this is a memorandum written by you in relation to the Hannaford Community Centre refurbishment.---Yes.

20 And you'll see the assessment of quotations starting there. Innocon's I think the second cheapest of the quotes. If we can turn to the following page, page 100. Sorry, page 34, sorry. You state there in the third paragraph Innocon had submitted the second-lowest tender price. They've experience working on similar projects. Did you know whether Innocon had experience working on similar projects?---No. No idea.

Do you know whether they did or whether they didn't?---I know they're all from a building background. They all worked for a company, a building company. So I know they had capacity to do the work.

30 But you didn't have any knowledge in relation to - - -?---But not, yeah, exactly, not, not for Innocon, the company itself, but for individual experiences, yes.

And you were successful in persuading Innocon's tender to be accepted or their bid to be accepted?---I think this one is, this one's a bit different. This one was, I think - can you go back? That first one they came low, they came in late, so I think I did the memo first and then he priced, his price came in and then I think I told the manager or, the manager at the time, say, "Oh, this guy just came in late. What do I do?" And he said, "Oh, that's non-conformance, so just put that in your memo, just write the story."

40 Do you recall whether you gave Innocon any assistance in relation to the pricing of this project?---Yes, yes, I did. So I gave them the lowest bid, the lowest price, which was - if you pull back on the previous page, I don't

know which company it was, I said, "If you can beat this, then the job's yours." So obviously it shaped - - -

This is the Hyper Construction?---Yes, so it's Hyper, yeah, if it's Hyper Construction then.

Do you recall who it was you said that to?---I can't remember it's Monty or I think, it was probably most likely Monty 'cause obviously I just did it with him 'cause we're mates.

10

Was that something you said to him on the phone?---I think so, yeah.

If we can go to volume 18.1, page 19. This is a message, this is a WhatsApp message between you and Mr Nguy.---Yes.

You're the, if you see at the top, there's a telephone number ending in 79. Would you agree that's your telephone number?---That's my current telephone number, that's correct, yes.

20 But it was also the telephone number that you were using at the time?---At the time, that's when I had one phone.

Mr Nguy is the other person you're communicating there. Do you recognise his telephone number?---Yes, 128, yes, I do.

This was a message sent in early August 2016. Do you recall whether this Hannaford Community Centre was the first time you'd sent information in relation to an Inner West Council tender to Monty?---Yeah. So this would be, yeah, I'm pretty sure it would be - but this would be, so prepping that I'm going to send you a tender to price.

Yes.---Yes, yes. That's correct, yes.

Yes, indeed. So the messages go on. Can we go to page 36? So you see here in blue Mr Nguy is asking you questions in relation to the prices, giving you some information in relation to their price.---That's correct.

About 90 plus GST.---As a cost, yes, that's correct.

40 And then turning to page 37, which is the following page, you say in green there, "Only got one price in at 101 K".---That's, that's correct.

So is that an instance of you providing information in relation to a competitor's tender price- - -?---That, that's correct. Yes, that's correct.

- - - to Monty?---That's, that's correct.

And was that a process that you typically engaged in in instances where you wanted Innocon to be the successful bidder in relation to a process that you were running?---That's correct, yes.

10

Do you recall whether you also had a telephone conversation with him in relation to coming in? I think you gave some evidence about if you come in under a certain price you've got it?---At some point, exactly, yeah. So, yeah, I'm pretty sure I would have. We spoke on the phone about, oh, we would have had a discussion about it.

20

Do you recall whether you provided them with any assistance in relation to the preparing of their quotation apart from providing the information that is about the competitor's prices?---No. The only thing I can recall is that I tell them to make their tender submission look, look detailed. So put in, you know, put in, say, their experiences, who's going to run the job, what their, their CV - to make the, the tender submission look above average.

Look above average?---Yes.

That is to make it look like they had more experience than they had?---Yes, exactly.

30

And do you recall preparing documents for that or assisting them in relation to drafting those documents?---I don't remember doing anything. I, I can't recall. To tell you the truth, I can't recall. I might have. Like, I might review some, some of their docs saying, "Oh, yeah, it looks all right" but I can't recall if I did actually - - -

But you certainly do recall giving them information in terms of disclosing competitor's quotes to them?---Yes. That's correct, yes.

40

Commissioner, I seek a variation of the section 112 order in respect of Mr Nguyen's compulsory examination transcript of 6 April 2022. That is page 838 from line 2 to 839 line 4.

THE COMMISSIONER: Yes, all right. Is there an extract of it?

MS DAVIDSON: I'm sorry?

THE COMMISSIONER: Is there an extract that you have?

MS DAVIDSON: Yes. There's an extract I can hand up and there will be an extract brought up on the screen if the variation is made.

10 THE COMMISSIONER: Yes, all right. Well, I grant the variation.

MS DAVIDSON: I'm sorry, Chief Commissioner, did you say you grant the variation?

THE COMMISSIONER: I grant the variation, 838.

**VARIATION OF SUPPRESSION ORDER: SECTION 112 ORDER IS
VARIED IN RESPECT OF MR NGUYEN'S COMPULSORY
20 EXAMINATION TRANSCRIPT OF 6 APRIL 2022, PAGE 838 FROM
LINE 2 TO 839 LINE 4.**

MS DAVIDSON: If that could be brought up on the screen. Mr Nguyen, you attended a compulsory examination before the Commission in April 2022. Do you recall that?---Yes. Yes, I recall.

This is an extract from the transcript of that examination. I'll take you through it. You say, "And with that first job" the Hannaford Community
30 Centre kitchen refurb, you said you could give them a hand and throw them some work. "Well, I gave them an opportunity to" - sorry, I'm paraphrasing - "I gave them an opportunity to price." "I see. So you sent them an offer to tender?" "Yeah." "And RFQ?" And you explained that's three contractors you can go out to. "And to your knowledge had Innocon undertaken any other Inner West Council work at the time?" "No, that would be the first." And then you were asked, "What was your involvement? Did you provide them with any assistance with that tender?" "Not from my memory. It was just, I think at the time I was just a bit wary but I just gave them an opportunity to tender." "I see. You never disclosed
40 any confidential information to give them an advantage in the tender process?" "Not from - oh yeah. So, no, I'm not too sure." "Okay.

Thinking about Innocon in general and the contracts they tendered for did you provide them any assistance at that stage that you can recall?" "Not that I can recall, no." "Okay. And you never disclosed confidential budgetary information or competitor's quote?" "Oh, no. I didn't think I would have because I understood that, well, I guess the rules. It's not until I got the second phone, the SDL phone." "I see." "Because you do, do you know what I mean? Like, I was aware. And then I was, yeah, I was aware that the work phone is for work, yeah." "I see. So is it your evidence that you didn't provide any favourable treatment to Innocon?" "Not that I can recall. Yeah, I just treated them as it was like everyone else. I just gave them the opportunity to price." Those answers in respect of not providing any assistance to Innocon were untrue, weren't they?---That's correct, 'cause when I saw the memo, then it brought back memory, when you showed me the memo. So when I saw, remember when I saw the first one came in late submission then it started coming back to me.

So you didn't recall it - - -?---At the time.

Your evidence you didn't recall at the time?---At the time, that's right, yeah, until I saw the memo you just showed me, presented to me. Okay, that's, that's, it started to come back.

But you definitely did provide assistance to Innocon.---Yes, that's correct. Yes.

And, indeed, the messages that we've just shown you on the screen indicate that you provided competitors' prices.---That's correct. Yes. So at the time when I was explaining Innocon I didn't see the memo. It's just, it's, it's, I think it's one of the earliest ones so it's hard to recall.

You see if we can go back to the Table 4 Summary Document for Innocon, within February - sorry. It's the document you have in front of you, the table, the Innocon table.---Oh, it's not there, it's not showed yet, yeah.

It will be brought up on the screen.---Yep.

And item number 4 there is the Leichhardt Park Aquatic Centre astroturf, and that's in February 2017.---Yes.

Do you recall that project?---Yes. Yes, I do.

Do you recall whether you provided competitors' quote information to, you can see the competitors tenders that were listed there?---I think I would have. Yes, I think I would have, yes.

Can we bring up volume 18.7, page 132, halfway through the page. You're sending a message here, you see your number with 479 about halfway down the page, "Can you send through the turf quotes to my personal email." This is a message you're having with David, or a conversation you're having on WhatsApp with David Michael. Who is David Michael?---So
10 he's one of the directors.

Of Innocon?---Of Innocon, yes.

You say, "Can you send through the turf quotes to my person email. The other guy wants to keep as a record." And then if we scroll down to the next page, you're talking about another guy's pricing.---That's - - -

And then Mr Michael's asking you about just sending the high quote. You say, "Just the high one." Mr Michael said, "It's addressed to us." And
20 scrolling through the next page, and, "Yes, I know. He just wants it for file. He's not going to send it. He has OCD." Do you recall who you're talking about there?---I have no idea.

If we can continue on.---Do you want, yeah, do you want to continue then it might recall my - - -

Just to see whether this refreshes your memory.---Yeah.

Mr Michael says, "I still don't get why he needs it. All he needs to do is a
30 quote from him, or is he worried in case he wins the job and needs to do it?" "He likes everything to be in a particular order. He just wants to file it." This is you saying that. "I'll scan the one you gave to me and blank out your name, if you're comfortable with that." And then messages continue. And Mr Michael says, "I'll blank out your name and scan it to you." Does seeing any more of those messages refresh your memory in relation to - - -?
---Who that - - -

- - - why it was that you were collecting other quotes that had been obtained by Mr Michael?---I've, I, I don't recall. I'm not too sure why, I don't know.
40 I'm not too sure. Yeah, I don't know who, who's the person we're talking about.

So you're not sure who the other guy is in that conversation?---I can't recall. Yeah. Yeah, I can't recall.

Is this a stage at which you were involved in preparing quotes on behalf of other bidders in relation to - - -?---I think that's the, yeah, it was the first, I think it was the beginning of it.

10 So if Mr Michael had obtained quotes from others, do these messages reflect your involvement in potentially putting those forward as competitor quotes?---Oh, possibly, oh, possibility, yeah.

Possibly? You're not able to say one way or the other?---Yeah, I, I can't, I can't recall, it's, it's - - -

Do you recall when Monty left Innocon?---I don't know when he left Innocon. I got, I can't give you a time frame. I didn't take note when he left Innocon.

20 So if we can go to volume 18.1, page 191. Can you scroll down? That last message, "I'm moving on, mate," 30 March 2017. Does that help refresh your memory in relation to the timing of him moving on?---Yes, yes, it does, yeah. So it was shortly after the astroturf job I think he moved on, yeah.

So the astroturf job was, well, a date in relation to - - -?---Yeah, I think so. I think after that - - -

30 The summary that you've got is 22 February 2017.---Yeah.

Can we scroll to or go to page 198 in the same volume. See the middle of the page there, "Dave will still pay your for the astroturf, you've got my word." And then you say, "David's going to ask for work." Just stopping there for a moment, when Monty says to you "Dave will still pay you for the astroturf" do you recall what he's speaking about there?---I'm not too sure if I got a, I got, I got a backhander for that. I'm not too sure if he says something else. I can't - yeah.

40 Would there be any other context apart from a kickback - - -?---Yeah, I have no, yeah.

- - - in which Dave would be paying you - that is Mr Michael - would be paying you for the astroturf?---I, I can't recall, I, I seriously can't - it sounds like a kickback but I don't recall getting a kickback, if that makes - yeah.

You don't recall having one actually paid?---Yeah, yes, yeah.

Did you at that time - - -?---Unless, unless - sorry.

10 Did you at that time recall having an arrangement with Mr Nguy in relation to the payment of kickbacks in relation to Innocon work?---I can't recall. The only thing that I can remember maybe is Dave did something, yeah, 'cause Innocon did something for my sister's apartment.

We'll come to that.---Yeah.

Let's continue with these messages, then. You say, "David is going to ask for work." That's you to Monty, you see in green there.---That's correct.

20 Can we scroll down. You then say, "If he doesn't, he doesn't." And Monty says, "Say nothing is coming up." Do you understand or do you recall what the context was for that conversation?---Well, maybe he was going to pay me for the astroturf but never did. As in I didn't accept it. I said if he doesn't, he doesn't. That's what I assume.

And in relation to Monty saying to you, "Nothing is coming up," and you saying, "Not much I can do, right?" what would have been your reason for having that conversation with Mr Nguy?---Because he wanted to start working for Inner West Council I think. So, so I think he established or he's going to establish Innocon and then 'cause - I mean, Constructicon, sorry.

30 Yeah. So he wanted to phase out Innocon, so - - -

You understood at the time - - -?---I, yeah, that's what I think, yeah.

- - - Mr Nguy wanted you to award work - - -?---To him rather than Innocon because Innocon already has a foot in the door.

Right.---So it makes sense, yeah.

40 So it's his company - - -?---Yeah.

- - - as opposed to working - - -?---Exactly, yeah, yeah.

- - - continuing to work with Innocon. You'll see, returning to the table for summary, that's the paper document that you have in front of you, that there was one more project awarded to Innocon by the Inner West Council. That's the Glover Street baseball cages upgrade - - -?---Yep, that's correct.

- - - in April 2017. Do you recall assisting Innocon in relation to that project?---Not too sure if I assisted but I recommended that Innocon to Tim Brown 'cause he asked, who's a civil contractor and I said, yeah, these guys
10 will do it.

So Tim Brown appears in the recommended or approved by - - -?---Yeah, so he was one of the - - -

- - - column there. What was Tim Brown's role?---He was a parks officer at the time, yeah.

And you recommended Innocon to him?---That's correct, yes.

20 Do you recall whether you provided any other assistance to Innocon?---I think I, I can't, I can't recall but some, I think I helped them price the job.

And when you say "helped them price the job" - - -?---Because they, they all, yeah, so these guys are building guys, so they know, the, the, the baseball was more civil, so there was a bit of concrete works and ground works. So I think I priced that for them, so - - -

So you on their behalf prepared part of their quotation. Is that your recollection?---Yeah, and that's, that's, that's, that's right, yeah. That's
30 what I can recall.

All right. If we can go to volume 18.1, page 160? Can we scroll down? Can we keep going? So it's 159, 160. You say, I'm sorry. Monty says to you, "Know any other civil guys who would be keep to price the baseball cages job?" to which you say, "Yeah." If we could continue scrolling through these messages? "Let me speak to the bloke first, to make sure he will put in a price." So is that a conversation of the kind that you were referring to in your answer just now about - - -?---Assisting them with - - -

40 - - - assisting them with pricing?---That's, that's correct. So I think I would have went out to most likely BH Civil or Ballyhooly Civil, just to get the

price or price it for them, through them and then they do the work, so the, yeah.

Right. So that is another company with which you were associated - - -?
---Yes.

- - - Ballyhooly?---Yes.

10 Well, being your civil guy, potentially?---That's right, that's right. My civil guy, yeah.

So if we could continue scrolling through? To make sure he will put in a price, but Monty says, "The tender's due Thursday." If we can keep scrolling - - -?---No, sorry. Yeah.

"I said, I spoke to Gerry"?---Yeah, Gerry. So Gerry was, he used to work for BH Civil and then he started his own company, Kane Civil, so I must have gone to him first, yeah.

20 All right. But, just to be clear, BH Civil is Ballyhooly Civil?---Ballyhooly Civil, yes. I will start saying Ballyhooly Civil, yeah. Sorry.

And then you say down the bottom of this page, "I price work for him." Do you recall what you meant by that?---So I would literally price work for him, as in, he, like, say, for example, that job there, I would do the (not transcribable) take off, I'll put rates next to it and say, this is how much you're going to make, are you happy with it, or put your mark-up on top and I'll send it over.

30 So you would provide him with the information in relation to a price?---I would, I would price it for him, exactly, yeah.

So continuing to scroll down, so, "I can wipe it up pretty quickly" - - -?
---That's supposed, I think whip, see what that, yeah - - -

You think it's whip, yeah?---Yeah.

40 And by that, do you mean put together the quote?---And bill of quantities with rates. Exactly. Yeah.

If we continue to scroll? Monty says, "I see." And then if we can continue to scroll, you ask whether it was open for two weeks and Monty says, "Only one." You say, "Wow, that's so quick." Are you asking questions about the timing because - - -?---No, no. So that's, the reason, 'cause I wasn't looking after the project, yeah.

Yes. That was the question I was about to ask you.---So I wasn't, that's, yeah, yeah, so that's why, yeah. So - - -

10 So you weren't managing the procurement process in relation to this project?---Exactly. It was Tim Brown, exactly, that was managing it.

Right.---So I was doing the behind the scenes, like, for them, yeah.

Assisting in relation to the Innocon quote?---That, that's correct, yes.

So if we keep scrolling, you're asking him about whether he has prices for other elements.---Yes. So that's building - - -

20 Fence braces?---Exactly, yeah. And - - -

Roofs et cetera. If we can keep going to page 166 you will see, "I will get the civil stuff for you. Ask Tim for an extension of time." So is that a reference to Tim Brown?---Tim Brown, that's right. So - - -

And Monty asks, "Do you reckon?"---Do you reckon that you can get an extension. That's, yeah.

30 Yeah. And is that, your suggestion that he asked for an extension of time, for the purpose of you being able to provide additional assistance to him by preparing parts of the quote?---The quote, the civil - yeah, exactly. Yeah. Well, not to get the price because I, I wouldn't have access to the price or the overview of the submission.

So where you say you wouldn't have access to the price that would be because you were not managing the tender process for this project?
---Exactly, yes, that's correct.

40 If we continue to - well, can we go to page 169? If we can go to the top of the page of 169 you say to Monty, "Budget is 60 K but I know it's going to cost about 100 K." So is it correct to say that by that you're passing on

information that other people who are tendering for the project wouldn't have access to?---Oh, so, the budget, the 60 K would mean that I would have probably spoken to Tim on a casual basis and said, "Oh, how are you doing? Oh, what are you, what are you working on?" just to try and get something out of him, yeah.

But that wouldn't be information that other tenders in relation to the Glover Street - well, I should say other bidders in relation to the Glover Street baseball cages would have had access to?---No, no. Exactly, yeah.

10

So, again there you're providing Innocon with assistance in relation to preparing their tender?---Yeah. That's it. Giving more detail. Yeah, exactly, yes.

And then these messages you will see are in, well, these are on 21 March, which is before the message I took you to earlier on 30 March about Monty moving on.---Yes.

20 If we can go to volume 18.3, page 13, the last message on that page. So this is on 11 May. So by then I think Monty's told you that he's leaving Innocon. You say down the bottom, "Bro, I feel like telling Dave off." If we can then scroll down. "Didn't listen to you".---Yes.

"I told him to at least use my civil guy for the excavation. End up using someone else".---Using someone else. That's - yes. No, I remember that. Yes, I recall that. Yes.

30 Does that relate to the Glover Street baseball cages?---That's the, yes, yes. I priced that for him, I think through, I'm pretty sure it was Kane Civil and then he didn't go with Jerry, he went with someone else. Yeah.

All right. And why were you irritated by him doing that?---Because I think Jerry started his business and he was looking for work so I told him "I, I'll give you something."

40 So it wasn't because you were obtaining a financial benefit from Kane Civil?---No, no. I think I was just helping him out, yeah. He, he, because he'd just gone on his own and I said, "Look, I'll, I'll help you out just to get you started."

So if we continue to scroll down, “He ended up using someone else” you say to Monty. Monty says, “Cut him off, bro”.---Yeah.

You say, “Yeah. I’m going to tell him off and tell him to keep the petty cash. Not worth.” Do you recall what you meant by - or what do you understand - - -?---Yeah, because I think Dave, yeah, I think Dave said to me “I’ll give you a kickback.” Like, I think, like, I think this relates to the astroturf. I think I was supposed to get a kickback but then didn’t get it and I said, “Oh, whatever, doesn’t matter.” And then he said, oh, and then I
10 think he said the same thing again and I said, “Whatever.”

So, is it your evidence that in relation to both the astroturf project where we’ve seen your messages with Monty about Monty telling you Dave will still pay you for the astroturf and the Glover Street baseball cages upgrade, that you had an understanding that you would have received a kickback from Innocon?---Potentially at that - yes. Yes, I - - -

Potentially or actually you understood that you would receive it?---I didn’t, I, I understood it but I didn’t care, if that makes sense. I wasn’t going for it.
20 It wasn’t my motive.

So it was simply offered to you?---Yeah, yes.

Do you recall having discussions in relation to what you were to be paid with Mr Michael?---I, I can’t recall, yes.

Or with Mr Nguy.---Well, with Monty’s company, Constructicon, I think there was, we touched base on it but it didn’t, I don’t think, it didn’t fall through.
30

Did you have involvement in drafting Innocon’s quotes? That is we’ve discussed that you had involvement in relation to the baseball cages upgrade after that period of time when Innocon was used for bidding for council work.---Yes, I probably would have. Yes, I probably would have the template, yes, because just prepared their, their quotes and stuff.

So when you say to prepare their quotes, once Mr Nguy left Innocon and you discussed cutting off Mr Michael, were you aware of Innocon in fact doing any real bids for Inner West Council work?---No.
40

Did you approach them in relation to actually submitting any - - -?---I, I didn't approach them, no. I didn't approach them, no.

So the quotes that they submitted after this period of time were dummy quotes?---After the period, exactly.

So if we can go to table 11, slide 4, you'll see that all of the projects that were listed on this table are dated after April 2017, that is after the date of the Glover Street baseball cages upgrade.---Yes.

10

So is it accurate to say that insofar as Innocon submitted bids in relation to any of those projects that they were dummy bids?---A dummy bid. That, that, that's most likely the case, yes.

And so was it your understanding that nobody at Innocon knew that you were using Innocon's name and documentation for the purposes of preparing a quote?---That's, exactly, yes, that's correct.

20 And so what was the process that you would follow in relation to preparing Innocon quotes for these four projects where they were dummy bids?---So, yes, I would just, so I had the template, obviously, from Monty 'cause - - -

So when you say you had the template - - -?---Yeah.

- - - what kind of template are you referring to?---Like the soft copy where you could just, you just make your own, you know, you input to the quote. So, yeah, they have their ledger and company details. So I'd use that and then I would just, I'll obviously do a dummy bid, so put in the scope that it was supposed to be priced and put in a, a, a dummy price.

30

So you prepared the entirety of the document?---That's correct.

THE COMMISSIONER: How did you send it?---I didn't send it. So I put it on a USB from my personal computer and transferred over to the council computer and said it was sent.

MS DAVIDSON: So you would prepare them on your personal computer at home, is that right?---That's correct. That's correct.

And then by providing it on a USB to your council computer, would that then enable you to upload it into the council system in some way?---That's correct, yes.

And in preparing the memos that you prepared in relation to these projects, was there any requirement that you describe when the quotes were received?---Not how the quotes were received but the description of the quote, like where they ranked or how they ranked in terms of price and I guess quality of work or experience and stuff like that.

10

Sure. But there was no, am I understanding correctly, there was no need for you to include in the memo that you prepared for your supervisor any information about whether the quote was sent or not?---No, that's correct, yes. So it's just say the quote's received on this date or whatever, and that's it.

So - - -?---It doesn't necessarily mean it was emailed to me.

20 So when we're looking at the procurement manual that Inner West Council had earlier and it talked about the VendorPanel portal or the use of a single email address - - -?---Yes.

- - - by which quotations were to be received, both of those mechanisms - that is those two methods that were recommended to be used - would not have facilitated you preparing a quote on a USB at your home - - -?---Yeah, that's correct.

- - - and then providing it as one of the three quotations that were received? ---That's correct.

30

So dummy bidding wouldn't have been possible had you followed the recommended practice?---If I followed, that's correct, yes.

Do you recall asking, so looking at the first of these projects in time that's listed on this dummy bids sheet, it was the Seaview Street Hall renewal works in October 2017, do you recall asking Mr Nguy to sell you a template in relation to that?---Yes. Yes, I would.

40 And then you used that template for the purposes of creating subsequent dummy quotes.---Yes. So if, so you're probably aware, but with the likes of Constructicon, SDL and Mobile Arch, to some certain extent, I did have

access to alias email, so that's where I'll be talking to myself pretending I was a - - -

Somebody else from those companies?---Exactly, yes. Yeah.

Yes, we'll come to those.---Yes. Sorry.

10 But did you for Innocon?---No. So Innocon will just be USB, 'cause obviously I don't speak to anyone there and they won't do me any favours, so - - -

Right. What was in it for you creating dummy quotes in relation to these projects?---I, I, that, I'm still asking myself that. I, I don't know. Just helping a friend out, to some certain extent. Like, it's, I don't know. It's just, just, I know they'll help me out by making it easier for me, you know, um, to do what I need to do at home.

20 How is creating dummy quotes making it easier for you to do what you needed to do?---Because, um, so if I favour them to do the work, and I know they're there to do the work and I could just be elsewhere looking after, you know, a family member or running errands, so then I don't have to be there at work.

That is if you favoured the successful tenders that you're associated with. ---That, that's correct. Yes. Yeah, so if I wasn't to favour, if it was to be a different contractor who I had never worked with, I would have to be there to babysit them 'cause I don't know what they're like or what they'll do, if that makes sense.

30 And so in creating dummy quotes, did that in and of itself also make your job easier?---Easier. Yes. Yes.

And how was that? How did it do that?---It's easier, sorry, 'cause it just makes, so I could be, I know they will perform and I know they will perform the work. They will do the work, take care of the work. And then it's just that I don't need to be at work all the time.

40 THE COMMISSIONER: You're talking about the successful bidder? ---Yes. So the successful bidder I would favour which would, I would be, which I would be associated with them.

MS DAVIDSON: And you could ensure that the successful bidder was successful by creating dummy quotes from other companies?---That's correct. Yes, that's correct, yes.

Is that a time consuming process, creating the dummy quotes?---No, not really. If you have the template there, it's all there, you're just changing the numbers and - - -

10 Did you ever receive any benefits, either financial or any kind, from Innocon?---I think the, so they did my sister's apartment but at, at a cost price. I think, I assume that would a benefit, right.

Was that the reference to floorboards you made before?---Floorboards, yes, that's right. Yeah. That's right. That's correct, yeah.

So they installed, and I right in understanding they installed some floorboards in your sister's apartment?---That's correct.

20 Can we go to volume 24.1, page 1. This is an email that Mr Michael of Innocon provided to the Commission. He notes in relation to floorboards that the invoice and expenses for this work are attached, and I can take you to those, but it says, "Looks like there was a small mark-up on costs but generally most of our time was not charged." Did you understand that you or your sister had received free labour in relation to the installation of the floorboards?---I knew they gave us, they gave me a discount for my sister.

You knew they gave you a discount for your sister?---Yeah, a hundred per cent. Yeah. Yeah, so - - -

30 And that involved not paying for labour and just paying for materials. ---Yeah, 'cause they did it themselves, yes, 'cause I was there, yes.

You were there.---I was there, yes, so I was there to open up for them to let them in to make sure everything was all right.

And did you have a discussion with them about them giving you a discount or not paying for labour?---I probably did. They said they would look after me 'cause I looked after them, so I don't know.

40 So you understood it to be a quid pro quo for giving them council work. ---That's right, yes.

And you don't understand that your sister paid for labour either in relation to those floorboards?---Yeah. My sister doesn't, she, I just sent the invoice to my sister and say, "Here. I, I, this is me helping you out."

Right. But that would only have been the invoice that - well, it was only the costs that were included in the invoice, not - - -?---Yeah. Which I would assume - yeah, exactly.

10 Not the things that were not charged.---That, that's right. That, it would all just be, I assume it would just be the material.

THE COMMISSIONER: Did you have a discussion with your sister about that?---No. She doesn't know anything about it. I just said I would look after it, that's it.

MS DAVIDSON: Chief Commissioner, I seek a variation of the section 112 order in respect of Mr Nguyen's compulsory examination transcript of 6 April 2022, page 843. The line numbers are lines 33 to 42.

20

THE COMMISSIONER: Yes, all right. A variation is granted in those terms.

VARIATION OF SUPPRESSION ORDER: SECTION 112 ORDER IS VARIED IN RESPECT OF MR NGUYEN'S COMPULSORY EXAMINATION TRANSCRIPT OF 6 APRIL 2022, PAGE 843, LINES 33 TO 42.

30

MS DAVIDSON: Thank you, Chief Commissioner. If that could be brought up on the screen. You were asked, I asked you a couple of questions about Innocon undertaking work on your sister's apartment on the flooring. "I just wanted to confirm that you received no financial benefit when Innocon installed the flooring for your sister." "Oh, no. I was just the middleman and my sister did the transaction." You were asked, "It's your evidence that your sister paid in full for labour and materials and there was no free work. Is that correct?" "From memory, yeah." That answer was untrue, wasn't it?---Yeah. That's, so, at that time I, I, I was trying to recall until I went home because, because you guys asked to see if I could find the invoice for, for, for that work and then I found the invoice that night and

40

then I sent it over and I said, "Oh, maybe it was just the material only." I think (not transcribable) or something like that.

I'm sorry, you said you think you sent it to?---No, so, the, at the time when - so at the time one of, one of you guys requested an invoice, a couple of invoice. So when I went home I found the invoice to that work and I think it just said material only. So at the time, at the time when I was at the hearing doing, saying this particular thing, I didn't recall until I saw the invoice and, oh, maybe it was just the material only.

10

So it's your evidence that you understood yourself to have corrected the record in relation to that?---That, yes, that's right, yes. So when I start seeing, I guess, what you're showing me, if you showed me that before then it might have picked up what I recalled, if that makes sense.

As in that you hadn't seen the email from Mr Michael, is that what you're referring to, showing you what I have just shown you?---Yeah, that's right, yes. Yes.

20

Commissioner, I should probably tender the two extracts of compulsory examination transcript to which I have referred. I apologise. I should have done that sequentially earlier. The first one is the 6 April transcript, page 838 line 2 to page 839 line 4 and that would be the next sequence in the exhibit numbers. So it would be 54, as I understand it.

THE COMMISSIONER: Yes. It will be Exhibit 54.

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#EXH-054 - COMPULSORY EXAMINATION TRANSCRIPT OF TONY NGUYEN DATED 6 APRIL 2022 – PAGE 838, LINE 3 TO PAGE, 839 LINE 5

MS DAVIDSON: And the next one would be the 6 April transcription, page 843 lines 33 to 42.

THE COMMISSIONER: That will be Exhibit 55.

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#EXH-055 - COMPULSORY EXAMINATION TRANSCRIPT OF TONY NGUYEN DATED 6 APRIL 2022 PAGE 843, LINES 33-42

THE COMMISSIONER: Do you have a copy of that?

MS DAVIDSON: Yes. Perhaps if now is a convenient time we might also mark - I would ask you, Chief Commissioner, to mark for identification the two tables that have been the subject of evidence from Mr Nguyen this afternoon. The first one being the Innocon, table 4 - well, I've been referring to it as the table 4 summary but it's headed Innocon Pty Ltd.

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THE COMMISSIONER: Do you want that marked, do you?

MS DAVIDSON: Should be MFI 2.

THE COMMISSIONER: MFI 2.

#MFI-002 - TABLE 4, INNOCON PTY LTD SUMMARY

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MS DAVIDSON: And there's a series of slides in respect of dummy bids. I will be coming to the other slides in the sequence but the one we've been looking at is the fourth of those slides. It's dummy bids in relation to SDL, Constructicon and Innocon, if that could be MFI 3.

THE COMMISSIONER: Do you have a copy?

MS DAVIDSON: Yes. Thank you, Chief Commissioner.

30 THE COMMISSIONER: Sorry, the last page, is it, or the whole document?

MS DAVIDSON: If the document could be marked, I will be coming to the remainder of it.

THE COMMISSIONER: All right. So, that'll be MFI 4.

MS DAVIDSON: It's a series of PowerPoint slides that comprise the one file.

40 THE COMMISSIONER: Yes, all right, thank you. Sorry, MFI 3, sorry. Thank you.

**#MFI-003 – TABLE 11 DUMMY BIDS IN RELATION TO SDL,
INNOCON AND CONSTRUCTICON**

MS DAVIDSON: Mr Nguyen, I asked you earlier as to whether you had discussions with anyone at Innocon in relation to receiving benefits for giving them work, and I think you said you might have had those
10 discussions. Do you recall any particular discussion with Mr Michael or Mr Nguy in relation to Innocon providing benefits to you?---I don't, I don't recall, no. Possibly. I, I don't recall. It's, it's - as in when you're talking, when you say benefits, as in kickbacks or - - -

Kickbacks or any other form of benefit.---The only thing I can remember is just the, my sister's apartment.

Is the floorboards?---Yeah, yeah, the floorboards, yeah.

20 If we go, or can we go to volume 18.1, page 3. This is a discussion that you were having with Mr Nguy in August 2016. I think we've established that in August 2016 was the first time that Innocon became involved.---Yes.

You see in about the middle of the page there you say, "I got 15 of these types of jobs. I have to deliver this delivery this financial year. You're bound to get a few." If we can keep scrolling, there's discussion in relation to budget. We can keep scrolling down. Again you're indicating that you shouldn't have told him. If we can keep scrolling. If we can keep going through to page 8. So there's a description of again you providing
30 information to Monty.---Yeah, I think this is just the beginning of how we kind of gelled together, yeah.

Yeah, so if we can stop, if we can go back up to the top of that page, which is page one hundred and - I'm sorry, page, if we can go down to the bottom just so I can see the page number there. Yeah, that's page 8. So you say at the top of that page 8, "The first few jobs I don't want anything, just want you to get comfortable with the system first and how council works."
Would you agree that it seems from that message as though you're
40 introducing them to council work with a view to getting something from them, that is from Innocon?---I think, though, is that from Innocon or from Constructicon? I can't remember.

Well, this is a discussion with Monty in August 2016, so Constructicon hadn't occurred at that point.---Oh, no, that was, that was after, okay.

Yeah, because it was March 2017, is that correct?---Potentially, yeah, so potentially, yes.

10 So in referring to, for the first few jobs, not wanting them, not wanting anything, wanting them to get comfortable first in how council works - - -?
---Yes.

- - - would you agree that you were looking to, after those first few jobs, getting financial benefit from Innocon?---Potentially, yes, yes.

Potentially or actually yes?---I don't know, as in I can't recall, like, well, today I'm, like, it wasn't my intention, but I guess from reading that it is my, it was my intention, if - - -

20 You'd agree that what emerges from that message - - -?---Yeah, that's what I mean, that's what I mean, like, yes, so - - -

It was your intention at the time?---At the time, yes, at the, that's right, at the time it probably was my intention, yes.

30 So if we continue down in this series, so Monty read that and you said, "Don't feel you're in debt, yeah? Know the system first." And Monty says, "Yep." So again is that consistent with on the first few jobs - - -?---Yeah, just to get comfortable because it, yeah, just get comfortable and see how it works.

And then subsequently, though, him feeling that he was in debt because you say, "Don't feel that you're in debt in relation to the first few jobs"?
---Maybe, yeah. Maybe. I don't, don't know why I said that, like, yeah.

A natural reading of that would be that after the first few jobs, he should feel like he's in debt to you?---From reading that, yes. Yeah, that probably was my intention at that time, but, yeah. So, yeah, I'd just help him to get started, then after that, I guess - - -

And so after he left, he established Constructicon. Did Constructicon do subsequently a significant amount of work for Inner West Council?---Yeah, they done, I think they did a fair, fair bit, yes.

Can we bring up the table 4, Constructicon table. This is a version, I can hand one up to you, Chief, Commissioner, of an equivalent table to the one that we were looking at for Innocon and one for the witness, in relation to jobs that Constructicon did for the Inner West Council. And you see the first one there is June - - -

10

THE COMMISSIONER: Just one moment. Yes.

MS DAVIDSON: The first one there is June 2017. Do you see that, up the top there, Mr Nguyen?---Yes. Yes.

And the total, which shows at the bottom, on the very last page of the document, is \$1,071,168.42 which is the total figure paid to Constructicon ?---Well, the first one there (not transcribable) access gate, concrete driveway. I'm not sure if they did, I'm not sure if they did it, so, yeah - - -

20

If you have any concerns in relation to any of the - - -?---Yeah, I just need a minute, just to kind of, yeah. It's just - - -

Yes, of course. I'm not asking you now to check every entry in the table. It's at least something that you can discuss with your legal representatives overnight.---Okay.

We're not going to finish your evidence today.---Yes.

30 And so if there are any concerns in relation to any inaccuracies in the table - - -?---I'll flag it up. Okay.

- - - feel free to raise them with us.---Okay.

At the moment, if I might just ask that this table be marked for identification, Chief Commissioner, which would make it MFI 4, I believe?

THE COMMISSIONER: Yes. That can be marked for identification 4.

40

#MFI-004 – TABLE 4, CONSTRUCTICON SUMMARY

MS DAVIDSON: Do you recall introducing Constructicon as a new supplier to council?---Yes.

And was there some form that you had to fill out?---Yes, that would be the supplier's, supplier set-up form, which obviously has that box of conflict, which I did not tick.

10 So that was the process that you described earlier - - -?---Yes. Yes.

- - - that you also followed in relation to Constructicon? I think you said that Constructicon, there was an email address that was set up for you? ---Yes. I think admin - - -

Do you remember what that was?---Admin@constructicon.com.au.

Was it pronounced Constructicon, is that - - -?---That's what I call it, yeah, so - - -

20

Right. Was that email associated in any way with your name, that is the admin@constructicon email?---No, I think, there was, it was alias name - - -

That was an alias associated with it?---Yeah.

Do you remember what that was?---Anthony Bryne, Anthony something, Anthony Bryne?

30

Anthony Byrne?---No, Anthony Byrne. There we go, yes.

And was that something that Monty set up for you?---Yes. So it's something that we, I guess, we agreed how are we going to play this, so he will set me up an email which I have full access to and that's where I, I guess, communicated to myself.

So where you say communicated to yourself, you would send requests to the Anthony Byrne or - - -?---Admin, exactly.

40

- - - the admin email address?---And then, yes. Then they will - - -

And then pretend to be Anthony Byrne - - -?---That, that's correct.

- - - and reply to yourself?---That's correct, yes.

And, in that way, you were able to control the entire process - - -?---Yes.

- - - in relation to what Constructicon were submitting to the council?
---That's correct.

10 Did anybody else have access to that email address? Did Monty have access to it?---Oh, yeah, so he would have. I would assume. Oh, I'm not too sure but I would assume so, if he's the director. Like - - -

Do you know whether he ever looked at the communications going to or from - - -?---Oh, no, 'cause I would cc him in so he didn't need to look into that email 'cause he would just be cc'd into it.

And do you know whether anybody else worked at Constructicon or it was just Monty?---It was just Monty at the time, yeah.

20 Did you agree with Monty or discuss with Monty using the alias?---Yes. Yes.

And so he understood that that was what you were planning to do?---Yes. So he said, "Oh, yes. That's the plan."

And what did you understand the purpose of that plan to be?---So, so the plan was to make him, I guess, Constructicon to look bigger than they are, so the more emails, the more employees.

30 And would making it look bigger make it easier to present it as a company that could gain - - -?---Exactly, just to influence, they, they are well established. They can do the work. I know they can do the work anyway, it's just to say that they're well established. It's just to get the foot in the door.

Because in fact it was a brand new company with not track record at all.--- Exactly, yeah.

40 And it was only Monty on his own.---Exactly, yeah.

Right.---But Monty was capable of doing the work, 'cause that's his background.

Did you draft quotes on behalf of Constructicon using the admin Constructicon email address?---Yes. Yes.

So you - - -

10 THE COMMISSIONER: Sorry, how did it make Constructicon look bigger?---Oh, just, the way I just, it's, it's I guess perception. If there's more emails so, so you have one from Monty and another email from admin so it looks like it has more employees.

I see. The fact that there was two emails.---Yeah.

MS DAVIDSON: Did you use a position title, do you remember, in relation to Anthony Byrne?---Project officer, I think.

20 So it was implying that he was doing something different from what Monty was doing. Is that right?---Exactly, yeah. That's, yeah. Exactly. Yes.

Would you, in drafting quotes on behalf of Constructicon, use your knowledge of project budgets, that is, Inner West project budgets?
---Budgets, yes. Yes. Yes.

And would you use that knowledge in relation to constructing prices or putting together prices then submitted by Constructicon?---Yes, that's correct.

30 And did you also in the process of drafting quotes on behalf of Constructicon use competitors' tenders to make sure that Constructicon's quotes were the cheapest?---Yes.

And so that provided an advantage to Constructicon by your use of those different methods?---That's correct.

How often did you do that?---How, how do you measure often?

40 Well, I guess in relation to the jobs that - let's return to this table. I can - - - ?---Oh, say a percentage, say one in three or one in four he would get a job.

When you say one in three or one in four - - -?---So out of ten jobs he will probably get four, four. Yeah. Yeah.

I see, but in relation to the jobs that he did secure, that is, that Constructicon did secure - - -?---Yes.

- - - having a look at this table, and I appreciate it's not short, there are 35 entries - - -?---Yes.

10 I'll give you a couple of minutes just to read through what those projects were.---Yeah, so the majority of it was under ten value, ah, 10,000, so it would be one quote process.

So you'll see those starting on the second page.---Yeah, so the, most of this work would be under 10,000 'cause I knew I could, I guess I only needed one quote.

Right.---Yeah.

20 You only needed one quote and therefore did that make it easier for you to - - -?---Bring him on board, or engage him.

Right.---That's correct, yes.

And in relation to those where you only needed one quote, were you nevertheless assisting Constructicon by passing on information in respect of what the budget was or what the quote should be?---Yeah, so, so obviously I, I, it's me that's, that's Anthony Byrne, so I would know so I don't need to tell him. He just does what I say, "Okay. We've got this. Go do it."

30

So in relation to these jobs which Constructicon did secure - - -?---Yes.

- - - so taking away the proportion of jobs that were council jobs overall and the question as to, what I'm saying is I'm not asking you a question as to how many out of the overall total of council jobs that you were managing to Constructicon, secure, what I'm asking you is in relation to these jobs - - -?---Yes.

40 - - - that it did secure, is it reasonable to assume that you provided assistance of the kind that we've been discussing - - -?---Oh, yes, it was to - - -

- - - to Constructicon in relation to each of these jobs?---Yes, that's correct.

That is for jobs that Constructicon was contracted to perform in every instance - - -?---Yes.

- - - you provided assistance in relation to council information?---That's correct.

10 And also in relation to the drafting of their quotes.---Their quotes, that's correct, yes.

You're not aware of any instance where a Constructicon quote was prepared independently of you or your involvement?---Oh, no, he, Monty would have went through me. He would say, "Is this okay?" Like, that, that is, yeah. He would, yeah, he would always ask me to check or - - -

Which enabled you to manipulate the process - - -?---Exactly, that's correct.

20 - - - in every instance that Constructicon then secured work.

THE COMMISSIONER: How did you understand that Constructicon was going to do this work? This is all different types of work from what I can see.---Yeah, so, so Monty's like a builder, so he, he would have, you know, roofers, painters, so would just engage them as a builder.

So he wouldn't do it himself?---No, he wouldn't, no, no, no.

Just get contractors?---Sorry?

30 He'd just get a contractor?---That's right, yes. So he's just pretty much the builder that just engaged trades.

MS DAVIDSON: How was it that you were able to manipulate the procurement system to secure that outcome or to engage in assisting Constructicon over this number of projects which, as you can see, extend over the period from June 2017 into, I think the last one in there is September 2020? Do you know how you were able to do that without being detected?---To tell, I, I have no idea, as in I guess they, I guess they trusted me, do you know what I mean? Like just, they never questioned what I did.
40

Was there a lack of process that you were aware of that you were able to find a loophole to behave in this way?---Oh, there would be a loophole. That's the reason why I, I, I did it. But the loophole would have been the one-quote process. So I would, say like, say like a 30 grand job, I would break into three individual, like, packages. So therefore you only need one quote, do you know what I mean?

Yes.---Yes, yeah.

10 Okay. So is it the case that some of these jobs at least were potentially one job?---Some of these were one - - -

They could have had a value of above \$10,000 but you broke those down in order to ensure that you only had to have one quote?---That's correct.

And in relation to the ones that were above \$10,000, did you also engage in breaking down the scale of those projects at times to keep them under the \$150,000 threshold?---Yes.

20 So - - -?---So it would be the same, I guess, scenario what I did too on the 10,000 to the, between the 10,000 and 150. But obviously you need three quotes so the, the three quotes I had, I would I guess fixed it.

Right. Did you receive any financial benefits from Constructicon?---No. Not that I can recall. Like, I've been trying to rack my brains, but it was, it never came to that point yet, so - - -

Did you receive any items from them?---I think, I think a second-hand phone.

30

A second-hand phone?---Yeah.

Can you describe the context in which you were provided with that?---I think I just recall that Monty was getting a phone upgrade and he said, "Do you want my old one?" and I said, "Yeah, why not?"

Right. Did you have any agreement with Monty that he would pay you in relation to Constructicon work awarded by the Inner West Council?---There was an agreement but it didn't follow through. The reason there was an agreement is because of my situation, my relationship with SDL.

40

I'm sorry, the reason there was an agreement - - -?---A agreement was my relationship with SDL.

Okay, and are you - - -?---'Cause we had an agreement, there was a, there was an agreement with, I guess, payment or kickbacks from SDL.

Right. And why was it the arrangement with SDL that meant that you had an agreement with Monty?---Because I think - I, what I think is that I think SDL told Monty you should have an agreement with him in place for, I
10 don't know, I think, well, when you, when you go down the time line, SDL did send me a ruthless email, like a, I guess you could say a blackmail email.

THE COMMISSIONER: Sorry, say that again.---SDL sent me an email saying that I owe them money. Like it's like a, you know, blackmail email.

Black?---Mail email. So he, he just sent me a ruthless email saying that there were all these projects for Innocon, you know, from, from Inner West Council, "You made this much, you owe me this much because we lost
20 money."

MS DAVIDSON: I'll take Mr Nguyen to that email, Chief Commissioner. ---Oh, yeah, you want to - yeah.

But I'm dealing at the moment with an earlier period in time.

THE COMMISSIONER: Yes.

MS DAVIDSON: Did you, in making an arrangement with Mr Nguy, have
30 an agreement in relation to being paid a percentage of the contract price?
---Yeah. There was a percentage.

Do you remember what that percentage was?---Well, originally I thought it was 5% but I think now it's 10 or 20%. Yeah. I thought it was lower but apparently not, yeah.

When you say apparently not, what do you mean?---I know there was a message that you showed me in the last hearing that said that, I think there was an agreed value or percentage.
40

So, were there percentages agreed in relation to contract value or was that in relation to profit?---I think profit, I think profit. It won't be the contract because otherwise that's all the profit.

Or was it sometimes both?---Yes, there would have been both. Oh, oh, I'm not too sure.

We're sticking with Constructicon at the moment.---Yes, okay.

10 I'll come to SDL.---Okay. Well, I'm not too sure with Constructicon. I didn't pay too much attention to him, yeah.

Right. If we can go to volume 18.6, page 262. Thank you. You'll see that this is a message in 2018 between you and Monty.---That's correct, yes.

But here it's you asking him, "Are you okay with 20% from Constructicon?" He says, "I'm fine."---Yes.

20 Does that prompt your memory in relation to any percentages and what it related to?---Yeah. That's the profit, the, I'm pretty sure it was the profit, yeah. It would have been the profit.

20% of the profit?---The profit, yeah. It wouldn't be 20% of the, the contract because it would, yeah, that that's all the profit.

Right. And why do you say it wouldn't have been 20% of the contract? ---Because he, he didn't put a big mark-up on it, yeah.

30 Right.---Well, I, I know the mark-up, it wouldn't have been that huge. Yeah.

Can we go in the same volume, 18.6, to page - so this is on 28 February 2018 - to page 311? I'll take you through these messages, "If I put 10, this is you, are you willing to give me 20%" and then down the bottom "or are we changing the system?" If we can keep scrolling down. And you say, "Actually, no, we leave it 10, otherwise gets confusing, 10% contract sum".- --Okay. So it's 10% contract sum. Yeah.

40 Right. So is it your evidence that at times there was a 20% arrangement and at times there was a 10% arrangement?---I think at the beginning it was 20% and then it got changed to 10%. Yeah.

So when it was 20% it was 20% of the - - -?---Of the profit.

- - - profit.---And then he changed it to 10% of the contract sum because he's trying to be in line with - I know you told me not to SDL but that's where it came from, SDL.

Right. So that was consistent with what - - -?---SDL was, exactly, yeah.

10 - - - you understood the arrangement to be with SDL.---That's right.

Okay. So where you're saying at the top of this, if we can go back up to the top of this page 312, "Actually, no, we leave it at 10, otherwise gets confusing" - - -?---Meaning that it's in the same line with SDL.

I see.---I think, yes, it would be, yes.

Right. And so this reflects, would you agree, a discussion or agreement that you had in place with Monty in relation to payments from Constructicon?
20 This was not payments from SDL.---Yes, payments from Constructicon, yes, that's correct.

And it reflects you making an agreement with him in relation to particular percentages of profit and contract sum.---That's right.

Commissioner, I seek relief, or a variation to the section 112 order in respect of Mr Nguyen's compulsory examination transcript page 849, lines 29 to 40. I can hand up a copy. If that could be brought up on the screen.

30 THE COMMISSIONER: Variation is granted.

VARIATION OF SUPPRESSION ORDER: SECTION 112 ORDER IS VARIED IN RESPECT OF MR NGUYEN'S COMPULSORY EXAMINATION TRANSCRIPT 6 APRIL 2022, PAGE 849, LINES 29 TO 40.

40 MS DAVIDSON: You were asked, "How were the cuts and profit division worked out?" And you said, "For Constructicon?" Yes." "Oh, I don't know, as in I leave it to him." You were asked, "So you never had any

discussions with Monty Nguy.” “No.” “I want this much per project.”
“No, I never had that discussion.” “Yes.” “You never spoke to him before
every project, working out what profit cuts would be? ‘I want a cut,’ or
anything like that?” “That’s correct. That’s correct. I was, it was never my
incentive to get anything from him.” When you said you never had that
discussion with Monty Nguy in relation to cuts and profit, that’s untrue.
Your evidence there was untrue, was it not?---That’s correct. I didn’t recall
it at the time, yes.

10 THE COMMISSIONER: I’m sorry?---I didn’t recall at the time. Yeah,
that’s the reason why I got confused with the 20% and the 10% till you
showed me the message.

MS DAVIDSON: But you’re asking a number of questions in relation to
working out of that Constructicon cuts and profit, would you agree?---Yes.

You didn’t have any trouble now recalling what the cuts and profits were?
---I still have trouble. It’s just that I see it. I still have a trouble now but I
see it. It’s just I don’t recall the conversation, but it’s there so I must have
20 had the conversation.

So is it the case that your evidence is you didn’t recall until now but now
you do recall?---Yeah, now I do recall, yeah, ‘cause you showed me the
message, maybe we did have the discussion. At the beginning I, at the
beginning I originally thought it was 20% and then it ended up being 10%,
so I didn’t recall the 10% and I didn’t know it, yeah, I didn’t know it
changed. I didn’t know I changed it, changed an agreement.

I suggest to you that you had a recollection of having discussions with
30 Monty Nguy in relation to cuts and profit from Constructicon at the time of
your compulsory examination. Is that correct?---Yes, that’s correct.

You did have a recollection at that time?---No, I didn’t, I did not have a full
recollection, a full recollection.

You had a partial recollection?---I had a bit of a partial recollection until
you started showing me things, okay, maybe I did have a discussion, yeah.

But at the same time you gave a very clear answer that you never had that
40 discussion in relation to wanting a particular percentage per project?---I

thought I changed it. The original level was my original response and then, then, yeah, then, then, then I recall having some sort of discussion.

I suggest that you didn't change your answer in relation to not having those discussions with Mr Nguy in respect of Constructicon. In relation to - - -

THE COMMISSIONER: Sorry, did you want that tendered?

MS DAVIDSON: Yes, sorry. Thank you, Chief Commissioner.

10

**#EXH-056 – COMPULSORY EXAMINATION TRANSCRIPT OF
TONY NGUYEN DATED 6 APRIL 2022 TRANSCRIPT, P 849, LINE
29-40**

MS DAVIDSON: 56, thank you. If we can go to volume 6.1, page 28. Did you understand, just while that's coming up, did you understand Mr Nguy to be keeping a tally in relation to kickbacks to be paid to you from Constructicon?---I think he did. I think I seen it once, I think.

20

You think you've seen a tally.---A tally, yeah.

I'll wait for the document to come up on the screen.---The - - -

Is there any way we can enlarge that a little. Are you able to read that on the screen in front of you?---Oh, yes. Yes, that's what I think I saw, yes. Yes.

30 Which is a document described as an Inner West Council Progress Claim Tracker.---Yes.

And if we scroll over to the right-hand side of the document, you see the Quoted Amount, Total Expenditure, Gross Profit columns, Status and then you see a TN Kickback column.---That's right, yeah.

And on the right of that, TN Status. And you'll see in that column the various entries say that they were paid on 17 August 2017 and 11 November 2017. Were they paid, were those kickbacks paid to you?---I can't recall the payments. Yeah, I can't recall the payments.

40

That is you don't recall receiving any payments?---Yeah, I don't recall receiving the payments, yeah.

If we can go in the same volume to page 29, which is the following page, this is another document described as Constructicon Inner West Council Progress Claim Tracker. This has a few more projects on it.---Yes.

10 Some of which are described as "outstanding". You'll see that in the top row there some of those green highlighted entries are described as "20% of net profit" and then lower down there's other that say "10% of contract sum".---10%.

Is that consistent with - - -?---The, the texts, the WhatsApp message? I think so, yes, yes.

Right. So that at some point the arrangement changed - - -?---Changed, that's right, yes.

20 - - - to being 10% of contract sum. And do you recall in relation to the extra entries that you see on this table - - -?---Vaguely. I - - -

- - - 10% of contract sum?---I remember seeing the first one. I vaguely, maybe I did see this but I remember seeing the first page.

What was the context in which you remember seeing it?---It's just the, just the, the gross profit and the 20% net profit.

30 So did Mr Nguy show you this document?---I think so, yeah, must have, yes, so - - -

And was that in the context of you agreeing with him amounts to be paid to you?---I think it was just saying that "I'm keeping track, don't worry about it" sort of thing.

Right.---Yeah.

But again there's a Paid column showing in this document as well, that is on the far right-hand side.---Yes.

40 For a payment of \$2,813.49.---I, I don't, I don't recall getting that payment. Like, like, if I recall I would say, yeah, I got paid, like - - -

So you don't recall receiving that payment. Do you have any reason to think that you didn't?---I don't know, as in it's maybe it's just too low. It's just, I don't know, it's just I don't recall getting that amount.

Did you think or did you have reason to think that Mr Nguy was pulling the wool over your eyes if he was showing you these spreadsheet documents and telling you he was keeping track?---Oh, look, I never pay attention. It was just, my attitude towards him was, okay, if it is, it is.

10

Right. So do you have any reason to think if he was showing you a document that said that he'd paid you that in fact he hadn't paid you?---I, I'm not too sure. Yeah, I'm not too sure. But I don't, yeah, like, to pay \$2,813.49, how would, I don't know how that would be paid.

You don't know the form in which it would have been paid to you?---Yeah, exactly, yeah.

20 Is it something that would have been paid to you in cash?---Would, would have been cash, yes, if it's - - -

So is that consistent with any recollection you have in relation to receiving payments from Mr Nguy?---Not from, not from him in particular but from, again, you know, from SDL.

So you recall receiving cash payments from SDL?---Yes, that's correct. That's one thing, like, I don't recall if - if I do recall now I'll say, yeah, I remember getting these payments because, but I - - -

30 Right. Is it also the case that potentially having received payments from SDL that you'd confused in your mind which ones were from SDL and which ones were from Constructicon?---It couldn't, it couldn't be 'cause everything came from the director. So it would be Seng Laphai that would have gave me the, the kickbacks himself.

Right.---Yeah.

40 So your recollection is that, to the extent you received kickbacks from SDL, they were paid by Seng Laphai?---That's correct, yes.

Rather than by Monty?---Yeah, I don't think Monty would have been - he knew about it but I don't think he was allowed to touch the money.

Did you have a quote template that you used in respect of Constructicon when you were using the Anthony Byrne alias?---Oh, yeah. So there would have been a template, yes, yes, yes.

10 And I think your answer earlier was that you used that in relation to preparing dummy bids on behalf of Constructicon. If we can go back to the table, that is table 11 now marked as MFI 3, slide 2 and slide 3. Both of these are lists of - well, both of these slides list projects in respect of which Constructicon was used to create dummy bids.---I - yes. That sounds about right, yes. It looks, looks to be right, yeah.

That looks right to you?---Yes.

20 And in preparing those dummy bids was Monty aware that you were using the Constructicon template and providing dummy bids on behalf of Constructicon?---Yes, yeah, he was aware.

SDL was aware, was Monty aware?---Monty, Monty was aware. Constructicon was aware that I was using the alias email to do dummy bids.

So these were dummy bids where Constructicon was not successful?
---Exactly, but they still - - -

30 But nevertheless Mr Nguy was happy, or aware of you, and presumably didn't protest you using Constructicon letterhead, documentation, to prepare dummy bids. Did you let them know, that is Mr Nguy, know when you had submitted dummy bids on his behalf?---Yeah. So, so the way it works, it would have been, the three quotes would have been fixed so I would have known SDL, Constructicon and Marble Arch or JTG Services. So I would, so there were no, you know, two of them would know it's a dummy bid but they will get the next round. So, so I would just rotate the jobs, so not favouring one subcontractor for multiple jobs.

So is your understanding the reason that they were content with you - - -?
---Exactly.

Or the reason that Mr Nguy was content with you using Constructicon in that way was his understanding that he had secured future work from council?---Exactly. All, all of them. That's the way it was working, yeah.

So it was effectively, from your perspective, a rotation system?---That's correct.

10 Did you have reason to favour particular companies in relation to particular jobs or it was simply rotating one after the other?---It was simply rotation one, one, one after the other.

Commissioner, I note the time. I'm about to move onto a new subject, if that's - - -

THE COMMISSIONER: Sorry, I just wanted to ask you a question. Didn't you say that after Mr Nguy registered Constructicon you used Innocon to put in dummy bids?---Yes.

20 As opposed to using them for the purpose of allocating work?---I, I don't quite understand.

Well, after Constructicon was set up you ceased using Innocon, is that correct?---That's, that's correct, yes.

But you still used Innocon's template to submit bids for other projects which were dummy bids?---That's correct. So the way I did it was not through email but through the USB we were talking about.

30 Through USB.---Yeah, yes.

So - - -?---Whereas - sorry.

But these projects which are listed on the screen at the moment which have Innocon, I think only one of them, they were never part of this round robin that you were talking about?---That's right.

Innocon was never going to get another job?---Exactly, yeah.

40 All right. Thank you.

MS DAVIDSON: If that's a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes.

MS DAVIDSON: I'm not quite finished with the Inner West Council but I don't expect that that will absorb a significant proportion of time tomorrow.

THE COMMISSIONER: Okay. We'll continue with your evidence tomorrow at 10 o'clock. Yes. All right. Thank you. Adjourn.

10

THE WITNESS STOOD DOWN **[4.00pm]**

AT 4.00PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.00pm]