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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 TUESDAY 21 MARCH, 2023

AT 10.00AM

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

THE COMMISSIONER: Yes. Thank you. You ready to resume?

MS DAVIDSON: Yes.

THE COMMISSIONER: Yes. Thank you, 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.

Yes. Thank you, Ms Davidson.

MS DAVIDSON: Mr Nguyen, I'd asked you some questions towards the end of your evidence yesterday afternoon in relation to payments received in the form of kickbacks from Constructicon and I think you said you were not too sure whether they were paid. Do you recall giving that evidence?---Yes.

If we can go to volume 1.12, page 3? And if we can scroll up to the top of the page, we can see this document, perhaps to the previous page? This is an extract from your bank statement, a Commonwealth Bank account? ---Yes.

And can you see it relates to the period 8 August 2017 to 9 November 2017?---Yes, I do.

And if we can go back to page 3, you see they're highlighted in yellow? A transfer from Monty Nguy, "monty owning" I think it says, "1", and the sum of \$2,913.07 credited to you?---Okay. I see that, yes.

And the column next to it, it seems like as part of the reference, there's a reference to the figure of \$2,813.49. So although \$100 more seems to be credited, the figure that's referred to in the transfer text is \$2,813.49. Do you recall the spreadsheets that we were looking at yesterday in relation to Mr Nguy and Constructicon and a column with TN Kickback. If we could have volume 6.1, page 28?---Yes, I recall.

And do you recall that one of the entries there was a sum of \$2,813.49? ---Yes, I recall that from yesterday.

And so to the extent that this, at least the reference line in this bank statement lines up with that amount of money that was recorded as a TN kickback, would you agree that this reflects an actual payment from Mr Nguy to you in relation to a kickback sum?---That, I would say that's correct. So at the time, I genuinely didn't recall that payment, so - - -

But you would agree that the coincidence in the timing, that is - - -?---I, yeah, I think it is that payment but I genuinely didn't recall.

10 So if we look at the spreadsheet, which has just come up on the screen, those reflect, that is the TN status lines in the right-hand column reflect a payment on 17/8/2017, which is the date of the payment that we've just looked at on your bank statement?---Yes.

And so it all seems to line up, from your perspective?---Yes, it seems to line up. Yes.

Does seeing the transfer or the payment being made in that form prompt your memory in respect of other payments you received from Mr Nguy?
20 ---To tell you the truth, it doesn't. I don't know why it doesn't, but I genuinely don't remember that transaction, otherwise I would have stated that transaction. I don't know if it's been 'cause it's a, a long time ago or was, or, or the first transaction you, or, or I don't, I don't know. I don't, I don't genuinely recall that transaction.

But - - -?---But, yes, it was made, from what I can see.

Right. So it's - - -?---So I acknowledge that it was made, but I just genuinely don't recall.

30 So is your evidence still that you remain unsure in relation to payments from Mr Nguy?---From, well, based on what you showed, then, then, yeah, that probably lines up with that spreadsheet, yes.

Right. That is that the payments were made as reflected in that spreadsheet?
---That's correct, yes.

There were a number of jobs, if we can go back to MFI 4, which is the Constructicon table 4 document? I can pass the witness a hard copy, 'cause
40 I believe that he didn't leave one in the witness box yesterday.---Thank you.

Mr Nguyen, this is a version of MFI 4, which is the document you saw yesterday with some additions to it, that is the version that you're seeing on the screen is the version that you saw yesterday, which has the Total Paid column on the right-hand side. This version has some additions, simply in terms of contract value and variation, but the entries are otherwise the same, that is the projects, perhaps the projects as described are the same. Does that make sense?---It does make sense, yes.

10 And can you see turning to the third page of the document that I've just handed to you, that at the end of that document, particularly on page 3, although also on page 2, there are a number of jobs in relation to, well, that are at the sub \$10,000 level?---That's correct.

Would you agree that you passed on a number of jobs of that kind specifically to Mr Nguy and Constructicon?---Yes, that's correct.

Did you inflate prices in relation to those jobs?---Like there would have been some sort of inflations.

20 There would have been some sort of inflation?---Inflation, but the way I guess I worked is that I don't make it too noticeable, so it lines up. If that makes sense.

Right. So what was the mechanism that you used for it not being too noticeable?---So, so Monty would get the quote from say the trades and then he will give it to me and I said, okay, well, how much can I push? Oh, just whack on 20% or 25% or, you know, the usual, yeah, rather than the usual standard say 10% or 15%.

30 Right. So you would have discussions with Mr Nguy in relation to how much could - - -?---How much to mark up.

How much this could be inflated?---Yes.

And was that for the, what was your motivation in doing that?---I'm not too sure, as in it just happened to be that way.

Well, in order to, was it in order to improve the profitability of Mr Nguy's business?---No, just, it's more to keep him busy.

40 To keep him busy.---Busy.

Why was the price relevant to keeping him busy?---No, so he would normally, so, so he would have come back with the cost price and then usually all you do is throw in like a normal, a standard, a 10% or 15%.

A builder's margin?---Builder's margin, exactly.

Yes.---But obviously some things you could push up a bit more. You can go 20%.

10

Right. So I'm asking you what was your motivation in seeing how much you could inflate or thinking to yourself how much you could inflate Mr Nguy's prices?---At the time I didn't think of anything, it's just that, okay, I'll help you out. That's, that's - - -

To help him out?---Yeah, that's it. Just my genuine I guess intention was to help him out.

Right. So that he would make more profit on those jobs?---That's correct.

20

And was your motivation also that the level of profit that he would gain would be relevant to how much you would be paid?---That wasn't the priority but maybe in the back of my head possibly.

Possibly in the back of your head.---Yeah. It's just that I wasn't thinking about all, all, my motive, wasn't the forefront motive.

And the forefront of your motive was what?---Just to help a mate out.

30 To help out a mate.---Yeah, yes.

So can we go to volume 18.2, page 108. Scroll down to the bottom of the page. This is messages between you and Mr Nguy in April 2017. If we can continue down to page 111. I'm sorry, page 109. Can we go back up to the top. I apologise for that. So this is an example of you saying to Mr Nguy, "Job will cost about six K to do. Put it for nine K, pocket three K." Do you see that sequence of messages?---Yes. I see that, yes.

40 Is that an example of the kind of thing, in terms of inflation the kind of communication that you would have with him for sub \$10,000 jobs?
---That's correct, yes.

Right. And pocketing three K reflects a higher level of margin than would normally be the case.---That's correct for a standard builder.

Right. And was it the case that you were able to accept quotes that had that level of inflation in them because there wasn't any further process for scrutinising those quotes at the council?---That's, that's correct.

10 Did anybody sign off on the sub \$10,000 jobs apart from you?---So, so I would recommend it and co-sign, oh, and then sign it as the recommendation and then it would be the manager to sign off on it.

But was it the case that your manager ever rejected a recommendation - - -? ---No.

- - - for sub \$10,000 job that you put through?---No, they didn't reject - yeah, no, they don't, they don't, they didn't need, they didn't reject any (not transcribable)

20 So from your perspective it was a simple - - -?---Exactly.

- - - tick-and-flick kind of exercise?---That's, that's, correct, yeah.

All right. So moving down to page, if we can continue scrolling through to page 111. There's then a reference towards the bottom of the page here to "that drainage job at the pools". Do you see that from you?---Yes.

30 And looking at the Constructicon table that I have provided to you, you see on the third page, item number 31, "LPAC minor drainage and turf"?---Yes. I think that would be that job, yeah.

You think these messages are talking about the same thing?---Yeah. Yeah. I think so, yes.

40 Can we keep that up on the screen? Continuing through to page 114. So you say to Mr Nguy, and the messages above if we can scroll back up, the messages above are in relation to I think a painting job. Can we have 113? Thank you. And then there's that rendering job and painting job and then you say, "I've put aside all these small jobs" - sorry - "I've put all these small jobs aside for you." Did that reflect the process that you were following at the time, that is to the extent that there were small jobs

available at the council and you were attempting to give them to Mr Nguy?
---That, that's correct. So rather than package, so the idea, rather than package it all up together for one builder, like, like I mentioned before, I would separate it into under \$10,000 just to do the one-quote process.

And that avoided the need to get other quotes entirely?---Exactly, yes.

10 And did that enable there to be more inflation because the jobs were broken up so each one could have an inflated price?---Possibility. Depending on the, the cost I guess the cost value. Yeah.

Monty Nguy, I think we established yesterday, left Innocon.---Innocon, yes.

He went to work at around April 2017 for SDL. Do you recall that?---Yes.

What was his role there?---I think he was a procurement or a contract admin, or procurement manager. Or, it's contract admin or, or contract manager or--

20 Project manager?---No, that would have been Seng himself, yeah.

And do you recall the period that Mr Nguy was working for SDL?---Yes, I did, yes, I do. That's how I was introduced to SDL.

So what was, do you remember in your recollection what that period was?
---I wouldn't, I wouldn't have, I wouldn't, I wouldn't pinpoint exact dates.

30 But April 2017 as the start of the period sounds about right to you?---I would say so. Like, I would say so.

If you can go to volume 18.5, page 152. If we could scroll down. These are messages between you and Mr Nguy. I apologise, I think I have the wrong volume number there. Do you recall having a discussion with Mr Nguy around the time that he started, I'll come back to those, around the time that he started - actually, can we try 18.3, page 152 - at the SDL in relation to how you might be able to effectively use SDL as part of your processes that you were engaged in in the council for securing work for Mr Nguy? Yes, this is the page. Thank you. So this is May 2017 and you say to Mr Nguy, "Bro, there's a lot of work coming up".---Yes.

40

And if we can scroll down, "I just saw the list," you say. "If we can get Seng, yours and a sister company we are going to make something."---Yes. So - - -

What did you mean by that, "Seng, yours and a sister company we are going to make something"?---So I think the sister company was Monty's company. I don't know, well, Seng (not transcribable) I don't think they have a sister company. I think it's another company so it's just, I guess, just to bid against each other just to control the bid.

10

Right.---Yeah.

So you're referring to having three companies there.---That's correct, yes.

And if you had three companies, all of which you're able to - - -?---To control the bid.

- - - manipulate.---Exactly. Yes.

20 Right. What would you then be able to do?---Just to, I guess, just give them work.

So when you say, "We are going to make something," do you recall what you intended by that?---I guess it's the, I guess it's the offer or the money, as in, we're all going to make something.

You were all going to make money out of this.---Yeah. I guess that was - - -

30 THE COMMISSIONER: Are you referring to dummy bidding are you or - - -?---Yes.

Where did you get that idea from?---Good question. I don't know. It just, it just, it just happened.

Did someone suggest it to you or - - -?---I think, I think when you go back to 2014 the, the who ASN Contractor, you know, back in Glenfield Junction Alliance, I think that planted the seed. I just realised it just now that I think that's, there's a link, well, it's the same process, dummy bids.

40 MS DAVIDSON: Chief Commissioner, I do intend to go to that period of time.

THE COMMISSIONER: I just wanted to know at this stage.---Yeah. So I think that's where it probably originated from. It just, it didn't, it didn't occur to me now to say, oh, there's a link to back there.

MS DAVIDSON: And would you agree in sending these messages to Mr Nguy about Seng, yours and a sister company and making something, the evidence that you've just given about, what, one of the things you were going to make was money for the three of you, this reflects you taking the initiative in terms of controlling the arrangements, making the scheme work?---That's, that's, that's the intention, yes.

So - - -?---So I have full control, so making, so, you know, just to feel like I, I have the power just to control who gets what.

And in relation to making money, it wasn't simply that the others were suggesting that to you, was it? It was you actively suggesting that there be a scheme between Seng, yours and a sister company?---That's, ah, I'm not too sure, as in I don't know what was the context at the time. So I don't know if we had a discussion, verbal discussion, and then say, "Oh, let's set something up," and then this was reinforced.

Right.---Yeah.

But you would agree that this message reflects you taking the initiative in terms of creating a scheme or an arrangement?---Oh, yes. Yes, so this would, yeah, so it would be like, "How do we use this to our benefit," and - -

30 And it was a scheme or an arrangement by which you were going to make money as well as Mr Nguy and Mr Laphai.---Exactly, yes. Yes.

If we can stay in volume 18.3 but go to page 209, about halfway down the page. Can you see there Mr Nguy is saying to you, this is 5 June 2017, "Did you get the SDL Projects email login?" And then continuing to scroll down, and you say, "No," and there's discussion as to whether it was sent or not. What did you understand to be the SDL Projects email login?---So that's, that's the same setup as what I had with Constructicon with Anthony Byrne, so I will be controlling one email just talking to myself.

40

Right.---Yeah.

So if we go to page 211, “What name are you going to use?” “Lol, I’ll surprise you.” Does that reflect you creating an alias?---The, that’s correct, yes.

And do you recall what the alias was that you created in - - -?---It’s always a female. Joanne something, I can’t remember the last name.

10 Joanne Breen.---Oh, that’s, yeah, Joanne Breen. That’s where I got mixed, the Breen from, yeah.

And the messages, if we go to 216, reflect an agreement in relation to using Joanne Breen from Mr Nguy’s perspective.---Yes.

So he understood that you were using that - I’m sorry - Mr Nguy understood. Did Mr Laphai - - -?---We all understood that.

20 - - - also understand that?---Yes. For him to give us access to the email, he’s the admin. So, he had to create it himself.

All right. So Mr Nguy wasn’t able to set up - - -?---No, I don’t think he would have had access to that portfolio.

And was the email address projects@SDL.com?---That’s correct, .au, yeah.

I’m sorry?---.au, yeah.

30 Right. And that was the email address that you used when you were pretending to be Joanne Breen?---That’s correct.

Did anyone else use that email address?---I don’t think so. I think it was just, just myself. It was, the intention was it was for me. So, I don’t - - -

So is it safe to assume that any emails that were sent by Joanne Breen using that email address came from you?---Probably, yes.

40 Because you don’t understand anybody else had access to it?---That’s, that’s, at the time, yeah. Well, Seng could, could have access to it because he’s the admin but I don’t think he, I don’t know if he did - - -

You're not aware of him pretending to be Joanne Breen at any point?---No, exactly. Yeah. So it's mine, so it's probably, it's probably me but I'm not aware if Seng did do anything but he did have access.

And you made an agreement with Mr Nguy and Mr Laphai in relation to being paid by SDL, is that correct?---Yes. Yes.

10 So was that an arrangement that you initially made with Mr Nguy or initially made with Mr Laphai?---I don't know how it came about. I think it was probably both.

Because this was after the period of time that you had been engaged in discussions with Mr Nguy about being paid from Constructicon's - - -?
---That, that's correct. So it would have been the three of us sitting down and we would say, okay, what's, what's the split.

20 So staying in volume 18.3, if you go to page 245. That's where we were before. Just scrolling down. This is again messages between you and Mr Nguy. Mr Nguy says, "Spoke to Seng about our arrangement." Then if we can keep going and you say, "20/80." Do you understand what you mean by 20/80?---So 20, because I would understand the next question, the next line from, response from Monty, it would be 20% of the net profit, yeah.

And then you say, "For both." And - - -?---So, so this would be - sorry, to interrupt.

30 No, so when you say for both, do you understand that to be a reference to both an arrangement for SDL and Constructicon?---That's, that's correct, yeah. So I think at the time - so Monty obviously, so me, myself and Monty would have a discussion of, you know, the split and then he would have to tell Seng that this is the arrangement between myself and Constructicon.

So if we scroll down I think we'll see the next message. You say, "SDL and Constructicon", which I think is consistent with what you've just put.
---That's right, yeah.

40 And Monty says, "All Inner West projects." You then ask, "20% cash?" And if we keep going you say, "He understand I can only take cash, right? So you have to mention about the tax and stuff." Why was it that you were saying to Mr Nguy "He understand that I can only take cash"?---'Cause that's what you get for kickbacks. It's, I guess it's untraceable, yeah.

So you didn't want to be paid by SDL in the way that you had been paid by Mr Nguy, at least on the occasion that we've looked at, by transfer into your bank account?---The, that's correct, that's correct. Yes.

The idea was that it would be untraceable.---That's - yes.

10 And where you saw the message that My Nguy sent about this being for all Inner West projects, did you understand him to be in a position to commit to an arrangement on behalf of Mr Laphai, that is to commit to paying you 20% of net profits?---Between Constructicon and myself or SDL?

No, between SDL and yourself - - -?---Well, that's - - -

- - - was Mr Nguy in a position to commit to that arrangement on Mr Laphai's behalf?---I, I don't, I don't think so, yeah, I, I don't think so. It was, I don't think Monty acted on, as Seng's behalf. Seng - - -

20 Right. But you recall having discussions separately, do you, with Mr Laphai in relation to that arrangement?---I recall having a conversation with the three of us, I think, yeah.

So there was an occasion on which the three of you - - -?---Well, in the, I guess in the, I guess you can say in the same room having a discussion about the split.

30 Right. And when you say "the split"?---It's the profits. So, say Constructicon 'cause they've got smaller jobs, I'll get 20%. SDL 'cause they're bigger jobs, I get 10%.

Right. Although here the discussion is 20% of net profit for both companies?---So, yeah. So I asked is it for both, then I think, I think I can't recall, he must, and then he went, I think back, went back to saying, so is it 20% for you and then he came back and I think he said 10% or something like that, but it was, that 20% was more for Constructicon 'cause it was smaller value, yeah.

40 All right. So notwithstanding that Mr Nguy says that he's spoken to Seng and the arrangement is to be 20% of net profit - - -?---Yeah.

- - - sometimes there was differing arrangements. Is that your evidence?

---Yes. So, so because we wanted to be transparent with each other. So that's the reason why we say, okay, let's tell Seng what's our arrangement, 'cause obviously - - -

You and Mr Nguy wanted to be transparent?---Exactly. So we all wanted to be transparent, so - - -

Right. How did you introduce SDL to Inner West Council work?---I just told them to send me a company portfolio.

10

Sorry? You told them to send you a company portfolio?---I just told them to send, send me, yeah, send me a company portfolio and then, you know, attached that to the new supplier form.

You attached it to the new supplier form?---I think so, yeah.

And that's a form of the kind that you were giving evidence about yesterday?---That, yes, with the, you know, the conflict box, yes.

20 Right. In volume 18.3, can we go to page 284? So those discussions we were just looking at were on 7 June 2017. On 16 June 2017, you're sending an email to Mr Nguy saying, "Can you put a dummy price in for SDL just to get the name familiar with everyone?" Does that - - -?---That rings a bell now.

- - - prompt your memory?---That, that rings a bell now, yes. I think it didn't start straightaway. I think I told SDL to put in a few bids, I think (not transcribable) so then they're, oh, who's SDL, where do they come from? I say, they priced this previous job.

30

So to create a track record?---Exactly, yeah. Saying that, so they didn't come out of nowhere, yeah. That's what I can recall, yeah.

In relation to - I don't need to go to that now. Chief Commissioner, perhaps if we can have marked for identification as MFI 5 the updated Constructicon table that I've taken Mr Nguyen to this morning because I'm about to give him a new one?

THE COMMISSIONER: Do I have a copy of that?

40

MS DAVIDSON: Yes. I apologise, Chief Commissioner.

THE COMMISSIONER: MFI 5.

MS DAVIDSON: And then if I might also hand up, and hand a copy to the witness, so - - -

THE COMMISSIONER: MFI 5.

10 **#MFI-005 – UPDATED CONSTRUCTICON TABLE**

MS DAVIDSON: - - - what I would ask to be marked as MFI 6, which is a list of projects or a summary of projects in relation to SDL.

THE COMMISSIONER: Do you have a copy of that?

MS DAVIDSON: This is a document that's been provided to Mr Nguyen's legal representatives yesterday.

20

THE COMMISSIONER: I don't have a copy of it. This is MFI - - -

MS DAVIDSON: I'm sorry, Chief Commissioner. I thought I provided two copies there.

THE COMMISSIONER: No, there's one only.

MS DAVIDSON: There it is.

30 THE COMMISSIONER: Okay. That'll be MFI 6.

#MFI-006 – SUMMARY OF SDL PROJECTS

MS DAVIDSON: Thank you. Mr Nguyen, this document here is a summary of projects that SDL was successful in performing for Inner West Council?---Yes.

40 Have you had an opportunity to look at this document?---Yes, I have.

Do you agree that it reflects accurately the projects that Inner West Council contracted with SDL in relation to?---I guess thereabouts, yes.

Or thereabouts?---Or thereabouts, yes. Oh, I can't exactly, I can't remember exact. It's been a while. So, but it looks familiar.

But to the best of your recollection - - -?---To the best of my, exactly, yeah.

10 - - - you're not able to point to any error in relation to the way that the projects have been summarised here?---That's correct, yes, but there had been an error with the, the last column that I picked up.

An error in the last column?---Yes. So if you go to item 9, so the table that, the tracker that SDL had, it was supposed to be a minus variation or minus kickback.

A minus kickback, all right.---Yeah.

20 We'll come to the table that - is that their table that Mr Laphai emailed to you when he asked you to repay \$22,000?---That, that, that's correct.

All right. We will come to that.---We will get there, yeah.

But just in relation to this, that is this table, it's MFI 6, where it says in the right-hand column for item 9, "Money to Tony Nguyen, \$26,237.17", I think you just referred to that as a minus kickback.---Yes.

30 What do you actually mean by a minus kickback?---Well, he, well, so this was a still, this was a, this was the project where he said he lost money and then he - - -

I see. So this is the project where he asked you to repay him?---Repay, exactly. Yeah. So he's saying that he lost 26,000 and then in the email, the body of the email he said, "You owe me 22,000."

As I said, we'll come to that spreadsheet.---That's, yeah, we'll get, yeah. Yes.

40 And to whether - did you in fact repay him the 22,000?---No. I didn't pay him anything, I didn't do anything. Yeah.

No. So it wasn't really a minus kickback, he just thought that it should have been, is that right?---It should have been, exactly, yeah. So he was just, I guess, chasing money. I don't know if he lost, I don't have visibility of what's his actual costs. Like, he could just be making up or he could just be - I don't, I don't have that visibility or transparency.

10 So from your perspective you understood it to be money that had been paid that he requested be repaid?---No, no. As in it hasn't been paid. It's just a, it's just a tracker he said. So the, the, so that project line item I think, based on his tracking sheet, he said, he said there's a profit and so he said, "We're in minus profit." So there was no profit made on that project, so we would have to split that minus, or that, that loss.

It might be easier to do that by reference to the document when we come to that.---Exactly, yeah.

20 But just to be clear, is it your evidence that in relation to item 9 that you were not paid \$26,237.17 in respect of the Steel Park community rooms upgrade?---That's correct, that's correct.

30 So we've seen the messages in mid-June 2017 about using SDL for a dummy bid. Looking at this table here you can see there number 10 - I withdraw that. By later that month, Mr Nguy, that is later in June 2016, it appears that Mr Nguy was already considering tallying up work for SDL and Constructicon. Can we go to 18.4, page 10? Can we scroll down? So this is 21 June 2017. Yeah, here we are. Thank you. If we could just scroll up a tiny bit. This is 26 June and you're saying to Mr Nguy, "I bags all the small jobs, like the kitchen upgrade at Hannaford Centre, got like 20 of them." Do you recall what you're speaking about there?---So 20 was probably an exaggeration. So normally the capital works program comes out and then obviously the manager said, "What would you like to do?" So he just - - -

The manager said what would you like to do in terms of what project - - -?
---Project.

- - - would you like to manage?---Exactly. And then you would just, yeah.

40 Okay.---So you say - - -

So where you're saying "I bags all the small jobs" - - -?---Yes.

- - - that was for the purposes of being able to - - -?---Control the, the, the bids.

Right.---Yeah.

And Monty says in response, “I’m going to do that consolidation with SDL pretty soon when I get back so I’ll sort you out 20% of all works to date cash before it happens okay.” Did you understand when he’s referring to a
10 consolidation with SDL that to be a reference to consolidating amounts that you were owed in relation to SDL work?---That would be correct, yes.

Right. And where he says “so I’ll sort you out 20% of all works to date cash before it happens”, do you know what that’s a reference to?---That one I can’t, I can’t recall. Maybe it’s for Constructicon he just tidied up this table, like the table, like the, the, the table that you’re showing me, the, the last, the second page I don’t, vaguely, I don’t vaguely remember that. I do remember seeing the first page if you recall the - - -

20 All right. We looked at some messages earlier this morning in relation to “Seng, yours and a sister company”. Do you recall - - -?---Yes.

- - - you saying if we had Seng, yours and a sister company you’d be able to make something? Do you recall whether there ever was a sister company?
---No, there wasn’t a sister company.

Was there a company with which you had some involvement called Remtech?---Yes, there’s, I remember Remtech but I don’t think that’s a sister, sister company. I think that was a company that Seng used to work
30 for.

Right. So it was associated in some way or known to Mr Laphai?---That’s correct, yeah, from my understanding.

Right. Did you have access to documentation from Remtech?---Yes, I did.

So was that a template?---That was a template, yes.

And was that something that Mr Laphai gave to you?---It would have been,
40 yes.

Right. Can we go to volume 18.3, page 157. This is again you and Mr Nguy. You were asking him, "Do you trust Remtech", can we scroll down to see this conversation as it progresses, "like 100%?" you ask, "cause if all this turns sour I get screwed. You know what I mean." Do you know what you're referring to there?---Yeah. So that would have been bringing Remtech in so Seng would have, so what I can kind of recall was that Seng said, "I have another company that we can use."

10 Right. So when you said bringing Remtech in, was Remtech as an entity and those who were controlling that company ever aware of this so far as you know?---I'm not too sure 'cause everything went through Seng.

Right.---Yeah.

So all you knew about Remtech was what Mr Laphai told you?---That's correct, yes.

20 And is that why you're asking these questions?---Exactly, yeah, that's why because it's all going through him and then - - -

Right.--- - - - and then, yes, and he would send me a template for me to I guess work on the quotation and - - -

So for you to use for dummy bids?---Exactly, yes, yes.

All right. So if we scroll down. Seng trusts Remtech 100% and you ask Monty whether he trusts Seng.---Yes.

30 He says yes. We can keep scrolling down. Keep going. And Monty says, "Can you get away with two builders and make it work, SDL and Constructicon?" And you say, "The job's not guaranteed." Do you understand what he was asking you there, "Can you get away with two builders and make it work"?---I think he just, I think they might be having trouble around taking a third person in, a third contractor in. I can't recall, yeah. Yeah, from what I can see it's just, he asked if, "Can you make two work?" But you need three quotes so - - -

Okay.---Yeah.

40 So when you say, "The job's not guaranteed" - - -?---Guaranteed, exactly. So if I can the, the, another contractor, they could come in.

All right. So if we continue to scroll down to the next page. "I can try to make it work. I wanted something solid, that's why I asked about a sister company." That's from you.---So, but that must be Remtech, from my understanding.

Yes.---Yes, that must be.

10 Right. So where you say you wanted something solid, are you again referring there to being able to control all the parties?---Yeah. Yes, like a trust sort of thing. Like, haven't heard of them. I don't know, you know, who's, who's then involved. It's just word of mouth sort of thing.

Okay.---Yeah.

20 So if we can continue to 163. "You know, in reality of this, if I get busted, I get done for fraud." And Monty says, "Yes, I know. Okay. Let me have a think about it." So why was it that you said that to Monty, "If I get busted I get done for fraud"?---I think, I think in using the template.

And the dummy bidding process.---Yes, yes, that's correct.

And manipulating the tender process as well.---Manipulating. That's correct, yes.

Right. And was it the case that you had access to an email address from Remtech for the purposes of sending quotes?---No, I never had access to Remtech's email.

30 All right. So if we go to 18.3, page 181, if you could scroll down. So Monty says, "I got access to admin at Remtech." Do you recall him using that email address?---Maybe it was him. Maybe, but I never had access personally, like - - -

It wasn't something that you used.---Exactly. So, so saying Monty might, might, spoken to Remtech so I need to email them. I would have done, set up the same, I guess, system, the way I set up.

40 So in preparing documents on behalf of Remtech - - -?---Yes.

- - - you weren't able to email them or use an alias.---No, exactly, yeah. I wouldn't, yeah, that's correct.

So it was the USB-type system that you explained yesterday.---That's correct, yes. Yes, that's correct.

10 All right. I think you've given some evidence about there being a tracker sheet that Mr Laphai ultimately sent to you. If we go to volume 5.1, page 48. So this is an email that Mr Laphai sends to you on 5 July 2020.---That's correct.

“You've not helped us,” he says, “But actually tried to blacklist us Steel, during Steel Park project. We've suffered a loss of over 80K. Please pay back 22K of commission you've accrued over the various projects.” Now, we'll come back to the content of the email but attached to that, if we can scroll to the next page, is a spreadsheet document. Now, is that the spreadsheet that you've been referring to in terms of a tracker that Mr Laphai kept?---That was, yes, that's correct. Yes.

20 And do you recall whether you'd seen this document prior to July 2020 when it was emailed to you?---Yes.

You had seen it?---I have seen it, yes.

And what were the occasions on which you'd seen it?---Um, no occasion. He would just send a link and say, “I'm keeping track.”

I see. So he'd sent it to you previously.---Yeah, exactly. Yes.

30 Right. And where there is - well, looking at the columns here you will see in the middle there is Total Cost for Projects and then a net profit and then there's a TN column.---Yes.

Do you understand the TN column to be amounts that were paid to you?
---That, that's correct.

40 And when there's then a percentage of net profit figure and there's varying figures there, do you understand what that column was?---No, I don't. It's, this table I never got my head around. It's a bit confusing, yeah. So, the thing I - - -

Because there's a very wide range of different percentages shown there.
---Yeah. Which I don't understand where he got it from or how he worked it out. It's just, yeah, the only thing I see was just the net profit and TN column and the bottom, the comment at the bottom, below, yeah.

Does it seem to be the case, at least from what he is purporting to show there, that at times he paid you more than 10% of net profit? So if you were to look at the entry there for number 2, Maitland Train, you see that there's 10% being paid to you there and then in the next, number 3, Seaview, you
10 see a net profit shown of \$15,000 and you being paid \$10,000, and the percentage 67% in the next column would seem to be what 10,000 is as a percentage of 15,000?---Yeah but it, it, it didn't make sense. Why would I take all, all the profit and - you know? That's why this table is confusing to me because it didn't make sense. So I don't know of his figure, this net profit is correct. Do you know what I mean? Like, I don't know if it's a, like, it's a true value of his costs.

So you didn't understand whether you were in fact being paid those percentages?---Accordingly, exactly, yes.
20

But do you agree that you were paid the amounts that are shown there?
---So, yes, I was, I was paid the amount, yes.

And how were you paid?---So that was all cash.

And how was the cash delivered to you?---In a gift bag, in a paper bag, yeah.

In a bag, yes. And where?---At various places, I think. I can't recall exactly
30 where but I could recall one incident was, was with, I think there was a place in Marrickville close to a park, which annoyed me because it was inside the LGA, yeah.

Was it Mr Laphai who gave you the money in cash in bags?---Yes. That was Mr Laphai, yes.

Was it ever anybody else?---No. It would be just him because I think he's the one that controls the money in the company.

40 Did Mr Nguy ever deliver cash to you on behalf of Mr Laphai?---I can't recall but the only time I recall is just Mr, just Seng just giving me just a, a

gift bag on all occasions and then there was a, I think the last amount was, I guess he short-changed me. It wasn't 15,000 he gave me and I mentioned that to him already.

So how many occasions do you think you were given - well, looking at the amounts on this spreadsheet, did you receive a cash payment in relation to each of these separate entries or did he consolidate the amounts and give them to you?---Oh, he consolidated the amount, yeah.

10 So do you remember on how many times he gave you a bag of cash?---I can remember two instances.

Two instances?---Yeah, two instances, yeah.

And do you remember how much cash you were given on those occasions?
---I can't remember the first one but I can remember the second one because the reason why I remember the second one is because I was short-changed, yes, yeah.

20 So you were given thousands of cash in a gift bag in a car park but you don't recall on the first occasion how much you were given?---That's correct.

Was it more than \$15,000?---Oh, it was more, it, it would have been more than \$15,000, yeah.

Because the total in the TN column here - - -?---It, it would have been, I guess, might be the value of, what was it, so 45 - oh, it would have been maybe the 45. It wouldn't be more, yeah.

30

So to the extent that there's the first three entries that you see in that TN column add to approximately \$45,000, you think it might have been - - -?
---The first - - -

It might have been those three added together and been given to you?---Oh, no. Oh, sorry. It's - can I take that back? So if you look at the bottom column.

40 Yep.---See how there's Item Cost Remaining? So, yeah, so see how there's "withdrawn"? So they are, so the "withdrawn" are the cash that he's given me.

I'm sorry, so where we're looking at, is that the Negative Help column you're looking at?---No, no. The bottom column. So, do you see the "withdrawn"? So they'd withdrawn ice cream, phone.

Yes, I see. Okay.---So all the "withdrawn" was probably when he handed me the cash.

10 That's probably references to you being - and there are four payments there with "withdrawn" beside them.---Yes.

Does that help prompt your memory?---So there would have been four, yes. Oh, the 10,000.

So that adds to \$70,000 being given to you?---The last, the, the 10,000 I don't think was, I, I don't think - so the 10,000, the last withdrawal is, I don't think that, that existed.

20 You don't recall being given that last \$10,000?---Exactly. I remember being given 15,000, which ended up being, I think, 12 or 13,000 or something like that. I can't remember, yeah.

That's where you think that you were short-changed?---That, exactly, that's the last thing I remember.

30 So how did you know that you were short-changed? Did you count the cash?---I count the cash, obviously, yes. And then I, I called him, I remember calling him and say, "Just to let you know, I've been short-changed, but it doesn't matter. Don't worry about it. I'm just letting you know for next time." So just - - -

Okay. So that he would pay you next time?---Yes.

The amount that you'd been short-changed?---Or know next time or just make sure he counted before he gave it to me, yeah.

40 So would you agree that it appears from the figures that are shown here, and I know you've said you don't think you were given the last \$10,000, but that looking at the withdrawn figures and taking away that last \$10,000 that this would reflect you being given \$60,000 cash by - - -?---SDL, yes.

- - - by SDL or by Mr Laphai?---Yes, thereabouts. Don't know the exact figure, but thereabouts.

Right. And you understood that you were owed, that is, from the last \$10,000 figure, that you were potentially owed \$10,000 more than that, which would take it to \$70,000?---But I don't know where the \$10,000 came from, yeah.

10 Right. So you don't understand that to be associated with the Steel Park?
---Exactly, 'cause the 15,000 last withdrawal would have been the last fifteen, would be in the Bridgewater. So I don't know where that last withdrawal of 10,000 came from.

All right. So you think you received \$60,000 or thereabouts - - -?---Yeah.

- - - and you were being short-changed two or \$3,000 - - -?---Something like that, yeah.

20 - - - on one of those payments?---Yes.

So that would take you to about the total that's shown in the TN column there of \$62,000 if you received 60 and you were short-changed two or three?---Something, yes, I would assume so, yes.

Something - - -?---Something along, I'd have to get a calculator, to calculate, but, yeah, something along those, those lines.

30 Right. And what did you do with the cash once you received it?---I just store, store it in a box, just stored it, stored it at home, so - - -

The whole \$60,000 amount?---Yes.

Did you use some of that cash later in relation to paying persons associated with Transport projects?---Yes.

And who was that?---So I think I took a bundle to pay, so it was a Downer employee, so Aidan came to me and said, "Kevin's asking for money."

40 Is that Kevin Watters?---Kevin Watters, yes.

So do you recall how much cash you took to pay Kevin Watters?---Yeah, it was, it was about the \$8,000 mark, I think, yeah. That, that's, thereabouts. Could be a little bit more, little bit less but 8,000 is, sounds about right.

And do you recall paying any other Downer employee out of the cash that you'd received from Mr Laphai?---So then, I would have used, so, so Ben -
- -

10 Vardanega?--- - - - Vardanega, so then I would have used that for his finder's fee for one of the projects at Macdonalddtown.

And do you recall how much his finder's fee for Macdonalddtown was?
---Some, for some reason, I have 24,000 in my head, yeah. I think there was, I think it was a bit more but, yeah.

We'll come to Macdonalddtown - - -?---Yes.

20 - - - and to the Transport projects. Do you recall using that cash to take to pay anybody else associated with Transport projects, whether a Downer employee or a Transport employee?---Not that I recall.

Or anyone else who was associated with those persons?---Not from this, not from this - - -

Not from this pot of cash?--- - - - not, not from this pile of cash, yes. Yeah.

30 Other payments you made out of profits that you made from Transport projects. Is that right?---Yes. That, that's correct, yeah. So this was separate to the, the Transport and Downer.

All right. And is it the case in relation to the projects where SDL was successful, that you assisted Mr Laphai to inflate his prices so that there would be more profit on those jobs?---I would have if I was controlling the bid, yes. Yes.

40 All right. So in relation to the bids that are shown going back to MFI 6, this is the SDL table here, you'll see on the first page, there's a number of projects that are above \$10,000 where you'd recommended and indeed won, in the case of Bridgewater Park - - -?---So Bridgewater Park, that would have been an open tender, so they would have, I, they, they would have won

that legitimately, well, if (not transcribable) yeah, like, they would have, I would have had minimal influence on it.

But you recommended that they succeed in relation to that project?---That, that's correct, yes. So they would have got, probably been one of the lowest prices. So I don't know if they were the lowest or the second lowest and (not transcribable)

10 So that was the evidence you gave yesterday about to the extent you could, you favour - - -?---Exactly, when, for (not transcribable) tenders.

All right.---Yeah.

Did you manipulate that tender process by passing information to Mr Laphai?---Not for that project.

Not for Bridgewater Park.---Not for, yeah, but for Steel Park I did.

20 For Steel Park you did.---Yes.

Which was another one - - -?---Which was a big one.

- - - that required an open tender.---That's correct.

30 All right. And so what was the information that you provided for the Steel Park project?---So, so, so initially it went out to open tender. First time around it came back with over price or over budget, or the, the tender prices came all over budget. So then we de-scoped it, so then I would give that information, "These are the prices for the other contractors," so we would, I think we went to one of the pubs in Ryde or something and then we had a discussion, and then I would just say, "Okay. Here's the lowest tender bid. If you de-scope them, this is what you're going to have to be to win the job."

Right. So you were providing competitors' pricing information to Mr Laphai - - -?---That's correct.

- - - so he could succeed in the tender process?---Exactly, yes.

40 And did you also manipulate then variations that he was able to charge in relation to that job, do you recall?---Oh, that job I, I stepped away from that

job, I think, 'cause there was a turning point between my relationship with SDL.

Right.---So - - -

And that is reflected in the email that he sent you and - - -?---Yeah, so I kept it as, I stepped away and kept it as professional, and then I was just mentoring Lojine, who I told her to take over, and just guide her along the way.

10

So she ended up managing the Steel Park job did she?---That's correct.

Okay.---That's correct.

In relation to the other jobs that are shown here between the \$10,000 or under the \$150,000 threshold, did you assist Mr Laphai in relation to inflating prices for those jobs?---Yeah, I would have, so I would have told him what's the cost price and then I would compare it to the budget and then say, "Okay. We can do this."

20

All right. So in order to get a price that was in his "closer to the budget" - - -?---That's right, yes.

And at the same time, there was dummy bidding going on in relation to various of these projects.---Favouring, that's correct.

Right. Can we go back to the email that is 5.1, page 48, just the page before what's on the screen. So Mr Laphai suggests by July 2020 that you're not helping but actually trying to blacklist SDL. Do you know what he's referring to there?---To tell you the truth, I have no idea where he got that from. I didn't blacklist him or anything like that. I don't think he - - -

30

Okay. Do you know what prompted him to send you this email?---Ah, maybe spiteful, being spiteful. I don't know, yeah.

THE COMMISSIONER: Say that again.---Spiteful. I don't, yeah.

MS DAVIDSON: Why would he be spiteful?---I don't know. It just came out of nowhere, this email. Like - - -

40

It came out of the blue from your perspective.---Exactly, yeah. So I stepped away when I started hearing his, or SDL's relationship is deteriorating from the other trades, like, he's not paying them or he's trying to refute their payment and he's saying he's not getting paid by council. He actually did get paid by council.

Right.---And to me that's a red flag. I said, "This guy's going to be a headache," so I stepped away.

10 Okay. So you had heard that he wasn't paying his trades.---And he was being difficult or saying, or, yeah, he was being difficult paying his trades saying, "You didn't do this so you're not getting paid this."

Yeah.---Yeah.

And why was that a problem from your perspective?---Because if he's getting paid by council he should pass on the payment, yeah.

20 So were you concerned that he was withholding money that had been paid by council that should have been paid to trades to keep it for himself?--- That's, that's, I would assume I would have had trades call me direct and say, "Did council pay SDL the progress claim" and I said, "Yeah, we did last week," or whenever we did, and he goes, "Cause he said that they haven't got paid, that he's waiting for payment from council."

Right. So it was a pain from your perspective to have trades calling you, hassling you for payment.---Exactly, yeah. So red flags, I don't need this, like - - -

30 Okay. And do you recall when that starting happening?---It was probably around the same time as Steel Park. That's why I stepped away from Steel Park, yeah.

Okay. So Steel Park was in 2020.---Yeah.

I'm sorry, was in 2019.---2019, I think it was, yeah.

And yet after that there was still several jobs in Lambert Park that was given to SDL. They were in June 2019.---I think Lambert Park came before.

40

Steel Park, or the date in relation to the contract there was April 2019.
---I just remember Steel Park was the last, last project that I was involved in
which I stepped away 'cause of the whole hassle.

Okay.---But Lambert Park was done before.

10 All right. So you think the date might be inaccurate there in relation to
Lambert Park?---I think, yeah, I think the date, yeah. So Lambert Park
would have done, would have been done before Enmore Children Centre,
I'm certain.

And the Enmore Children Centre kitchen renewal was in November 2018.
---Yeah, so Lambert, so if you go to item 6.

That's the toilet block upgrade in Lambert Park.---So that would have been
done at the same time because there was a variation, or, yeah, variation or
new contract. It would have been part of that project but I split the scope.

20 So the removal and disposal of the roof and the replacement of the power
cable- - -?---Yep.

- - - were part of the toilet block upgrade were they?---That's right, yeah.
So they would have been done at that same time. So I would either have
done - - -

All right. So to your recollection that was in 2018 rather than 2019, was it?
---That's correct, yeah. It was early on. It was one, yeah.

30 Okay.---So I, but I'm saying that Steel Park was the last involvement I had
with SDL.

Okay. I suggest to you that the memorandum that you wrote in respect of
the removal and disposal of the existing roof, which is number 10, was in
2019 for the Lambert Park project.---Yeah, I just, yeah, just it doesn't - - -

If we can bring up - - -?---Yeah.

40 Exhibit 48, sorry. Volume 5.4 which is Exhibit 48. Thank you. Page 171,
could we have that brought up. 171. So this is a memo that you wrote in
relation to the Lambert Park roof which you see it's dated June 2019. Does

that prompt your recollection?---It, so if you don't mind going back to the invoice for SDL. Is that - - -

I don't think that was actually the invoice in relation to that.---They each had the same value I think 'cause I think what I did was I told them to go ahead and do the work and I would have done the new memo just to cover that work. So I would have just backtracking.

10 All right. There's no reason why you would have done a memo in 2019 to cover work that was performed in 2018 would there be?---So Lambert Park, so if you look, I think that invoice that's for 5 June, was it, the payment date or, so the work must have been done before the invoice done.

All right. But in either event it's 2019 rather than 2018, is it not?---So it would have been, yeah, so it would have been either - - -

So it's June 2019. It's before you've said, it's before you've received the email in July 2019 that came from Mr Laphai that we've been looking at. ---Oh, that came in 2020, didn't it?

20

Sorry, that came in 2020.---That came a year later, yeah.

You're correct.---Yeah.

But it's before - in any event the invoice - sorry. Can we have page 175? I think that's the invoice that Mr Laphai is referring to. I withdraw that, Mr Nguyen is referring to.---Mr Nguyen. No, that's okay. Yeah. So this was back in May. So it would have done, been done in May and I would have had to backtrack it. So I told them to go ahead and do it and I was

30

backtracking. Hence the date of the memo.

So your evidence is that the date of the memo is later than the date - - -?
---Exactly, yeah.

- - - the work was in fact performed?---Exactly. Yes.

And if the invoice is in May, did you understand the work in Lambert Park would potentially be done before the work was being done in Steel Park?

40 ---It would have been at the beginning. Or, or it would have been - I think, no, I think Steel Park went for three months or something like that. So,

there would have been, the beginning would have been smooth sailing with Steel Park, there was no issue.

Right, right.---And maybe after the first progress claim and then there was issues with (not transcribable). Does, does that make sense? Yeah.

And the relationship deteriorated during the course of the Steel Park project?---Exactly. Exactly, yes. That's correct.

10 Over those months.---Yes.

THE COMMISSIONER: Just can we go back to that email of 5 July 2020?

MS DAVIDSON: That is - yes, I'm sorry, that is 5.1, page 48.

THE COMMISSIONER: You said earlier when you were shown this email that this came out of the blue.---Yes.

20 Is that still the case, bearing in mind what you've told us about Steel Park?
---Yes. This, this came about six months later when I haven't heard anything from him. So this was, this is July 2020. I think Steel Park was a year ago, or April 2019.

MS DAVIDSON: So you hadn't been giving him anymore work?---No, after that, no. So that - - -

Over that period.---That, that's correct, yeah.

30 THE COMMISSIONER: When you said out of the blue you meant you hadn't heard from him for a while? Is that what you - - -?---That, that's exactly it. So I kept either avoiding him or, and then it just - - -

You're not suggesting you were surprised when you received that email?
---Sorry?

Were you surprised at all when you received that email?---I was taken, I was, I was - yes. I was surprised. Yes.

40 Why?---Because I didn't hear anything from, from him and then out of the blue this email came and then it just, I guess, shocked me. Yeah.

MS DAVIDSON: And you didn't think you'd tried to blacklist SDL?---I don't think I ever did. Just whenever I asked they'd say, oh (not transcribable) do your job until they did Steel Park and it was a disaster because I stepped away.

But they hadn't been getting any more work from the council?---No. I don't think, I think Steel Park was the last one, yes.

10 So, so far as Mr Laphai thought he had been blacklisted, potentially that was because he has ceased to get work from the council after Steel Park, is that a possibility?---That's, because he, yes. That, that's, that, that is, that, that is the, I guess, that is the story. After Steel Park the, he had a lot of issues because I wasn't managing head-on. (not transcribable) Lojine and she would come to me for advice and then I would just keep it professional saying, like - - -

Did Lojine know your association with - - -?---No Mr Laphai?---No, no.

20 So she didn't understand that you were due to be paid an amount of the profit out of the Steel Park project?---That's correct, yes.

Do you recall discussions with Mr Laphai around the time of the Steel Park project about it going badly?---I can't recall but I knew it was going badly because he was sending all of these variations which I was knocking back. So I was telling him, so he was sending the variation to Lojine, she would sent it to me, I will assess it and if I say, "No, you need to compare it to the normal rate", you know, like the, the, the average rates and then that's what's reasonable.

30 So did you understand Mr Laphai to be trying to do something that you'd previously assisted him to do, which was to inflate prices and variations? ---Exactly. That, that's correct, yes.

And thereby to make more profit?---Yes, and then I would just tone it down, saying, just to show him, look, I'm, yeah - - -

40 So in this instance, for the first time, you were not approving claimed variations that were inflated or that you thought were inflated?---That, that's correct.

Right.---So I would dispute the variation. Yeah, so I would dispute the variation and then Lojine would be, I guess, the forefront of the project.

So it was Ms Frost who was having the communications with Mr Laphai?
---That, that's exactly, yes. So I was just the behind-the-scene guy. Well, well, manager. So I would let her run the job. She would come to me with advice and I say, "This is what I'll do."

All right.

10

THE COMMISSIONER: Sorry, just want to clear up something else. Do I take it that in relation to Lambert Park and Enmore, are those projects, which are marked 10 to 14, had been in progress before Steel Park was completed?---Yes, that would be right.

MS DAVIDSON: In addition to the payments - I'm sorry, Chief Commissioner, had you - - -

20 THE COMMISSIONER: Sorry, 14 was a plumber call-out fee. I'm not sure whether it was part of Lambert Park and Enmore.---That's back in 2018.

MS DAVIDSON: That was the previous year in any event.---Earlier, yeah.

THE COMMISSIONER: Do you know what that related to, number 14?---I vaguely remember, I think it was still Bridgewater Park. There was a, a leak or something like that, 'cause SDL did it. And - - -

30 Sorry, where was it?---It was Bridgewater Park. So I think there was a plumbing issue there and I told SDL "You need to fix it," but I think the warranty was over or the 12 months defect (not transcribable) was over.

MS DAVIDSON: And so they charged the council for a plumber to come and do the fix?---That's exactly. To do the fix, yes.

In addition to the approximately \$60,000 that you refer to being paid in cash by Mr Laphai or SDL, did Mr Laphai provide you with any other form of benefit?---A phone.

40 A phone.---If you see, yeah, if you see the list, if you call back the register you'll see, I guess, the items, yeah.

It's 5.1, page 49.---So it would have been a phone which was deducted from my, I guess, fund, the kickback. So - - -

So he purchased a phone for you?---Yeah, he purchased a phone for me, yes.

10 And was that - well, we'll wait for it to come up on the screen. All right, so phone, \$970, is that what you're referring to?---That, yes, and then along with the recharge 'cause it was a prepaid phone.

Right.---Lotto tickets. I don't know the lotto tickets, yeah. Maybe I, yeah. The ice cream, that was petty, the ice cream was at Lambert Park where one of the boys pulled the power point off the, the freezer, and then all the ice cream was melted and the club owner was complaining and then Seng said I shouldn't be paying for it, and then I said, look, just take it out from the, take it away from my fund, or - - -

20 Your kickbacks.---Yeah.

Right. So he did pay for it but out of the money that - - -?---Yeah, exactly.

- - - you thought was - - -?---Yes.

- - - or that had been under the arrangement was due to you.---That's correct.

30 Right. And survey, what does survey refer to?---Survey would have been, I think it might have been one of the properties, one of my properties, I asked for a survey to be done.

Right.---Yeah.

And SDL paid for that?---Paid for that, yes.

Okay.

40 THE COMMISSIONER: So what were the lotto tickets?---I don't know, lotto tickets I think is just, I think, I vaguely remember that we were joking, "I'll just get lotto tickets," and stuff like that, and then he bought lotto tickets. But I didn't know he would charge it here.

MS DAVIDSON: So it's something you asked him for that he bought for you?---No, as in for all of us, as in we were joking, 'cause I think it was, you know, one of these ridiculous amount, it was like \$80 million, you know, Powerball, whatever, and then we're just joking, "I'll just buy a ticket," and then I didn't, and then he bought a ticket, he said, "Hey, boys, I've got a ticket," and then he tabbed it onto the - that's what I can recall. Which, yeah, I found funny. It's, yeah.

10 Going back to the phone. What was the purpose of him buying a phone for you?---For communication purpose.

For communication purposes?---Yes.

So was that so that it would have a separate number to the phone that you otherwise used?---That's correct.

20 And what was the purpose of giving you a separate number or a separate phone that you could use?---Just to communicate, I guess, to talk about bids, works, upcoming works.

Was the purpose to separate your communications on that phone from the - - -?---The council work - - -

- - - communications that you were having in relation to your council work?---The work phone, that's correct, yes. Yes, that's correct.

30 All right. So did you understand that phone to be for the purpose of communicating with Mr Laphai and others - - -?---And, that, that's correct, yes.

- - - in relation to the scheme you had with him and Mr Nguy?---That's correct.

Right. And do you recall when you got that phone?---Must have been early on, yeah, had to be early on when we, if we started talking about it, yeah. I don't know, I don't, I don't, I don't recall the exact date or month.

40 Does April 2018 sound about correct to you?---Is that when they started or - - -

Well, you'll see that the first work had been awarded prior to 2018. I'm just wondering whether you have any recollection of when you were given the phone, well, prior to April 2018?---It might be before then because he's done a few work, like, they would have, have to communicate.

Did you initially communicate with him on your own phone, do you recall?
---I think so, yeah, and then I said, okay, we might need the, another phone, just to, yeah.

10 So at some point, you thought it would be a good idea to separate the phone use?---Everything, yes. That's, that's correct. And I don't think the phone was under my name. I think it was, it was opened in another account - - -

It was under somebody else's name?---That's correct.

And was that for the purpose of disguising your involvement?---That's, I think so, yes.

20 And did you understand that it was under somebody else's name?---I understand, I understood it was under someone, yes, that's correct.

Right. And when you said it might be a good idea to have a separate phone, what made you think that that might be a good idea? Was that to avoid being detected?---No. It was more of a, I think keeping my personal work separated and, and that side of things separated.

30 When you say keeping your "personal work separated" - - -?---As in, so I had three phones at the time, yeah. So I would have one for, yeah, friends and families, this is my personal one, where, you know, you log on to Facebook, you see all that stuff and WhatsApp, and then, which - - -

Right. Was that your 479 number?---479, that's correct. And then you add the council work phone, so that would just be for council and council workers. And then you add this phone, which is for the whole bidding process and upcoming works and, you know, extra information given, to assist.

40 Right. Okay. And did you, in fact, use that phone for that purpose - - -?
---Yes.

- - - once it was given to you?---Yes, that's, that's, that's the purpose of it, yeah. I try to keep it separate, like - - -

And did you keep it throughout the period up to 2020 when you received this email from Mr Laphai?---Yes.

And do you remember what happened to it after that?---I stopped using it, yeah. So I was paying for, like, 'cause it was prepaid, I was obviously paying the recharge myself, so, yeah. I kept using it till I think it was this
10 time or, yeah, this time. Then I said, okay, maybe he's just reminded, okay, I'm still associated with him, so that's, start using my own phone or - - -

Right. Chief Commissioner, might that be a convenient time?

THE COMMISSIONER: Yes.

MS DAVIDSON: I'm about to move on to another - - -

THE COMMISSIONER: Right. We'll just take a quick break for quarter of
20 an hour or so. Thank you.

SHORT ADJOURNMENT

[11.33am]

THE COMMISSIONER: Yes, thank you. 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.
30

MS DAVIDSON: Just before we move on from the subject of SDL, did you understand that Mr Nguy left or ceased working for SDL around the time that your relationship with Mr Laphai also deteriorated?---Yes, that's correct.

And do you know why he left SDL?---Because of the, I guess, the conflict within the business, like, you know, payments to his trades and stuff like that. So they had issues internally.

40 So it was the same, the issue that you raised in your earlier answer about trades not being paid you understood to also be the reason that Mr Nguy

ceased working?---That's correct. He's the one that told me about the issues going on and then, yeah, then when, when I confronted him he just said no, so it's all okay, blah blah blah, and then when I started getting calls from the trades direct then I said okay, it's not okay.

So you say when you confronted him you're referring to Mr Laphai there?
---Yes, that's correct.

10 All right.---Saying that is everything okay. You know, you got paid. Why aren't you paying, he said why aren't you paying your, your trades and he said oh, I am, I am so - - -

THE COMMISSIONER: How did Mr Nguy come to work for SDL?---I'm not too sure. As in we, well, so I know that we all went to uni together. I don't, I vaguely remember saying like he was in one of the classes, in one of our classes, so that's where their connection between Monty and Seng lies. It goes back to the uni days and then I think they maybe kept in touch or lost in touch and then got back in touch and say hey, I'm doing this.

20 Did you have anything to do with him getting a job there?---Oh, no, nothing, yeah.

Yes. Thank you.

MS DAVIDSON: Another of the companies with which you were associated in relation to whom you awarded Inner West Council work was Marble Arch. Is that right?---Yes.

30 Do you remember when Marble Arch was first created?---Um, mid-2017. I can't, can't quite remember.

It was a company associated with Mr Cox.---Yes, that's Aidan Cox's company.

And did you set them up as a council supplier?---Yes, I did, going through the same form with the ticking the box of the conflict of interest.

40 And in relation to Marble Arch, were you able to access an email address?
---Yes.

And do you remember what that was?---It was, was it projects, or was one of either projects or admin@marblearch. I can't - - -

Did you have an alias associated with Marble Arch?---Yes. It was another female.

Laura Donnelly?---That's it, yeah.

10 And Laura had an email address. It was laura@marblearch.com.au. Is that an email you remember using?---Oh, was, oh, oh maybe that was the email I was using, yes.

And do you remember what her title, her imaginary title was?---Project engineer, I think, project engineer or - - -

Project coordinator?---Project coordinator.

And was it the case that as with - - -?---The other two.

20 - - - the other two companies, that Marble Arch was just Aidan Cox?
---That's correct.

That is, it didn't have any employees?---That's correct.

And so was your intention, or part of your intention in setting up the alias, as with Constructicon and - - -?---SDL.

30 - - - I think you've given evidence in relation to SDL as well, to help the company look bigger?---That's correct.

And did you use that alias and that email address to talk to yourself in the same way as you did with the other aliases and email addresses that you had for Constructicon and SDL?---That's correct.

Did you prepare quotes on behalf of Marble Arch and send them to yourself?---That's correct, yes.

Did you also use that email address for dummy bidding?---Yes.

40 And when you did use that email address for preparing quotes or for dummy bidding, did you tell Mr Cox about that?---Not, not, probably half the time

when it's involved him, as in, involved Marble Arch being the work, but I think I don't tell him or inform him that I'm using it to, say, give SDL the work or Constructicon the work.

Right. So he was aware of it if you were preparing quotes in relation to jobs that he would get. Is that, am I understanding you correctly?---That's correct, yes. Yes, that's correct. Yes.

10 And in relation to dummy budding, you didn't tell him that that was what you were doing?---Yeah, I didn't, thought about telling him. I just did it so
- - -

You didn't think about telling him?---Yeah, exactly. I just did it, yeah.

Right. And why was it that you didn't tell him?---'Cause I have access to the email so I thought it would be okay. I think it's just more of a, I thought it would be just, you know, we bounce off with each other sort of thing so -
- -

20 You bounce off each other.---Yeah, so like - - -

What do you mean by that?---By, like, say, I use, like, we take turns rotating, like, Constructicon alias email would be the dummy bid this time around. The next time would be the SDL alias email will be the dummy bid, and then the next one will - - -

I see. So you added Marble Arch to your - - -?---Circle.

- - - rotation system.---Yes.

30

I can provide you the table, and I hand up two copies, Chief Commissioner, for you. If I could have this marked for identification. This, Mr Nguyen, is a summary table of the kind that you've seen before, but in relation to Marble Arch Pty Ltd and projects that it was awarded - - -?---Thank you.

- - - by Inner West Council. Chief Commissioner, if that could be MFI 7.

THE COMMISSIONER: Yes, MFI 7.

40

#MFI-007 – TABLE 4 – MARBLE ARCH

MS DAVIDSON: Mr Nguyen, if you want to take some more time and make any or raise any issues in relation to the table over the lunch break, you're welcome to do so. But looking at it as you see it now, does that, to the best of your recollection, reflect works that you were involved in awarding to Marble Arch?---Yeah, it looks familiar, yes.

10 Those projects - - -?---The, the back end of the, where it says "unknown" I kind of have to put more thoughts into it.

I'm sorry? You'd have to give some more thought to it?---Yeah. The one that says "unknown" 'cause it doesn't, it, it rings a bell but it doesn't ring a bell at the same time, like, it's, got to see if it's a double-up or, yeah.

All right. So that's works in 2020 - - -?---Yeah.

20 - - - in relation to Petersham Park?---Yes. So the first page is, I would say it's familiar, I'm aware - - -

The reconstruction of the concrete footpath and the repointing of the external brick wall, numbers 8 and 9 and then - - -?---Yes, they're, that's, I, I remember that, yes.

And then 9A through to 9E are all also Petersham Park works. Those ones are in 2020. Do you recall those?---Vaguely. I've just got to, just, I, the (not transcribable) yes, the remediation work I, have to see what's the scope. I'm not too, the windows, supply windows, yes.

30 And what about 9E, the concrete and landscaping work?---Yes, that was the concrete, yes. Yes, I'm aware of that one.

That was one that you did recall recommending?---Yes.

And then after that, later in 2020, is it your evidence that - - -?---So that is in item F, 9F to 9.. Can I have a think about it over lunch?

40 Yes.---Yeah, just, it looks, I, it, it rings a bell but then it doesn't, so I just want to make sure.

In relation to, well, I think you've given some evidence yesterday that you knew Mr Cox from your time at the Glenfield Junction Alliance?---That's correct.

How did you come to be back in contact with him in 2017 or 2018?---I think he emailed me out of the blue, saying, just saying, "Hey, how are you doing, what are you up to these days? I have a business proposal for you or a business proposal I want to run by you" or something like that, yeah.

10 Okay. Well, do you remember what that proposal was?---He wanted to do something together, as in he wanted to form a company and do something together.

Right. And what was your response?---I think I said, "I'm working for council, I can help, help get you started," I, I think, yeah, something along those lines, yeah. So I didn't jump into a partnership with him or start doing things, so I, I, I think I started saying "I can help you get started."

20 And when you say "I can help you get started" did you intend that to be a reference to, as you'd assisted Mr Nguy, for example, when he'd started his own company - - -?---That, that, that's correct.

- - - to obtain council work?---That's correct.

And so did you understand that it was after that, that Marble Arch was formed?---Yes.

30 And did you have an understanding with Mr Cox at the time that Marble Arch was formed that you'd award council work to it?---Yes.

And you set it up as a council supplier for that purpose?---That, that's correct.

40 Did you have, well, I think you've given evidence that you used Marble Arch for dummy bidding without telling Mr Cox. Was he aware of your arrangements with other council suppliers, that is with which you were associated, for example, with Constructicon and with SDL?---Yes. He, he is aware that I was associated with Constructicon and SDL 'cause I told him I have this set up already, I'll just do the same steps as for you.

All right. That is the use of the email address and the alias?---That's correct, yes.

All right. And did he know about the dummy bidding that you were engaged in for those companies?---Potentially, yeah. So I probably would have mentioned it to him.

But you didn't mention to him that you were using - - ?---Well, yeah.

10 - - - Marble Arch for dummy bidding.---Yes. I don't recall getting him involved.

Do you recall him ever finding out about Marble Arch being used for dummy bidding?---For one instance, yes, but this is not related to the council. More it was for a TAP project.

Right.---Yes.

20 So that was a Transport project?---Transport, yes.

Right. And what was his reaction when he found out that you'd used Marble Arch for dummy bidding?---We almost had a punch-up so, yeah, so that was because of - - -

And do you recall when that was or which TAP project it related to?---Oh, it's Kingswood.

It was Kingswood.---So it was a landscaping package.

30 Right.---Yes.

Right.---So I remember that clearly 'cause, yeah, we almost had a falling out so - - -

THE COMMISSIONER: Sorry?---I remember that clearly because we almost had a falling out.

You had a?---Falling out, a punch - - -

40 MS DAVIDSON: So do you remember why he was upset that Marble Arch had been used for dummy bidding?---Yes. Because he said you should have

told me 'cause there's consequences and, yeah, he just said he doesn't like it.

And so after that occurred did you continue to use Marble Arch for dummy bidding on council projects?---I don't think so 'cause I don't think, I don't think so. I can't, well, I can't recall.

Did Mr Cox provide you with any financial benefits?---Just the phone. Just a mobile phone, brand new mobile phone.

10

Just the phone?---Yes.

So when you're referring to a phone is that a phone he purchased for you? ---Yes, that's the phone he purchased for me.

All right. And what was the context in which he purchased you a phone?

---So I think, I think we were having lunch and I said, "I need to go to a Telstra shop to buy a phone for a present for my wife for her birthday."

And then he just offered to pay.

20

He offered to pay.---Yeah. And I didn't say, I didn't reject or, yeah, I didn't reject the offer.

What did you understand was the reason he was offering to pay for a phone for your wife?---Oh, no, just, he just paid 'cause I see, 'cause I'm helping him out. He's just returning the favour I assume.

Right. So - - -?---So I was like okay.

30

Was it, thinking about it now was it a form of kickback?---Thinking now, yeah, it's, it looks like a form of kickback, yes.

Do you recall how much the phone cost?---I think \$2,000 or something along those lines. \$2,000 or something but, yeah.

All right. And did you use that phone or did you give it as a present to your wife?---No, I gave it as a present to my wife, yes.

40

So you didn't have a phone that was associated with Marble Arch in the same way as you did for SDL purposes?---Oh, no. Yes, yeah.

Okay.---So I would have still had that same number from SDL that I will use to contact Marble Arch.

Right. Did you have any form of agreement with Mr Cox in relation to receiving a share of his profits or his contract sum in relation to council works?---I vaguely remember we had a conversation but it just died out as in like it never followed through.

It never followed through.---Yeah.

10

That is, you - - -?---He just said something along the lines, “Oh, don’t worry I’ll, I’ll, you know, I’ll sort you out” but that’s about it. Like there was no tracking or anything like that. I don’t think, to my knowledge there was no tracking sheet or anything like that (not transcribable)

Right. And you’re not aware of receiving any payments from Mr Cox?---I haven’t, no, I definitely didn’t receive any payments from Mr Cox.

20 All right. And do you recall whether you ever saw a tracking sheet? You said you didn’t think there was any tracking sheet.---Yeah, I don’t think, I don’t recall seeing any tracking sheet on, on his behalf.

Okay. In relation to a - well, was there an occasion which Marble Arch was working on a project for the council and you were involved in stealing tools?---Yes.

And - - -?---So that would have - - -

30 What was the context of that, that that occurred?---So just it wasn’t intentional but it happened that way. So I think it was on the, what projects, the Petersham Park grandstand, the concrete works.

Right.---So item 9E.

Yes.---So he needed a - - -

In 2020?---9E.

40 Sorry. 9B?---Item 9E, E.

E. Right. Yes. Sorry. Down the bottom of the page there in July 2020?
---Yes.

Yes. So what occurred?---So I think he needed a demo saw and he said,
“Hey, can you get me a demo saw, hire me a demo saw to do the concrete
works?”

Right. Mr Cox that was?---Yes. And I said, “I’ll sort you out and then I’ll
hire it through council.”

10

Right.---“And then let me know when you finished with it.”

Did you have an account that enabled you, with a tool hire company - - -?
---Yes.

- - - that enabled you to do that?---Yes. Yes, we did.

Was that Coates Hire?---Coates Hire, yes.

20 Right. And so what did, you said to him, “Let me know when you’re
finished with it.”---Yes.

And what was your intention in saying that?---Obviously to return it.

To return it?---Yeah.

Right.---Obviously to return it but then I don’t know what came over me. I
just saw it and said, “Oh, I will, going to take it.”

30 You thought you would take it.---Yeah, as in when I, when he left it there
for me return - - -

Right.--- - - - I just had a different thought, thought and said, “Oh, I think
I’m going to take it.”

Okay. Did you report it as stolen?---Yes, I reported it as stolen.

To Coates Hire?---To Coates Hire, yes.

40 Right. And what did you then use it for?---So I used it for, I guess, my
business works.

So that's RJS Projects?---RJS Infrastructure, yes.

RJS Infrastructure. And was that for use in relation to one of the Transport projects that RJS Infrastructure was working on at that time?---Any project I guess, but at the time it would be, yeah, it would have been one of, it would have been mainly used for that one, yes, 'cause it was the only project we had at that time.

10 Was that Wollstonecraft?--- Wollstonecraft, yes.

Right. And when you reported it stolen to Coates Hire, did you then pay Coates Hire in relation to it?---Coates Hire, yes, I did.

The loss of the tools.---Yes, I did.

And was that using council funds?---Yes.

20 And was Mr Cox aware of you having taken the tools?---Yeah, he was aware but I don't think he said anything. Like, I don't think he can say anything. Like, he just, "Okay," like, "Let's use it."

Because he was involved with working with you at Wollstonecraft as well, wasn't he?---That's correct, yes.

So - - -?---So we, we, together we delivered Wollstonecraft Station.

30 So the demo saw, I think that was the name of the tool, do you - - -?---Yes, the demo saw, yes, that's correct. Yes.

Right. Would he have been a, would you understand him to have seen at the Wollstonecraft?---Oh, a hundred per cent he would have seen, yeah, exactly, yes. Yes, like I said, he, he knew but didn't say anything.

Right.---Like, I don't think he can say anything because what was done was done, like, yeah.

40 Another of the companies with which you're associated - I'll come back to your work with Mr Cox in relation to the Transport projects, but another company with which you're associated who was awarded some Inner West Council was JTG Services Pty Ltd.---Yes.

Chief Commissioner, I hand, it can be handed to the witness and multiple copies for you, a further table. That could be MFI 8.

THE COMMISSIONER: MFI 8.

#MFI-008 – TABLE 4 - JTG SERVICES

10

MS DAVIDSON: Thank you, Chief Commissioner. If you just take a moment to look at this. I think you've given some evidence yesterday that JTG Services was Nima Abdi's wife's company.---That's correct.

Is that Jessica Tosh?---Jessica Tosh, yes, that's correct.

Did you play a role in setting up this company?---I did set up the company.

You did set up the company.---I did set up the company.

20

And what was the reason for doing that?---I'm not too sure. I think it's, it was set up, I think, it's more for the, the TAP side project, the Downer side project, rather than the council side.

Right.---Yeah.

So was it set up as a vehicle for receiving funds in relation to - - -?---That's correct, yes. So that was the idea of it, yes.

30

To receive funds that would be paid to Mr Abdi.---To receive, that's correct.

Right. And you'd met - again, I think you'd given some answers yesterday in relation to meeting Mr Abdi through the Glenfield Junction Alliance. ---That's correct.

And then you'd - - -?---Stayed - - -

- - - stayed involved with him through ASN Contractors?---That's correct.

40

All right. Do you recall when you set up JTG?---2019.

I'm sorry?---2019, I think.

So am I right in saying it was effectively a shell company that you set up?
---Yes.

To receive funds.---Funds, exactly, yes.

10 All right. So are you able to explain then why a shell company was also
involved in providing work for council?---Council. So, um, he kept pushing
that he, so obviously to set up you need money to set up the company and
you need to do, I guess, the accounting, and you pay the accountant to do
your BAS and so on and so on. So, yeah, he kept saying - - -

THE COMMISSIONER: Sorry, who's he? Is that Mr Abdi?---Mr Abdi,
sorry. I'm referring to Mr Abdi. Yeah, so Mr Abdi would say, "Oh, give
me some, give me something from council so then I have something in the
account."

20 MS DAVIDSON: Give you something from council as in give you some
work from council?---Some, yes. So, so I can say that the two, item 2 and 3,
there was no work done.

There was no work done.---Yes.

So that was - - -?---Just pure cash inside.

Simply items that you, you effectively invented. Is that right? Those
works?---That's correct, yes. That's right.

30 Were they works that needed to be done or, and that somebody else did or
simply - - -?---Yeah, yeah, so they were works that needed to be done but
someone else did. They overlapped, yeah.

Right. And what about the first there?---So the first one, so it was, so there
were, so it was, so, so Constructicon was subbed into them and then they,
they, then Mr Abdi just keeps the, I guess, the, the profit margin on top.

40 Right. So Constructicon in fact did the work even though they'd also
tendered for the work?---Yeah, from, from memory, yeah, I'm pretty sure
they did the work. And then, yeah, it was just getting JTG in the, in the
system to do, you know.

To get council work?---Exactly, yeah. Just to establish the council.

All right. And so Mr Nguy was paid in relation to that - - -?---Yes.

- - - was he, as a subcontractor?---As a subcontractor, yes.

10 You understood that Mr Abdi was - well, was it Ms Tosh who was operating the accounts or - - -?---No, it wasn't. I don't think Jess knew anything about it. It's just her, it's just like, yeah, it's just her name. We used - - -

Right. So Mr Abdi paid Constructicon - - -?---For the work.

Right. And did you understand him to also receive a benefit in relation to that?---Yeah, so he would, there would have been a margin, like \$1,000 or something like that, I can't remember, on top. But there would be some margin.

20 So whatever the profit was?---Exactly, yes.

And did you also receive a financial benefit for providing works to JTG?
---Oh, no, no. Yeah, so it's just more of - it's more for giving work so that he, Mr Abdi, had something in the account to pay the maintenance costs of the business.

All right, but this was - - -

30 THE COMMISSIONER: Pay what, sorry?---The maintenance costs of running a business. Like accounting.

MS DAVIDSON: All right, so is it your evidence that that was also true of the first project, even though it was a substantially higher amount?---Yes.

That is, you said 2 and 3 were work that was never done.---Yes.

They were obviously sub \$5,000 projects. Leichhardt Oval is \$22,000.
---Yeah. Yeah, so if you see, so the, 2, 2 and 3 was done in January 2019.

40 Yes.---So, yep, that started off just so he had some funding in, in, in the bank account. And then I think it was time for him to do the work, so, or he wanted another top-up.

Right.---So - - -

Further funds to pay costs associated with the company?---Exactly. That's correct.

And did you assist in providing, that is assist in preparing the quote for JTG on that occasion?---Oh, yeah, I did, I did everything. He did, I don't think he had access at the time. Or he, he had access but he didn't have access as
10 in - so I created the email address and all that, so I had full access to it.

Right.---So he had access to it but I don't know if he ever used it.

Okay. So similarly to the other companies, you were able to access an email address on behalf of JTG Services?---That's correct. That's correct.

And did you inflate the price in relation to the Leichhardt Oval painting, do you recall?---No, I just told him to put something (not transcribable) that keeps them covered. I think 1,000 just rings a bell, or 1,200. Like, it wasn't
20 substantial.

Did you know what Mr Nguy was planning to charge in relation to that project? That is, as subcontractor. Was there a plan in advance that Monty would do the work?---Yes, he would, he would have had the mark-up. I can't remember, I can't recall what was the percentage or what was the mark-up, but there would have been a mark-up, yes.

But there was no, from your perspective there was no financial, there was no expectation of a benefit flowing through to you from that work?---Yes, that
30 wasn't, that wasn't (not transcribable) purpose. It was just more ongoing costs for the company.

THE COMMISSIONER: Sorry, had you done Constructicon's quotation in the first instance?---Yes.

So you had prepared that?---Fabricated it, yes.

And you had prepared JTG's?---Yes, that's correct.

40 MS DAVIDSON: The next company with which you were associated who performed work for Inner West Council was the Sanber Group or RJS Civil.

Chief Commissioner, I hand up a table in respect of them with a copy for the witness and multiple copies for you. If that could be marked as MFI 8. MFI 9. I'm sorry. I'm running one behind.

THE COMMISSIONER: MFI 9.

#MFI-009 – TABLE 4 – SANBER GROUP/RJS CIVIL

10

MS DAVIDSON: Thank you, Chief Commissioner. Looking at this, Mr Nguyen, does that so far as you can recollect accurately represent projects that - - -?---The Sanber Group.

- - - the Sanber Group worked on - - -?---Carried out?

- - - for Inner West Council?---So for, I think back when it was Leichhardt Council.

20 Right. Yes. And they traded as RJS Civil - - -?---Civil, that's correct.

- - - at the time?---At the time, yes.

And you knew Mr Sanber through your work on the Glenfield Junction Alliance?---That's correct.

And I think your evidence yesterday was that you knew him through Mr Abdi. Is that correct?---Yes, that's correct.

30 But was he himself also working on the Glenfield Junction Alliance?---Yes, he was, but I think you said he worked for Transport but he didn't. I think he was more Sydney Trains or he was a, he worked, he worked for Sydney Trains.

Right. And did you understand him to have a pre-existing relationship with Mr Abdi?---Yes.

40 And what was that?---Just, well, they, they'd seemed chummy, so I knew they had a relationship. So I think I mentioned that yesterday, like, their relationship is more than professional.

Yes. How did he come to be involved in Leichhardt Council work, that is, Mr Sanber or the Sanber Group?---I, look, I'm not too sure, as in, how it happened or how, or what triggered it, just - - -

Did you introduce him or set him up as a council supplier?---Yeah, I would have to, yes. So I would have had to done it, through Leichhardt Council, yes.

10 Right. And would you similarly have had a form in which you were required to declare a conflict of interest but didn't for the Sanber Group?
---That, that's correct.

Did you receive any benefits from Mr Sanber in relation to the award of these works?---No, I received no benefits, whatsoever.

Did you have a template, that is, a quote template, for RJS Civil?---I think I did, I think I did.

20 And did you use that for the purpose of dummy bidding?---I'm not too sure if I used it as dummy bidding, but for these four item works - - -

You used it to prepare these quotes, did you?---Yeah, yes, yeah. But I don't think, I don't recall using it as a dummy, using them as a dummy bid or RJS Civil for dummy - - -

And so when you prepared these works, do you recall whether you inflated the prices - - -?---Yes, I inflated - - -

30 - - - in relation to them?---Yes.

And what was the purpose of doing that?---So I think the purpose was to get Sanber Group started.

The purpose was to get Sanber Group started?---Started, yes, as - - -

So to help them make more money?---That's correct, yes.

40 And what was your reason for doing that in the context of not receiving any benefit from them?---I think 'cause the long term goal, well, long term was for the Transport side of things, like, Transport projects, just - - -

Sorry? The long-term goal was Transport projects?---Yeah, so just to get started up, so then we, they can carry out, you know, Transport projects, which rolled in to the maintenance, yeah.

Right. So do I understand you to say that the purpose was that Sanber Group would have done some council work, which would then assist them on getting Transport projects?---No, I wouldn't say assist them. It's just more funding.

10 Funding?---Funding, yes.

Right. Why did they need funding for Transport projects?---No, for, just to set up the company and then, just, to pay the, the ongoing costs of a business, yeah.

Okay. I see.---So when you, and so, obviously, when, obviously, you do, like, a TAP project, you need, you know, up-front costs, like PPE and stuff like that, you know, then - - -

20 So there were costs associated with being successful in relation to - - -?
---Exactly. And then branding, you know, just buying shirts with the company logo to, stuff like that, yeah.

Right. So am I right in thinking you used the Inner West Council contracting process to enable funding for RJS Civil to perform Transport projects?---Later on, yes, that's correct.

30 Later on. And you had an interest in RJS Civil's success in Transport projects because you were deriving profits from that company. Is that right?---That's correct. In, in their (not transcribable)

In the Transport context?---That, that, that's correct.

And, again, we'll come to the Transport projects shortly. Did you receive any other form of benefit, that is non-financial, from the Sanber Group that you recall?---Nothing, just the straight do the work, give the mark-up and then whatever comes up, such as the Transport projects and then, yeah, then we'll deal with it then.

Do you recall having any discussion at any stage with Mr Sanber about dummy bidding or being involved in the kind of arrangements that you had at council with Constructicon and SDL?---Oh, no, no, no.

You didn't have that kind of discussion with him?---I don't, yeah, I don't think I had the, kind of, 'cause, one, I didn't trust him solely, so - - -

You didn't trust him?---Yeah. Hence the easy falling out later on.

10 I'm sorry?---Hence the easy falling out later on.

Hence you had a falling out later on?---Yeah. Yeah.

Moving on, then.

THE COMMISSIONER: Sorry, what led you to not trust him? Was there something that happened?---He wasn't, well, yeah, wasn't I guess being transparent about everything. Like everything he'd say, like, he would show, say, this costs this much and then I would end up finding it costs this
20 much and I said, "There's a hundred grand difference. What's the go?" sort of thing. So he's been caught out a few times of, you know, showing the actual price of it, the actual profit of the project or the cost of the project versus what he marked up.

MS DAVIDSON: Chief Commissioner, I'll ask some questions that relate to that falling out.

THE COMMISSIONER: Yes.

30 MS DAVIDSON: Before we move on to Transport projects, do you recall giving some evidence yesterday, Mr Nguyen, in relation to floorboards and work that was performed in relation to - - -?---Innocon.

Innocon, yes, and the floorboards for your - - -?---Sister's apartment.

- - - sister's property?---Yes.

40 Yep. Chief Commissioner, I hand up copies, with one for the witness, of some emails that have been printed out, but if I can have them brought up on the screen as well. Mr Nguyen, these are emails that were provided to the Commission by you or by your solicitor - - -?---Yes.

- - - following your compulsory examination or in the course of your compulsory examination. Do you see there on the top email on the first page there's a reference to the emails from Mr Laphai, and then in the third paragraph there's a request in relation to Surry Hills and providing the invoice in relation to work performed by Innocon. That's the top email. And then underneath that you see, on the last page of that stapled bundle, the tax invoice that Innocon prepared.---Yes, that's correct.

10 Which was I think the same invoice that we discussed yesterday that was also provided to the Commission. And then the second email is also sent on 6 April 2022 and you say as an email chain in relation to, that is from Mr Nguy to your solicitor's client, that is to you, in relation to that address. Do you see that second email? I'll just have it brought up on the screen. The second email.---I'm sorry, I'm, I'm confused.

I'm sorry, I'm just having it brought up.---Okay.

20 So that's sent at 10.48pm on 6 April 2022. And you see it forwards on some emails from 2017.---Yes.

I think you gave some evidence yesterday in relation to you'd been asked some questions about indicating that there'd been no free work performed in relation to the question of the floorboards - - -?---Yes.

30 - - - and whether you'd given an incorrect answer in relation to that, and you said that you'd corrected the record with the Commission by providing records of documents. There's no indication in these emails that were provided by your solicitor that you were aware of or intended to indicate to the Commission that free work had been performed, is there?---No, it was, when you read the, I just had a quick look at the invoice. I went and picked, 'cause this has, "I install," so install would be the labour work. 'Cause I remember you mentioned yesterday that Innocon said they gave free, the labour work was for free.

Yes.---Yes.

40 And sorry, what are you referring to on the invoice?---So it says supply and installation on new floorboards, so installation would be the labour, so I wouldn't have picked up that the labour was for free at the time.

You didn't pick up that the labour was free at the time.---Was for free at the time, yes.

But your evidence now is that you understand that there was free work.---It wasn't free work but it was discounted, as in - - -

10 You didn't pay for the labour and nor did your sister. I think that was your evidence yesterday.---I didn't know that, I didn't know, 'cause when you mentioned, um, there was an email I think you showed me that David said that - - -

Yes.---So at the time when I provide this, I didn't that there was, that they didn't charge for labour, because when you read the invoice, when I provided at the time, I saw "supply and install" so install means the labour component, so I, so I assumed it was charged but at a discounted rate. Does that make sense?

20 That is the assumption you made based on that email.---Yeah. Exactly, yeah.

Is that your evidence?---Yeah, that's right. Yeah.

All right, but you didn't indicate, or you would agree these cover emails don't indicate one way or the other anything about your evidence to the Commission at that time.---Yes.

30 They simply forward on the documents.---Exactly. That's right. They just have me an invoice and then I just forward the invoice to my sister and then she paid.

They don't say, these emails though, that is, the cover emails that your solicitor provided - - -?---Yes.

- - - don't provide your instructions clarifying your understanding of the situation. They simply forward on the invoices, don't they?---Invoice, yeah, because I think it was requested that, "Can you provide the invoice for the work."

40 Right.---So, so I just forward the email. I just forward the whole email.

Commissioner, I tender those two emails. It would be exhibit 57.

THE COMMISSIONER: Yes. All right. That will be exhibit 57.

**#EXH-057 – 2 X EMAILS SENT FROM MICHAEL VO TO THE
COMMISSION DATED 6/4/22 RE INNOCON INSTALLING
FLOORBOARDS**

10 MS DAVIDSON: Moving now to work that you performed in association with Transport projects, I think you referred earlier to being involved in 2014 in a company called ASN Contractors.---That's correct.

Is that a company that your wife was the director of?---That's correct.

And did it initially have another name?---Yeah, so I think originally it was TRN Contractors.

20 Was that an acronym?---That was an acronym, yes. So it was an acronym and it was, coincidentally there was an established company called TRN Group.

Right, so it was an acronym for what?---Tony, Raja, Nima.

And they were the three people who were partners in the company?---Yes.

That is you, Mr Abdi and Mr Sanber?---Abdi and that's correct.

30 And you changed the name because there was a coincidence, you said.---So we changed the name to - yeah, so we changed the name to ASN because I think we got a legal letter from PRN Group saying that's a copyright issue.

Right. So there was some intellectual property issue.---That's correct, yes.

Why did you form a company with Mr Abdi and Mr Sanber in 2014?---For the sole purpose of, I guess, the work was, just for the works that Mr Abdi can provide to ASN.

40 Right. So was Mr Abdi working for Transport at the time?---Yes, so Mr Abdi was working for Transport at the time and Raja Sanber was working for Sydney Trains at the time at the Glenfield Junction Alliance.

Okay. So do you recall whose idea it was to form a company together?
---Not exactly, but, yeah, I don't know who, whose idea or how it happened.
It just happened and I just went with it. I know I didn't, it wasn't me that
started it. I know that for sure.

When you say it wasn't you that started it - - -?---Yeah.

10 - - - do you recall being part of discussions about starting it?---Yeah, so I
was part of the discussion. As in, yes, I was part of the discussion but I
didn't bring it up. I just went with it, if that makes sense.

So did Mr Abdi and Mr Sanber come to you and ask you to be part of a
company?---No, I think we were having a discussion and then I think they
might have had a discussion beforehand and then they asked me, "Oh, how
about you run it because you're obviously onsite."

20 All right, so you were onsite at the time, and why was it useful to them to
have somebody who was onsite?---So, one, because it, it doesn't link them
to, 'cause there would be a conflict of interest to the workplace.

Right, because they were both working for - - -?---For, well, I think it was
TCA back then, what they call it, and Sydney Trains. So - - -

Okay. So did you, in having those discussions with them, make any
arrangement with them in relation to extracting profit from the company?
---Yes, that would be an even split.

30 And was that your understanding from the beginning in terms of - - -?
---That's correct, yes, that's - - -

- - - how any money the company made would be - - -?---Be split three
ways.

- - - set out?---That's correct.

Did you understand both Mr Abdi and Mr Sanber to be part of that
understanding at the time the company was set up?---Yes.

40 And do you remember a discussion with them about that?---Yes, we, I think
we, they counted and made some form of shareholder agreement or silent

partner or something like that. I think we all put in \$100 each as a share, like a, like a, what they call like an investment or something, like a - well, to buying the share.

A contribution?---Contribution to the, exactly, contribution, that's the word.

All right. And you recall each of Mr Abdi and Mr Sanber being a party to that agreement?---Yes.

10 And do you remember signing it with them?---Yes, so I remember seeing it but I don't know where it's placed, as in there's a document.

There's a document?---Yes.

That you had a copy of?---That, that I had a copy of but I don't know where it is at this point in time.

Right. And do you recall going to the accountant's office or an accountant's office to sign that document?---Yes.

20

And were Mr Abdi and Mr Sanber there at the time?---Yes.

Did you use aliases in relation to ASN?---Yes, we would have, yes, I think names.

Names?---Names, yeah.

Do you remember what your name was that you used?---Most likely Anthony.

30

Anthony Lee?---Anthony Lee, yes.

And what about the others, Mr Sanber and Mr Abdi? Did they use aliases? ---Yeah, I think, Nick or Nicholas for one of them.

Nick Sandrusi?---Nick Sandrusi, yes.

Do you remember who that was?---That's Nima.

40 Yes.---Nima Abdi. And - - -

And Mr Sanber?---There's Roger, Roger Sandy.

Roger Smith?---Roger Smith, yes.

And Raj Sandy, was that also an alias he used?---Yes, he would, but I think it was more Roger.

He used the Roger alias more?---I think so, yeah.

10 And did you have business cards prepared using those names?---Yes, we did.

And did they have telephone numbers associated or printed on the business cards?---They, they would have. It would have been silly if you didn't have a contact number.

And were they your real contact numbers?---I think there was my real contact number. I can't remember. Yeah, I would, it would be my real - 'cause I had one phone at the time, yeah. And then the other two, I can't
20 remember if it was a secondary phone or if it's their number.

Was there a telephone number ending in 478 that was associated with your wife at the time?---478, oh, no, she's, yeah, that's not her number.

So why did you use - why was there a need to use aliases in relation to ASN Contractors?---Oh, it's a conflict of interest because I was working with, was it McMahon or John Holland at the time.

Right.---And then those two were working, obviously working for Transport
30 and Sydney Trains on that one project.

So they were all entities that were part of the Glenfield Junction Alliance?
---Exactly, yes, yeah, so we were all working for, under the Glenfield Junction Alliance but for different entities.

And the intention was to obtain work on behalf of ASN that was part of the Glenfield Junction Alliance project, is that correct?---Yes.

Right. So it was a conflict for all three of you for that reason?---That's
40 correct, yes.

Do you remember when in 2014 ASN was set up?---That's too far back. I, yeah, if, yeah.

If I was to tell you that it was registered in April, does that sound about right?---Possibly, I, yeah, I can't recall but - - -

Did ASN have activities other than seeking work in relation to the Glenfield Junction Alliance?---No, I think we just did that one job and then, yeah, we just did that one job and then, then we ceased the business.

10

Okay. Can we bring up volume 16.1, page 27. Is that page 27? We might come back to that. You obtained, that is ASN Contractors obtained the contract for the Glenfield Junction carport defect, sorry, car park defect I should say rectification works.---Yes. Yes.

And that was in November 2014.---I think so. I don't recall the time line but sounds about right.

20 And do you recall what the tenderers were in relation to that project?---Yes, I think I used Ballyhooly Civil for one of them I think.

Ballyhooly Civil, yep.---Yes. And then the other one was - - -

And ASN was another.---ASN was another and then the third one was Raja's mate.

Do you remember the name of Raja's mate?---Dabcorp or - - -

30 Dabcorp, yeah.---Okay.

Just before we continue, this was the document I was intending to show you before. This is a tax invoice from TRN which I think was a name you said you initially used.--- I initially, yes.

To Ballyhooly Civil the management fee that's being charged through TRN for \$16,500 in May 2014. Do you know what that was, what that related to?---To tell you the truth I don't remember, recalling seeing something like this.

40 I'm sorry, you don't recall?---Yeah, I don't recall. I can't - - -

Do you recall - - -?---Can, do you mind if - - -

- - - performing any work for Ballyhooly Civil?---Not at the time. Not at the time. I don't, I don't, I don't - - -

All right. Maybe you can have a think about that one over the lunch break.
---Yeah.

10 If anything comes back to you you can let us know. Coming back to the tender process for the car park rectification works, did you play a role in arranging for Ballyhooly Civil to quote for that project?---Yes, I was a, I was a point of contact for them to say hey, can you put in a price for this much.

Okay. So was it a quote that you prepared?---I, I can't remember. I can't recall.

Right.---Possibly, possibly.

20 So you said you were a point of contact with them asking them to put in a quote for that much. Does that mean it was effectively a dummy quote?
---No, I think the intention was to give them the work and then they will pay - oh, just give them the work and they'll, they'll give us a finder's fee or something like that or they'll just, yeah.

Right. The intention was to give them the work but in fact ASN was also tendering for the work.---That's right, yeah, so - - -

30 So you didn't really intend to give them the work, did you?---Those two, my, well, I thought they were because we had no one as in there was no subcontractors and the only subcontractor I knew was Ballyhooly.

Right.---I didn't know Raja knew Dabcorp. I knew that he knew a Dabcorp but I thought it was a shelf company.

I see.---Yeah.

40 So you intended for them to perform the work on behalf of ASN. Is that right?---Possibly, possibly.

Because you intended ASN to be successful in the tender, didn't you?

---Yeah, that's correct, yes, yes. So that would be right, yes.

Not really Ballyhooly?---Not really Ballyhooly, yes.

So you agree you were using Ballyhooly to manipulate the tender process.

---Yes.

So you told them to provide a price at a particular level.---Yes.

10

Did you, in giving them that level to put in the price know that that was going to be a price that was more expensive than what ASN would be submitting?---Yes, that would be the case.

And what was Mr Abdi's role in relation to this car park rectification works project?---So he would be I guess the client side, just doing the whole tendering process.

20 On the Transport side he was managing it?---On the Transport side, yes, because it was a Transport, it was for Transport directly.

And was he the project manager for this particular project, do you recall?

---He was project engineer. The project manager was Rob Miesegeaes at the time.

Right. Did he have access to the project budget?---Nima Abdi?

Yes.---I would assume so, yes, I would assume so, yes.

30 Did he tell you, that is, you in your ASN Contractor capacity, how much to put in as the ASN quote?---Yes. I think at the time, this, this, this rings a bell a bit, that he said his limit is 250 and he's, so, I think, I think the contract was under 250. Is that correct?

Yeah. Yeah.---So you just need, I guess, the manager to sign off on, which, I think he convinced Rob Miesegeaes to sign off on.

So when you say his limit is 250, you understood that he could approve up - - -?---Up to 250.

40

- - - to \$250,000 on behalf of the Transport entity he was working for at the time?---That's correct, yes.

As long as this manager signed off?---That's correct.

Right. So do you recall him telling you to put in a particular figure for the purposes of that tendering process?---I can't recall. I, I, I just remember that you get a price on Dabcorp or, was it, yeah, Dabcorp. And then, then we just marked up Dabcorp so we know that's going to be cost price, yeah.

10

Right. So you took Dabcorp's price and you put a margin on top of - - -? ---That's correct, 'cause we're going to, 'cause, yeah, we said we were going to use Dabcorp to perform the works.

Where you say "we" is that you, Mr Sanber and Mr Abdi - - -?---That's correct.

- - - made an agreement to use Dabcorp?---Yes.

20 And so the ASN tender was inflated from what Dabcorp provided to you? ---Yes.

And do you remember how much it was inflated by?---I, I can't really tell. Maybe 90 grand? I, I, I can't recall, 90, 80 - - -

So Dabcorp actually did the work - - -?---So, yes, Dabcorp carried out the work.

30 Carried out the work. And that wasn't something that Transport or the main contractor on the Glenfield Junction Alliance knew about, was it?---What do you mean?

That Dabcorp was performing the work?---No. They think, they thought it was ASN, yeah.

And how was it that they thought that to be the case?---So I think, I'm not too sure. I think Nima and, and then Raja just kept everyone away and saying, yeah, that ASN's doing a great job.

40 Were you aware of Dabcorp providing any benefit for Mr Sanber in exchange for that work?---I have no idea. I, I couldn't tell you, yeah.

So you said, I think, that there was a split or an agreement to split profits in relation to the work and there was a mark-up. If I was to tell you that you paid Dabcorp or the Daval Group \$121,000 in relation to that job, does that sound about right?---It rings a bell, yes, and - - -

And that the total figure, including variations, was \$246,000, leaving a profit of about 125,000 - - -?---Hundred and twenty - - -

10 - - - does that sound right?---It doesn't ring a bell but it sounds about right, if that makes sense, like, it's, it's just too, it's too long ago, that, it's very hard to remember.

Were you paid your split of the profits in relation to that - - -?---Yes.

- - - project?---Yes.

How did you organise for that payment to be received?---So it's a cash payment.

20

It's a cash payment?---Yes.

And how did the cash come out of the company? It was paid to ASN contractors, presumably - - -?---Yes, and then there was - - -

- - - by the head contractor. Is that right?---That, that's right, yes. And then it was the accountant.

There was an accountant?---Yeah, that sorted out the - - -

30

So how did that work?---I, I'm not too sure. I think this was when I was kept out of the loop, I think, 'cause Raja nominated an accountant which he said, it was his mate.

Right. And were you involved in any of the documentation that went to that accountant or making payments that subsequently were reflected in cash provided to you by the accountant?---I can't recall, as in - - -

40 Do you recall paying an invoice in relation to a sum before the cash was provided?---Yes. There would have been an invoice, yes. Obviously, that's how the cash was taken out, I think.

So the company paid an invoice - - -?---To our - - -

- - - and the cash was provided?---Yeah. That's right. That's correct.

Do you recall what you used that cash for?---I think my wedding.

I'm sorry?---I think my wedding.

10 Your wedding?---Yes.

Did you invest any of that cash in relation to Mr Abdi's fig farm?---Oh, yes, a bit of it, yes.

A bit of it.---A bit of it, yes.

So if the profits were approximately \$125,000, would that mean that you received approximately \$40,000 as a result of that?---That sounds, sounds about right, yeah, sounds about right. Yeah, the 36K rings a bell, 36,000
20 rings a bell.

36 rings a bell.---Yeah.

Okay.---Or 35 rings a bell.

And you took some of that money and invested it in the fig farm. Was that something that Mr Abdi was running?---Yes, that's correct.

Was that at his property?---That was at his property.
30

Right. Did you obtain any returns from the fig farm investment?---No, because we never got established, as in, I think we grew one season and then the drought hit.

Right.---Yeah, so then we weren't able to grow figs.

The figs died.---Yeah.

And did you attempt to revive that business later or did Mr Abdi?---No, I
40 think, no, 'cause I think because of the drought.

Might that be a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes, all right. Thank you. Adjourn till 2 o'clock, Mr Nguyen. Thank you.

LUNCHEON ADJOURNMENT

[1.01pm]