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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 23 MARCH, 2023

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Ms Davidson?

MS DAVIDSON: Commissioner, I call Monty Nguy.

THE COMMISSIONER: Yes. Mr Nguy.

MS DAVIDSON: I understand Mr Nguy is here represented but the person
who had received authorisation was unable to be here this afternoon,
therefore someone from the same firm is here to make an application in
10 respect of that.

THE COMMISSIONER: Yes. All right. Mr Agar, is it?

MR AGAR: Yes, Mr Agar.

THE COMMISSIONER: Yes. Are you seeking to appear?

MR AGAR: Seeking leave to appear.

20 THE COMMISSIONER: On behalf of Mr Nguy?

MR AGAR: Mr Nguy, yes.

THE COMMISSIONER: Yes. All right. Well, I grant you authorisation.

MR AGAR: Thank you.

THE COMMISSIONER: Mr Nguy, would you come forward, please?

30

THE COMMISSIONER: Now, Mr Agar, have you explained the provisions of section 38 to the witness?

MR AGAR: I have, however, if a direction was given, as well?

THE COMMISSIONER: I'm sorry?

10

MR AGAR: I have, however if a direction was given in regards to protection, as well?

20

THE COMMISSIONER: All right. Thank you. Please take a seat. You can sit down. Now, Mr Nguy, you must as a witness answer all questions truthfully and you must produce any item described in the summons or required by me to be produced. You can object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that the protection does not prevent your evidence from being used against you in the prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. Now, I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection and this means you don't have to object with respect to each answer or the production of each item. Now, I understand you've been spoken to about that?---Yes.

30

And is it your wish that I make that declaration?---Yes.

40

Thank you. Now, pursuant to the provisions of section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by the witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need

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

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

THE COMMISSIONER: Yes. Thank you, Ms Davidson.

20 MS DAVIDSON: Mr Nguy, you have a Bachelor of Engineering Construction degree, correct?---Yeah, correct.

And also a Diploma in Engineering Practice.---Yes.

And when did you finish that?---I think it was 2010 I think from memory.

2010.---Yep.

What did you do after that?---I went into work.

30

And where did you work?---I did my internship at Inten Constructions.

I'm sorry?---Inten Constructions.

Inten Constructions.---Yep.

You'll need to speak into the microphone.---Sorry.

40 That was your internship while you were at university or that was after you
- - -?---Correct.

- - - after you finished?---During university.

All right. And after you finished university where did you work?---A company called I think it was Reitsma Constructions, yep.

Reitsma.---Yep.

And what was your role there?---Contract administrator.

10 And following Reitsma did you go on to work somewhere else?---Yeah. ICMG.

Yeah. And what were you doing there?---I was a, yeah, contractor administrator.

And was it following your time at ICMG that you came to work at Innocon?---Yep. So ICMG actually went under. ICMG went under and that's when we started Innocon.

20 Innocon. And when you say "we" who are you referring to there?---Ben and Dave.

All right. Is that Ben Holland and David Michael?---Correct.

And were you also a director of that business?---I was, yes.

And you were a secretary as well of the company.---I believe so.

And were you also a shareholder?---Yes.

30

And for what period of time were you a director of that business?---I think for the life.

For the life, that is - - -?---Oh, for - sorry.

- - - for the time that you worked there?---Correct, yeah. For about, I think it was about two years.

For about two years.---Yep.

40

So do you recall about when you started working for Innocon?---No, I can't recall the year.

Was it 2014 or 2015?---Sounds about right.

I can take you to this if you would like to look at it but it looks as though there was a period of time in about May 2016 from the ASIC records that you stopped being a director and then started being a director again. Do you recall that?---Yeah. Yeah, I think they took me off because we were doing a development and I didn't want to be on as the director.

Right.---Yep.

For a liability reason was that?---Correct.

Okay. And then you recommenced being a director after that period of time.---I believe so, yes.

And did you continue as a director throughout the period you worked for Innocon?---Correct.

And indeed until somewhat after you'd left there?---Correct. Yeah, they took me off when I left.

They took you off when you left. What was your role at Innocon?---I was the commercial manager.

And what did that involve?---We were just a startup business so I was doing, like I was project managing, contract administrating. I was running the jobs.

All right. When you say it was a startup business, it was a construction business.---Correct.

What kind of construction work?---Commercial, commercial fit-outs.

Commercial fit-outs.---Yep.

Did it also do other kinds of construction work?---Predominantly commercial fit-outs.

Right.---Yeah.

And I think you said that you left Innocon in 2017.---Yep.

What did you go on to do after that?---I started Constructicon.

Started Constructicon. Did you also work for another business commencing from 2017?---Yes. I started Constructicon and then I came on with SDL.

10 All right. So Constructicon, taking those in sequence, is your business?
---Correct.

And you're the only director of that business.---Correct.

And you're also the only shareholder of that business.---Correct.

And do you continue to be a director of Constructicon?---Correct.

And that's your current occupation.---Correct.

20

And SDL, what was the capacity in which you worked at SDL?---I came on as the commercial manager.

Right.---Yep.

What did that involve?---I was running all the commercial projects. They had residential and commercial and I was running the commercial projects.

30 Right. And was that soon after you left Innocon that you started working for SDL?---Yeah, about there.

All right. Were you ever a director of SDL?---No.

Were you ever a shareholder in SDL?---That was, that was spoken about as being a shareholder but it was, yeah, it was all verbal.

When you say spoken about, was that with Mr Laphai?---Correct.

40 What were the nature of those discussions?---That I was going to come on as a shareholder.

Right.---Yep.

And did that ever happen?---No.

Right. Have you ever worked in those capacities - I'll finish with the timeline first. So you worked at SDL starting around the time that you left Innocon. Is that right?---Yeah, about there.

10 And was that in March or April 2017 that you started with SDL?---I think so.

And do you remember when you left SDL?---Yeah, probably about two years.

All right. So that would put it into 2019. Are you able to say when in 2019 that you left SDL?---No, I don't remember.

20 Do you remember what event, whether there was some particular event that caused you to leave?---Yeah, a lot of people in the company were leaving.

A lot of people.---A lot of people, a lot of stuff - - -

Yeah.--- - - - in the company were leaving and there's rumours that Seng was not paying the contractors.

Right.---And, yeah, that's when I left as well.

Okay. Was that the reason that you left SDL?---Yeah, that's right.

30 Okay. And was that associated with a particular project, those concerns about not paying contractors?---I, I can't remember the last job with SDL. I can't remember.

Okay. Was it a particular project that you had difficulties with that caused you to leave or something else?---Yeah, I, I don't remember the job.

Is it fair to say your relationship with Mr Laphai had changed by the time you left SDL?---Yes.

40 And what was that change?---Oh, yeah, we just didn't see eye to eye so - - -

Right. Okay, but you did see eye to eye earlier in the period that you worked there?---Yes.

We'll come to that in more detail. Have you ever worked under a name other than your own?---No.

What's your full name?---Monty Nguy.

10 Have you ever worked under the name Monty Huynh? I might be pronouncing that name wrongly, H-u-y-n-h?---Doesn't, I don't recall.

Are you aware of a person named Monty Huynh?---No.

If we could go to volume 6.1, page 3, and have that brought up on the screen. This is an email from an RJS, go back to, we had the page before, page 3. Sent from an RJS Projects email address to Tony Nguyen - - -? ---Yeah.

20 - - - in 2019, copying Aidan Cox, and it's from Monty Huynh. Does that look familiar to you? It relates to - - -?---No.

- - - a contract review in Kingswood.---No.

Did you work on the Kingswood project?---I did. I did.

You did. You can see that there's a request below it from Tony to Monty, presumably, or to the person who's at the RJS Projects email address.

---Yeah, projects@rjsprojects is, yeah, from Tony. I wouldn't have any access to that.

30

projects@rjsprojects is from Tony?---Yeah, correct.

So it's Tony speaking to himself, you believe?---I believe so.

Is there a reason that Tony would have been speaking to himself within his own - RJS is Tony Nguyen's company, isn't it?---Yeah, I don't know why.

But your evidence is that wasn't you - - -?---No.

40 - - - using that email address or that alias?---Not that I recall. Not that I recall.

Can we have volume 6.3, page 399 brought up. This is another email from the same person, Monty Huynh, the contract administrator at RJS Projects. This one relates to a plumbing works SWMS.---Actually, sorry, yeah. I had access to projects@rjsprojects. That's, that's what I was using.

You were using that email address.---Correct. Correct.

10 So is this an email that you sent to Mr Pilli at the Downer Group?---Correct.

And why were you, instead of using your own name, using another name there?---I was instructed by Tony to do it.

Instructed by Tony to do it?---Yep.

Do you know why Tony instructed you to use another name?---No.

20 So this was in connection - do you recall what project this email was in connection with?---Kingswood.

Yep. So it's a safe work method statement being sent to the project engineer in relation to the Kingswood rail project, is that correct?---That's correct, correct.

That's your understanding of it. Is there some reason that you can think of in relation to the Kingswood rail project why Tony might have instructed you to use a different name?---Mmm. Yeah, I think he said, yeah, not to use my name.

30 He said not to use your name. And what was your reaction to that?---Yeah, I agreed to it.

You agreed. Why did you agree?---Yeah, I just listen to what Tony tells me to do.

THE COMMISSIONER: Sorry?---I just listen to what Tony tells me to do.

40 MS DAVIDSON: You were in fact working on the site at Kingswood?---I was, yes, correct.

Did you tell other people on the site that your name was not - - -?---No one asked.

No one asked your name?---No one asked my last name.

If they had asked your name, would you have given them this name?
---Yeah, I think I would have.

10 Were you concerned about appearing to be someone else in the context of a site that you were working on?---At the time, no.

Did you ask Tony or think to yourself “Why am I being asked to use a false name?”---No.

THE COMMISSIONER: What did you think was being achieved by using this name?---Just to cover up my, my real name.

20 I see. And why do you think that was necessary?---Yeah, I think I, Tony was using Constructicon to bid as well, so just so there’s no, no real link.

MS DAVIDSON: So you were aware, were you, that Constructicon had also put in a bid in relation to the Kingswood project?---Yes, I was.

And you were aware that that was not an actual bid?---Yes.

And so subsequently when you came to work on the Kingswood project, if you’d appeared to be someone from Constructicon, why would that have been problematic?---Yeah, ‘cause it would have been picked up.

30 It would have been picked up? What would have been picked up?---Yeah, that, that from Constructicon and also from RJS, two of the same people were there.

Was it that you weren’t really a competitor to RJS, that you were - - -?
---Yeah, that’s correct.

- - - it would have been picked up.---That’s correct.

40 And so the covering up of your real identity was to, part of an attempt to cover up the bidding, the way that the bidding process - - -?---That’s correct.

- - - was not a genuine process, at least between Constructicon and RJS?
---That's correct.

We'll come back to what you knew about that bidding process. And so did you understand that to be the reason Tony gave you the instruction about using a false name?---Yes, yes.

Now, were you aware of Tony himself using false names previous to this?
---Yes.

10

Had you yourself used a false name prior to working on the Kingswood project?---No.

So you'd always, in your communications with Tony and others, used your communications you were using, you were engaged in, used your real name?---Yes.

20

So when Tony suddenly comes to you with a request that you use a false name, did that seem to be an additional step in terms of things he was asking you to do?---Yes.

Did you pause or consider whether you were willing to take that step?---No. At the time, no.

It seemed something that you should do because Tony had asked you to, did it?---Correct.

30

Did you think about what you would have done if somebody had discovered your real name?---No.

Just didn't think about the consequences?---No.

How did you meet Tony Nguyen?---From university.

You were doing the same course?---Correct.

40

How would you describe your relationship with him?---Yeah, I wasn't as close to him, I, I was close to him during uni and then we didn't talk for about five years or so. And then when he went to work for council, that's when, yeah, I got pretty close with Tony.

Okay. Would you describe your relationship with him as friendly?---Yes.

During the time that he was working for council?---Yes.

And afterwards?---Yes.

Do you recall how you came to be in touch with him again once he started working for council?---I think he, he, he messaged me and just said what am, what am I up to or what work am I doing at the moment.

10

And you responded to that message?---Yeah.

Do you recall how it was that Innocon then came to work for the Inner West Council?---Yeah. So Tony would say, I've got, I've got works at Inner West Council - - -

So was that in the context of the two of you getting in touch again?---Yes.

20 Do you recall how the conversation went?---Yeah. He asked what I did and I said commercial fit-outs and then he said, yeah, "I'm looking after a few building jobs. Do you want to tender on it?"

Okay. And you were enthusiastic about that idea?---Yes, of course.

Had Innocon been established for very long at that stage?---I think it would have been a year or six months, yeah.

I think you referred to it as a startup previously?---That's right.

30 And was part of your role to attract work for Innocon?---Correct.

Do you recall a process of Innocon becoming a supplier or being signed up into the Inner West Council supplier system?---Yes.

And what was that process?---Tony would tell me to send a EOI, expression of interest, and he will send me a supplier's form to fill out.

40 Okay. If we can go to volume 24.1, page 43, have that brought up on-screen, please? Do you recall the first project in relation to which Innocon submitted a bid or a tender proposal to the Inner West Council?---Yeah, I think it was, like, a kitchen refurb?

All right. Do you remember where that was?---No.

Does the Hannaford Community Centre ring a bell?---Sounds familiar.

If we scroll up to page 42, you'll see this is the kitchen refurbishment tender submission from Innocon to the Inner West Council?---Yeah.

Is this a document you had some involvement in?---I believe so, yes.

10

If we go to page 43, no, it must be the previous page. It must be 41. I'm sorry. All right. We'll come back to it. But, in any event, do you recall who signed this tender submission?---I think it was me.

You think it was you?---Yeah, from memory.

If I was to tell you it was Ben Holland - - -?---Okay.

- - - would that surprise you?---Maybe not - - -

20

But it was a document you were involved in preparing?---Correct.

Was this a job in relation to which you were ultimately successful?
---Correct.

If we could go to volume 18.24, page 4? This is a WhatsApp message, if you look down the bottom of the page, between a number that ends in 128.
---Yeah, that's my number.

30

That's your number. And the number below ends in 810, is said to be associated with David Michael.---Yeah.

Do you recognise that as being his number?---I don't recall his number but -
- -

The message from you says, "Tony said we got the job." Can we scroll down. I should say this is on 16 August 2016. Do you recall that as being about the time that Innocon started doing work in relation or - - -?---Yeah, I believe so.

40

- - - was first successful in relation to a bid for work from Inner West Council?---I believe so.

Putting through his recommendation now, David Michael says, “Boom,” after your message. You say, “Smoke and mirrors, baby,” down the bottom of the page.---Yeah.

Do you remember what that related to?---Yeah, probably, probably to show that we’re bigger than what we were.

10

Trying to show that you’re bigger than what you were.---Yeah, the company.

That is in your tender submission.---Correct.

Do you recall how you tried to show you were bigger than what you were? ---More staff.

Right.---Yeah.

20

Do you recall putting something in the tender documentation that indicated you were bigger than what you were?---No.

How do you think that you were trying to show that you were bigger than what you were?---Just our methodology and our past experience.

Okay.---Yeah.

30 So does that mean that you were aware of things stated in the tender documentation being false?---Our past experience.

Your past experience.---Yeah.

So the past experience that was stated in the tender documentation was not in fact all your past experience.---It was jobs that we done with previous companies but not with Innocon.

Okay, so you put that experience into the documentation notwithstanding that it wasn’t Innocon’s past experience.---Correct.

40

Okay. And if we can scroll to the next page, you see Mr Michael's response, he says, "More like insider trading." Do you have any idea why he would have said that to you?---Yeah, I can't recall but I don't know if Tony told us the budget for this, this job. I'm not too sure.

Right.---I can't recall.

Is it possible that he did in fact give you assistance of that kind?---Yes.

- 10 If I can turn to volume 18.1, page 3. This is a conversation between you and Mr Nguyen. Do you recognise that to be his number ending in 479?---I don't recall his number.

Right. To the extent you're at the top of the page there using your 128 number saying, "Cheers, Tony" - - -?---Yeah.

- - - do you accept that this is you communicating by WhatsApp with Mr Nguyen?---Yeah. Yep.

- 20 He says to you, and this is earlier in August 2016, "I've got 15 of these types of jobs I have to delivery this financial year. You're bound to get a few." If we scroll down to page 4, "Sweet," and then you say, "Did you say your budget was 70K?" And he says, "Yeah, but I shouldn't have told you." Does that prompt your memory in relation to being told about the budget for the - - -?---Yes.

- - - Hannaford Community Centre job?---Yes.

- 30 And did knowing the budget assist you in relation to preparing Innocon's quote?---It did. It did, yes.

And how did it do that?---Yeah, I would put my price together and then, yeah, Tony will tell me what I need to be at.

Okay. Do you recall that happening in relation to the Hannaford Community Centre quotation?---I don't recall but, yeah, I think it has.

So when you say Tony would tell you what you needed to be at - - -?---Yep.

- 40 - - - it seems from these messages, though, he'd already told you the budget was \$70,000, is that right?---Yep, yep, correct.

But he seems to accept in that message that you weren't meant to know that.---Correct.

If we can scroll down to page 5, he says, "See how you go with pricing first. Our budget is always out but I think this one should be about 60,000." And then if we could go on to page 6, you say, "I'll price it with no fat, then I'll tell you the price. You let me know what you put it at." What did you mean by "You let me know what you put it at"?---So, yeah, I'll put my price
10 in and then Tony will tell me where, where I need to be.

As in to put a mark-up on your price?---Correct, correct.

In order to come up to the budget?---Correct.

Right. And then he says "yeah". So is that an arrangement that you understood already by this time - - -?---Correct.

- - - between you and Mr Nguyen would be in place?---Correct.
20

And how had that come to be? Had you agreed it in advance?---Yeah, correct.

Okay, do you remember a conversation or a discussion about it?---It was, yeah, I think or a phone call discussion.

Okay, and what was the nature of that conversation?---Yeah, he'll tell me to price a job and then he'll put it at what the budget needs, what the budget was.
30

Right. And what did you understand the purpose of that to be?---Yeah, to make, to make a bit extra.

Right. A bit extra for who?---For, oh, at the time it was for him to get me into, into council.

Okay. So if we go into the following page, he says, "LOL, you've done this before?" He seems to think that's funny. And you say, "Ha ha ha ha ha."
40 Do you remember what was funny about it? Or why he was asking you why you've done this before?---No, not too sure.

Had you in fact been party to budget information when you were submitting a tender for jobs in previous capacities?---No.

So, so far as this was the first job that you were involved in for Innocon with Inner West Council, had you done this before, what you were doing with Mr Nguyen?---No, no.

10 If we can keep going on to page 8. This is still 2 August 2016. He says, "First few jobs I don't want anything, just to get you comfortable with the system first and how council works." Is that consistent with the evidence - -
-?---Correct.

- - - you just gave about just to get you used to the council?---Correct.

20 If we can go on to page 9. And he says, "So don't feel you are in debt, yeah? Know the system first." What did you understand he meant by "The first few jobs I don't want anything," which was the message we just looked at on the previous page, and "Know the system first"? What do you think he - what did you understand him to mean about the first few jobs and what would come afterwards?---Yeah, just to get me into the system. So in Inner West.

Right. And after that?---At that time, I don't know.

Had you had a discussion about what would happen after the first few jobs?
---No.

30 So where he says, "Don't feel you're in debt, yeah?" did that tell you anything about or prompt any memory about the nature of your discussions?---It was because, yeah, we were friends. He's trying to get me work.

Okay. Did you think at the time you might become indebted to him as a result of him getting you work?---Yes.

Okay. But that wasn't as a result of any discussion you'd had with him at that point?---No.

40 Can we turn to the next page, scroll to the next page, 10. "Cause I told everyone your company worked for me doing fit-outs at train stations, so if anyone asks how you know me, say you do some work for me when I was

with John Holland.” “Noted.” So do you recall why he would have said to you, you hadn’t in fact worked for John Holland, had you?---No.

Or worked with him on doing fit-outs for train stations?---No.

So do you know why he would have said that to you?---That was the reason. He told me to say that so - - -

10 Sorry, what was the reason that he told you to say that?---That, that, that’s what he told me to say.

Right.---Yep.

But why did you think he was telling you to say that?---In case someone from council asked.

Okay. So was it to disguise the association between the two of you?---Yes.

20 That is that you were friends.---Correct.

And you understood that at the time.---Yep, yep.

All right. Moving to the next page, “But if you feel uncomfortable let me know, yeah.” And that seems to have been the last message on the 2nd because you’ll see the next message is on 3 August 2016.---Yep.

So there’s a break in the chain of messages. Did you recall feeling uncomfortable at the time about the arrangement?---At the time, no.

30 Did you ever feel uncomfortable about the arrangement?---No.

If we can continue in volume 18.1 but scroll to page 36. We don’t need to scroll, I’m sorry. Go to page 36. This is on 15 August 2016. You’re saying, “Have you got all prices in yet? We are coming out to about 90,000 plus GST.” Do you recall having a discussion with Mr Nguyen before you submitted or before Innocon submitted the tender price in relation to where you were coming out pricing wise?---Yes.

40 If we can then scroll to the following page. He asks, “Is that cost?” And you say, “No margin.” He tells you that he’s got another price in at

101,000. Did having that information assist, that is about a price that he'd already got in - - -?---Yes.

- - - assist you in relation to the pricing of your quote?---Yes.

So does that reflect part of the kinds of discussions you were talking about around Mr Nguyen telling you where to come in at effectively?---Yes.

10 Or giving you information that would enable you to decide where to come in at?---That's correct.

And was that, that is the kind of communications we see in this series of messages about disclosing competitors' prices to you, something that you and, a conversation that you and Mr Nguyen would regularly engage in? ---Yes.

That is you would be given information about the budget, that is the council budget.---Yes, that's correct.

20 And would you also be given information about the competitors' prices? ---Correct.

You subsequently put in a quote which we see if we can go to page 44 of the same volume, or that is Innocon put in a quote. And this is discussions in relation to putting it in. The quote was in fact at \$99,000 excluding GST and you recall the messages we just saw in relation to knowing that there was a competitor price at \$101,000. Do you recall whether you used the information that you'd been given from Mr Nguyen to price the quote or the level of the quote at which you came in?---I don't recall for, for this job.

30 This was the first job so - - -

All right.---Yeah, I don't really recall.

But is it reasonable to assume that you would have used that information having been given it?---Yes.

And you recall that you were successful in relation to the Hannaford job. ---Yes.

40 There are a number of variations in relation to the Hannaford Community Centre job. Do you remember those?---No, I don't recall.

If we could have brought up volume 24.1, page 89. I realise you're not copied on these emails but these are communications as to a variation between Mr Nguyen and Mr Michael, and if can continue to scroll down to page 90, an instruction in relation to proceeding. If you can continue scrolling down to page 93, there's a variation - sorry, page 92 and 93, there's a variation quotation there for \$4,207 and then page 93 a variation for \$1,670. Does that prompt your memory at all in relation to the variations?---I think David Michael ran this job so - - -

10

Okay.---So, yeah, I wasn't - - -

So you didn't have any involvement?---No.

Do you know in relation to these variations whether the price was inflated? ---No. I don't recall.

Okay. In doing work for Inner West Council in your capacity with Innocon, do you recall discussing the pricing of variations with Mr Nguyen?---I don't think I ran any jobs with Inner West Council when I was at Innocon. I think the only one I did was the aquatic centre, the turf, turf works, astroturf.

20

We'll come to that. If I might - - -?---Yeah.

- - - show to the witness, Chief Commissioner, have you still got a MFI 2 or otherwise I can hand you an additional copy?

THE COMMISSIONER: Yes, I do.

30 MS DAVIDSON: Mr Nguy, this is a table document which shows the jobs on which Innocon were successful in obtaining work from Inner West Council.---Yeah.

Have you had the opportunity to look at this document previously?---No.

Just have a look now.---Yeah.

Does that accord with your recollection - - -?---Yeah.

40 - - - in relation to the jobs - - -?---Yep.

- - - that Innocon performed for Inner West?---I don't remember Jimmy Little Community Centre cleaning but, but Hannaford, Leichhardt and Glover Street rings a bell.

All right. So the astroturf that you were referring to was the project that you ran.---Correct.

All right, but otherwise you didn't have involvement in running the Hannaford project or the Glover Street project.---No. No.

10

Is that right? In April 2017, well, in the early part of 2017 I should say, there was the astroturf, the astroturf project occurred. Was that while you were still working at Innocon?---Correct.

Do you know whether Mr Nguyen assisted in relation to giving you information concerning the pricing of that job?---Yes, he did.

What information did he give to you?---Again, so I would price and then he will tell me where I need to be.

20

All right. And did that happen in relation to all of the jobs that you were involved in pricing for Innocon while you worked there, that is, for Inner West Council?---Yeah, I don't recall Glover Street. I can't remember. Most likely, yes.

Most likely, because that was the practice that you and Mr Nguyen engaged in where you were involved in bidding for the work.---Correct.

30 And was that an inevitable practice that the two of you engaged in when you were involved in bidding for work for whichever company that you were working in at the time?---At the time.

And did you understand that was because of the relationship between the two of you?---Yeah, correct.

If we could return to volume 18.1, page 191. If I could have that brought up. See the bottom message on that page and this is again part of the series of messages between yourself on WhatsApp and Mr Nguyen?---Yeah.

40 See, that's a message on 30 March, "I'm moving on, mate"?---Yeah.

Do you recall the context in which you told Mr Nguyen that you were moving on from Innocon?---Yeah. I think that was the time where I said I was going to go on my own, yeah.

So if we turn to page 195, you'll see in the middle of the page there, you say, "Any future works throw my way"?---Yeah.

10 So at that time, you said you were going to go out on your own, what was your idea in setting up your own company?---So at Innocon, there was three directors, me, Ben and Dave. I thought because I was bringing in the work, I was running the jobs, that, yeah, I can go out and do it on my own.

So you say you thought you could go out and do it on your own. Would you have made more profit doing things on your own?---Correct.

And was that part of your motivation for doing it?---Yes.

20 Well, turning to page 198, this is still the same series of messages. It's still on 30 March. Mr Nguyen says to you "it's going to be awks now" and you say, "Dave will still pay you for the astroturf, you got my word." Do you recall what that referred to, "Dave will still pay you for the astroturf"? ---Yeah. That was the profit for Tony.

Profit for Tony. So was that a kickback to Tony?---Correct.

For the astroturf?---Correct.

Do you recall discussing with Tony a kickback for the astroturf?---I do, yes.

30 And had you made an arrangement with him about that?---Yes.

And what was that arrangement?---I can't remember the split, but, yeah.

Okay. So did it involve a percentage of the profit being paid to him?---I believe so.

Okay. And is that something that you'd discussed with Mr Michael, as well?---Yes.

And where you say, "Dave will still pay you for the astroturf, you got my word," had you had a discussion with Mr Michael about still paying a kickback to Mr Nguyen even though you were leaving Innocon?---Yes.

Do you remember that discussion?---I do, yeah.

And what was the nature of the conversation you had with him?---Yeah, I was leaving the company and, yeah, I told David Michael that he needs to look after Tony.

10

Look after Tony?---Yeah.

Did you tell him the amount that you'd agreed to pay him?---I, I, I can't recall.

But you had agreed an amount, you think, with Mr Nguyen at this time?
---Yes.

20 Right. If we scroll to page 199 of the same volume, this discusses, the end of the previous page was Dave saying that, sorry, Tony saying that Dave will still ask for work and you saying, you see the message from you in the middle of the page there, "Say nothing is coming up." If we can scroll to the next page? You see at the bottom of the page there, "Do they know that I know that you are out?" Do you see that?---(NO AUDIBLE REPLY)

You need to give a response that the microphone can pick up.---Yes. Yes. Yes.

30 And then scrolling to the next page, Tony says to you, "'Cause you've got that Glover Street project." And you say, "100%?" And he says, "90%" Can we scroll to page 202? "He's writing the recommendation now. Just need to get that signed off." And you say, "Shit." Do you recall why that would have been?---No, I don't.

Can we move on to page 203? He, that is Mr Nguyen, says, "What?" And you say, "That's all right. Dave can have that one." So does reading that prompt your recollection as to why you might have been annoyed - - -?
---Yeah, I think that - - -

40 - - - about Dave - - -?---Yeah, I think was moving on at that time and then, yeah, I think I might have wanted that Glover Street job.

Right.---But - - -

What was the contract value for Glover Street? If you turn back to MFI 2, it was higher than any of the previous jobs that Innocon had worked on for Inner West.---Yep.

That is, it was \$140,000 or so.---Yep.

10 Does that sound right to your recollection?---I don't, I don't recall any amount.

Okay. But you recall wanting the job?---Yep, correct.

Was there any way that Mr Nguyen could have given it to you so far as you were aware at the time?---Yeah. I think Tony would just put a recommendation through.

20 Okay, but do you recall whether you'd set up Constructicon at the time of the tendering process for the Glover Street baseball?---No, I don't recall.

Okay. Had you had assistance from Mr Nguyen in relation to the pricing of the Glover Street baseball?---I believe so, yes.

Okay. And what was the nature of that assistance?---Again, so we would price it up and Tony will tell us where to be with the budget.

Okay. So did that involve him disclosing the budget to you?---Correct.

30 And you pricing up to the budget?---Correct.

At volume 18.5 - I'm sorry, volume 18.3, could we go to page 13? This is later in 2017, in May. See the bottom message there from Mr Nguyen to you, "Bro, I feel like telling Dave off." And then if we could scroll down. "Didn't listen to me. I told him to at least use my civil guy for the excavation. Ended up using someone else." Do you recall Mr Nguyen saying something like this to you?---I think so, yes.

40 If we can go on to the next page. You say, "Cut him off, bro." And Mr Nguyen responds, "Yeah, I'm going to tell him off and tell him to keep the petty cash." Do you understand - do you recall what you understood him to

mean by keep the petty cash?---Yeah, I think that was the kickback for the astroturf ones.

Right. The kickback for the astroturf or the kickback for the baseball cages?---Yeah, I wasn't involved in the baseball cage works.

Okay, so to the extent he's referring on the previous page to "using my civil guy for the excavation" - - -?---Yeah.

10 - - - if we could just go back up to page 14, do you know whether that related to the baseball cages?---I think so.

Okay. So would it make sense to think that his reference to the petty cash there is an arrangement in relation to the baseball cages?---Yes, I believe so.

Do you recall discussing with him a kickback for the baseball cages at the time?---No. That's, that's when I moved on or on the way to moving on.

20 Okay. But the time that you were pricing for the baseball cages, I think you said you were involved in that.---Yeah. I can't remember. Yeah, I can't remember if I was involved in that one.

All right. If we return to volume 18.1 and go to page 169. Might need to start at page 166. If we can scroll up to 165, I apologise. This is a series of messages between you and Mr Nguyen on 21 March 2017 in relation to pricing for fence braces, and you were waiting for prices on the chain wire. ---Yep.

30 And then if we scroll down to 166 he says, "Okay, I'll get the civil stuff for you. Ask Tim for an extension of time." Do you recall what that related to? Is that something to do with the baseball cages?---Yeah, yep.

Okay. Does that - - -?---I think this was when I was tendering on it.

So does that prompt your memory that you were involved in the pricing? ---It does, it does. Correct.

40 And if we go to page 169 of these messages you see him saying, "Budget is 60 K but I know it's going to cost about 100 K." You say, "Gotcha." Does that reflect the kind of conversation we've been talking about where he disclosed the budget to you to assist in pricing?---Yes.

After you left Innocon did you assist Mr Nguyen in getting access to Innocon documents?---Yeah. I think I gave him a template. Quote, a quotation template.

A quotation template. And how was it that you had access to that?---Yeah. I had access to all of Innocon's files.

10 So after you left you still had copies of files stores on your computer, is that right?---Correct, correct.

What did you understand you were giving him that quotation template for? ---To, to put in tenders.

And was that to put in actual tenders on behalf of Innocon?---No.

So what was the purpose of him, that is Mr Nguyen, having access to Innocon's quote template?---To put in, yeah, dummy, dummy bids.

20 So you knew that that was the purpose for him having access to the template?---That's what he told me.

And were you concerned about that?---At the time, no.

Did you have any communication with the directors of - did Innocon continue as a company after you had left?---Yes, they did.

30 Did you have any communication with the directors of Innocon, that is the remaining directors, about giving its documents to Mr Nguyen?---No.

Did you know whether they knew about you passing on documentation to Mr Nguyen?---No, I don't believe so.

And do you think that they knew about Innocon providing dummy quotations, or what appeared to be actual quotations to Inner West Council?---No, no.

Were you concerned about them finding out?---No.

40 If somebody had attempted to contact Innocon in relation to their quotations what do you think might have happened?---Yeah - - -

Did you turn your mind to that?---No.

Do you recall the first occasion on which, or around the time that you provided the Innocon documentation to Mr Nguyen was it in relation to a particular project?---No, I can't recall.

If I was to tell you it was in relation to Seaview Street would that prompt your memory?---Yep, yep.

10

What was the Seaview Street project?---I think it was a community centre, it was a building works, fit-out works.

I'm going to hand you another table of the kind that you have seen. Chief Commissioner, this is MFI 5, the Constructicon summary table. Would it assist you to have an additional copy, Chief Commissioner?

THE COMMISSIONER: No, I have it here.

20 MS DAVIDSON: So Mr Nguy, this is a table similar to the one that I showed you in relation to Innocon but this one relates to Constructicon. ---Yep.

Have you seen this document before?---No.

I'll just give you a short time to have a look at it.---Yep.

And just focus for the moment on the listing of the projects.---Yep.

30 Please feel free at any time to correct anything that you see in this document that doesn't look accurate, but so far as you can tell from your observations so far, does this accord with your recollection of projects that Constructicon worked on for Inner West Council?---Yeah.

And was the Seaview Street Hall community works one of those early projects that you worked on?---Yep, that's right.

So in October 2017 was - - -?---Yeah.

40 - - - whether the contract was signed in relation to that. And you see in the list of competitors tenders there. "Inncon", I think there's actually a

typographical error there, it should be Innocon, was one of the competitor's tenders.---Correct.

Did you understand at the time that you gave Mr Nguyen the Innocon template that he intended to use it to prepare a quote for the Seaview Street project?---Yes.

And what did you understand his purpose to be in doing that?---Yeah, just to get three prices.

10

To get three prices. That is in order to be able to have an influence on the bidding process in some way, was it?---Yep. Correct.

Okay. And what was the nature of that influence, as you understood it? ---Yeah, if, if he's got three prices he can put a recommendation through.

Right. So if he had a price from you, that is Constructicon, and a price from Innocon that was a dummy quote, and - - -?---He could have more control of the, of the tender.

20

Right. Okay. And was that a system that you came to be involved in repeatedly with Mr Nguyen - - -?---Yes.

- - - in bidding for council work?---Yes.

And you'll see there one of the other bidders was SDL Projects Pty Ltd. ---Yeah.

Is that also the company that you were working for at the time?---Correct.

30

Correct.

And did you understand that to be a genuine competitor or did you know whether SDL was going to put in a competitive quote for Seaview Street Hall?---I was employed at SDL when I did Seaview.

Sorry, you were employed at SDL when you did Seaview?---Yeah, correct.

Okay. If we could bring up volume 5.4, page 185.---Yeah, I think Seaview was the first job I worked on at SDL.

40

These are messages again from the, as between the 479 number and the 128 number that's marked as Monty.---Yeah.

And Monty says, "Tony said the price breakdown and claris for Seaview," which is messages on 23 October 2017.---Yeah.

10 If we can scroll down to the next page, you indicate what your cost price is and say to Mr Nguyen, "Are you going to put it in at 77K?" There's some other questions about the kitchen, if we could go to the next page. And the 479 number, which I think you said you recognised as Tony, is that correct?---Yeah, I believe so, yeah.

Says, "Yeah, 77," and then there's some questions about AC. He says, "Happy with 23K for two weeks' work?" Do you recall what that related to?---I think that was the profit.

Okay.---Yeah.

20 Would that be a high amount of profit in relation to two weeks' work?
---Yes.

Can we go to the following page. You say, "Yep." There's some other questions about air-conditioning units.---Yeah.

Can you go to the following page. Tony, that is the 479 number, says, "Okay. I'll put the quote together." Who did you understand him to be putting the quote together for?---Yeah, I think Tony had access to admin.

30 That is - - -

THE COMMISSIONER: Who, sorry?---Tony had access to admin at Constructicon.

MS DAVIDSON: All right.---Yeah.

So you think he was referring here to putting together the Constructicon quote.---I believe so.

40 Okay. If we can go to the following page. He says to you on the fourth message down there, "Happy with Constructicon doing the works, right?" Do you know why he would have been asking you that?---I think this was

when I started working at SDL, so I don't know why he would have put it under Constructicon, I'm not too sure. Maybe 'cause I tendered it? I'm not too sure.

Right. Well, it seems like he was putting together the quote, doesn't it?
---Yeah.

And he's asking you whether you're happy with Constructicon doing it?
---Yeah. That, yeah, because I was at SDL, yeah.

10

Right. Okay. So your response is, "Fuck, I've got to cash flow this job, then"?---Yeah.

Do you remember what your concern was there?---Yeah, because I'd just started and - - -

As in just started Constructicon?---Correct.

So you'd need sufficient cash flow to run the job?---Correct. Yeah.

20

Okay. If we turn to page 191, you say, "Def needs to be Constructicon," this is the second message, "too suss if SDL does it"?---Yeah.

Do you recall why you were asking those questions?---Yeah, probably to split, split the work, yeah.

Right. So he says in response to that, "Yeah, unless Constructicon does the rotunda repair"?---Yeah.

30

So did you understand the rotunda repair to be a separate job?---Yeah.
Correct.

Right. And so when it would be "suss" if SDL did Seaview unless Constructicon does the rotunda repair, you said to split the work. What do you mean by that?---Yeah. I think SDL was nominated or was nominated to do the rotunda. And for them to take on the Seaview would be too much, yeah.

40

Okay. And when you say "too much" - - -?---Yeah.

- - - what do you mean by that?---Yeah. SDL would have been awarded too many jobs, yeah.

So did you understand that Mr Nguyen wanted to spread the jobs around, at least between Constructicon and SDL?---Yes. Correct.

What was the purpose of that, did you understand?---Just to, yeah, just to not be flagged.

10 Not be flagged?---Yeah.

Right. So it was to make it seem as though he wasn't favouring just one company all the time, but at least to alternate between SDL and Constructicon. Is that right?---That's correct.

Can we go to the following page? And here you see in the middle of the page, the 479 number saying, "Just sent submission for SDL on Seaview," to which Mr Laphai replies, "Nice." Did you understand what Mr Nguyen was doing in relation to SDL for Seaview?---Yeah. He was putting in a
20 tender.

Okay. So did you understand him to have access or the capacity to put in a tender on behalf of SDL?---Yes.

Had you made arrangements with Mr Nguyen for him to have access to a Constructicon email?---Yes.

And do you remember what that was?---Yeah, Tony would ask for access to another email.
30

Right. Okay. He asked for access to another email. And you gave that to him?---Correct.

Do you recall when that was?---No, I don't recall.

If we can go to volume 18.2, page 157? This is a series of messages between you and Mr Nguyen on 20 April 2017?---Yeah.

Was that around the time that you were setting up Constructicon?---I believe so, yes.
40

You say, "Okay. Set up. I'll start using it to email agents and stuff." And then following page, I'm sorry. Tony says, "Okay. Set up." You say, "Flick me an email. Test it." He says, "Sent" and you say, "I'll send you my email signature." Do you recall what was the purpose of sending him your email signature?---Yep. So he can just copy it and change his name.

So that was for the purpose of him being able to use the Constructicon email address?---Correct.

- 10 If we can go to page 166 in the same volume. Actually if we could scroll up to 165. This is part of a discussion - perhaps 164 - between the two of you in relation to names. Do you recall, if we go back to 165, any discussion with Mr Nguyen in relation to who would be the name associated with the email address?---Yeah. I think Tony came up with the name, yep.

- 20 So here he is suggesting to you a name of Sharon Fagan, a chick admin, which you seemed to think was funny. If we can go to page 166, he says to you, "Wait, are you okay with me pretending to be someone?" to which you respond "What if they want to get in touch with you." He says, "Wait I will just Anthony Byrne." Does Anthony Byrne ring a bell to you as a name that Mr Nguyen used?---Yes, it does.

That was the alias he ultimately decided upon?---That's correct.

When he asked you, "Wait, are you okay with me pretending to be someone?" do you recall having any concerns about him pretending to be someone from Constructicon?---At the time, no.

- 30 I'm sorry?---No.

So apart from your question about "What if they were to get in touch with you?" and "Are you only going to reply via email?" you weren't otherwise concerned with someone presenting themselves as being from your company?---At the time, no.

And why was that?---Tony told me what was happening and I, yeah, I was, I was across it all.

- 40 He told you what was happening. What did he say was happening?---He said, "I'm going to create another email and I'll submit the tenders from that email."

And you were fine with that?---Yes.

And was that because you ultimately understood that you were going to be able to inflate the profits in the way that had been done with the Innocon jobs?---I was going to get work, so yes.

You were going to get work and you were also going to be able to price that work at a higher level that you would otherwise have been able to do?

10 ---Yes.

Did you have access to the admin email that Tony is referring to in these emails, that is the Constructicon email address?---I think so, yes.

So, where there were emails sent - did you ever use it?---No.

So where there were emails sent on behalf of Anthony Byrne using that email address, is it safe to assume that that was Mr Nguyen?---Yes.

20 Did you ever go into the email account to see what he was doing?---No.

Did you know when he submitted quotes on behalf of Constructicon?---Yep. He would cc me in it.

Would he cc you in for jobs where he intended for you to be successful or jobs where he intended you to be just a dummy bid or both?---Successful.

Successful. So where it was just a dummy bid did you know that he was doing that?---Yeah. At the, at, at, early, yeah.

30

In the early stages?---Yeah, that's right.

Did that change?---Well, yeah.

It did change?---Yep.

So was there a point in time where he stopped copying you on things? ---Yep.

40 And at that time did Constructicon then come to be used for dummy bids that you didn't know about?---Yes.

And how did you later find out about that?---No, Tony would tell me later on.

He would tell you later on?---Yeah, yep.

Were you bothered by him not copying you and not letting you know when he was using your company to submit dummy bids?---No.

10 Did Mr Nguyen regularly prepare quotes on behalf of Constructicon using the admin email address?---Yes.

And for jobs where he intended you to be successful, did he involve you in the process of pricing those quotes?---Yes.

So how did that work?---I would price it up as a normal job.

Right.---And, and then I'll send it to him to review.

20 Right.---Yeah.

And were you given a couple of answers, about he would tell you where you needed to be at?---Yeah. Correct.

He would come back to you with a figure by which you could inflate the quote. Is that right?---Correct.

Right. And you would then adopt that figure or he would just put that figure in there?---It varies so - - -

30

Okay.---Yeah. I think I submitted most of it, most of the quotes.

When you say you think you submitted most of it, to the extent that quotes were being submitted from the admin email address by Anthony Byrne, they weren't submitted by you, were they?---No. No.

Right. So what do you mean to say you submitted most of it?---Yeah, so the tenders that came from me were me submitting it.

40 Right.---Yeah.

So he didn't have access to your email.---No. No. No.

But anything that came from Anthony Byrne was from him.---Correct.

And similarly, if there were communications or questions sent to Anthony Byrne, did you monitor that email box to see if Tony Nguyen wrote to Anthony Byrne? Would you know about that?---No. Only if it was cc'd with me.

10 Okay. So otherwise you were aware of him using that email address to talk to himself basically.---Yeah.

Could we turn to volume 18.3, page 125. This is 128 number referred to as yours based on the WhatsApp extraction here. You're asking Tony, this is in May 2017, so at the time I think you said, this is just after Constructicon had been set up and you were working at SDL at the time, is that right?
---Yep.

20 You say, "Tony, that PDF crack from Peter Ha, does it work? Mine is playing up at the moment." Do you recall what the purpose of asking a question about a PDF crack was?---Yeah, we used PDF to do our tender submissions.

Right. So do you remember what a PDF crack was?---Yeah. I think that's like a cracked version without paying for the permission.

Right. Okay.---Subscription, sorry.

30 All right. So if we scroll to the following page, you've said, "Mine is playing up at the moment." He says, "Nah, it doesn't. Been doing it online. Think about buying one."---Yeah.

If we can go to page 127. You say, "Monthly fee, hey? I might do the same." Tony says, "Buy the Nitro PDF one, 300 bucks." Do you recall what Nitro PDF was?---I think that was another version, another PDF version.

Okay. And - - -?---Just - - -

And when you say they were PDF versions, were these pieces of software or programs or apps that enabled you to do something unusual with PDF files?---Yes.

Okay. So what was that?---You can edit the PDF files.

Right. So at least back in 2017, was editing a PDF file something that you regularly were involved in?---No.

10 Do you recall what you might have wanted to have a PDF crack or a - - -?
---No, so, no. No, so these PDF files are for us to combine all our, combine all the pages together to put a tender submission.

Okay.---So if it's a Word document, we combine it together into one PDF.

Right.---Yep.

Was it also for the purposes of editing other people's PDF documents that you might have wanted access to that kind of program?---Yeah, could
20 possibly be.

And was that potentially for the purpose of taking other people's quote templates and altering them?---Yeah, could possibly be.

Was that something that you were engaged in?---No.

You didn't ever get involved in altering anybody else's PDF template?
---No. No.

30 I withdraw that, quote template.---No.

Were you aware of that being something that Mr Nguyen had done?---Yes.

And what did you know about him doing that?---Yeah. He would, no, he asked me for that to do that.

He asked you for the PDF crack except this was an example of you asking him, wasn't it?---Yeah. At, at, at the time that's, yeah, what the PDF is is to put all the files together to do a tender submission.
40

That was what you were doing with it?---Correct.

But you understood him to be doing something different with it, did you?
---Yeah.

And do you know whose template files or quote templates he altered in that way?---No, I don't know.

But how was it that you came to know he was doing it?---Yeah, he would tell me, yep.

10

You knew what Mr Nguyen was doing in relation to submitting the dummy bidding on the Inner West Council work was dishonest, didn't you?---I did, yes.

Did that give you any concern?---No.

You were aware that the Inner West Council work involved spending public money?---Yes.

20 That you were gaining more profits that you otherwise would out of those public funds?---Yes.

Did that give you any concern?---No.

You went to work for SDL around the time that you left Innocon. Do you recall discussing with Mr Nguyen how SDL might be able to become part of the kinds of arrangements that you had with him at Innocon and had set him up for at Constructicon?---Yes.

30 And what was the nature of those discussions?---That Tony, Tony can give us work, yep.

And did you also think that SDL might be able to be used to advantage Tony?---Yes.

And how was that?---Another, another, another builder, yeah.

So that would enable him to do what?---To have control over the tendering.

40 Okay, to have more control?---Yeah.

If we could go to volume 18.5, page 152. This is again messages between yourself and Mr Nguyen. If we could scroll down from here. There's some discussion about a granny flat. If we could keep going through to 155. I think we might come back to that discussion. Did you set up Mr Nguyen with an email address in relation to SDL?---No.

Did you provide him with login details in relation to SDL?---I think so.

10 Can we go to volume 18.3, page 209? This is you asking, here we are on 5 June 2017. Do you see in the middle of the page there, "Did you get the SDL Projects email login?" to which Mr Nguyen replies, "No." Scroll down, "When did you send it?" "Can't find it on my phone. Sent emails", you say. "I will send it" I assume that means tomorrow.---Ah hmm.

Does this prompt your memory in relation to you providing those login details?---Yeah but, yeah, yeah, I might have sent it to him but Seng is the one that has access to all the emails, yep.

20 But in sending him the login was it your intention that that would enable him to have access to the email address that Seng had set up?---Yes, yes.

Right. Had you discussed with Mr Laphai setting up an email address for - - -?---Yes.

- - - for Mr Nguyen to use?---Yes.

And what was the nature of that discussion?---Yeah. Just so Tony can put in tenders on behalf.

30 So Tony could put in the tenders - - -?---Yeah.

- - - on behalf of?---SDL.

SDL. Right. And do you recall having a discussion with Mr Nguyen as to how he would do that, that is the way in which he would use the email address?---Yes.

40 And what was the nature of that discussion?---He would put in, yeah, a, a dummy, dummy bid.

Right. Did he talk to you about using an alias?---Yes.

And did you discuss the nature of the name?---Nuh. I left that up to Tony.

Okay. If we could go to, scroll forward in this discussion. You ask what name is he going to use. He says, "LOL. I'll surprise you." Well, you say, "Ha ha ha." He says he's going to choose the whitest name out there. If we can keep scrolling, there's now a discussion about what the whitest name out there might be. We can keep going. He says to you, "Maybe a girl's name?" And you say, "That could work." Then if we continue to page 215,
10 there's a suggestion about Joanne Green, then the following page Joanne Breen and that seems to be the settled name. Is that the name that you understood Mr Nguyen came to use?---Yes.

And did you discuss with Mr Laphai Mr Nguyen using an alias in addition to the email address?---Yes.

And what was his reaction to that?---Yeah. He understood.

He understood. Did you understand him to be okay with that?---Yes.
20

Did you make an arrangement - well, I'll go back a step. By this time, which is June 2017, had you made an arrangement with Mr Nguyen in relation to work that came to Constructicon and giving him payments in relation to that?---Yes, I think we spoke about, like, a profit split.

Right. Like a kickback being paid to him?---Yeah, that's right.

Right. Do you remember what agreement you'd reached in relation to that?
---I think it was, like, 20% of, of net profits.
30

Okay. 20% of net profits from Constructicon work?---Yes.

If we can go to page 245 of volume 18.3. Do you remember having a discussion with Mr Laphai about that arrangement that you'd made?---Yes.

And what was the nature of your discussion with him?---About the profit split.

Right. That that was for Constructicon work?---Yeah.
40

What did you, how was that relevant to SDL?---And then, and then SDL was, Constructicon was going to do just small jobs and SDL was going to do the bigger jobs.

Right. And did you talk to Mr Laphai about how the profit split was going to work?---Yes.

Right. So you see here a message, "Spoke to Seng about our arrangement." This on 7 June 2017?---Yeah. Yeah.

10

If we scroll down, page 246, "20/80", Mr Nguyen says to you and your response is you're happy with 20% of net profits. That's the figure that you've just - - -?---Correct.

- - - given in your earlier answer? Mr Nguyen said to you, "for both". Do you recall what you understood that to mean "for both"?---Yeah, probably, Constructicon and SDL.

Right. And if we can keep going to page 247? So he clarifies that, SDL and
20 Constructicon. And you say, "all Inner West projects" to which his response is "20% cash". Had you spoken to him about paying him kickbacks in cash?---Yes.

Right. Can we go to the following page? He says to you, "He understands I can only take cash, right? So you have to mention about the tax and stuff." So in saying at the start of this conversation that you'd "spoken to Seng about our arrangement", is it your evidence that Mr Laphai also agreed to be part of the same arrangement?---Yes. Yes.

30 And was that the basis on which you could have this conversation with Mr Nguyen about this being for both, for all Inner West Council work?
---Correct. Correct.

Right. And was there also an arrangement in relation to paying some percentage of the contract value?---Yeah, I think, I think to make it easier I think it was probably 10% of the contract fee.

Okay.---That rings a bell.

40 All right. If we can go to volume 18.6, page 311. This is messages between yourself and Mr Nguyen later, that is, this is in March 2018. And he says to

you, "If I put ten are you willing to give me 20%, as in 2K, or are we changing the system?" If we can scroll down to the next page, and then he says, "Nah, actually we'll leave it to ten, otherwise it gets confusing." And you say, "10% contract sum." So by this time was there also a system, 'cause he refers to "changing the system", a system in relation to him being paid 10% of the contract sum?---Yeah. That was the agreed profit split.

10 Okay. You say agreed profit split, but a percentage of the contract sum has nothing to do with the profit presumably.---That was what Tony was going to get out of it.

Okay. So was this something, this, he's referring to a system here, was it something, that is the amount that was to be paid to him, something you worked out on a job-by-job basis or were there standard figures?---I think when, when it's, when, when we started doing bigger sized jobs it was, yeah, 10% of the contract sum.

20 Okay. And do you recall why it changed?---Yeah, because I think the other system was getting confusing.

Right.---Yeah.

As in it was more confusing to track the profits if there was a bigger job. ---Correct.

Right. And did you recall discussing that contract sum system also with Mr Laphai?---Yes.

30 Okay. And did he agree to that as well?---Correct.

Okay. We had prior to this been looking at some messages from June 2017 in relation to speaking, you having spoken to Seng about the arrangement, so at least by that time it seems the three of you had an agreement, and at that time the discussion was 20% of the net profit. Were you involved in introducing SDL to the Inner West Council work?---Yes.

And were you aware that at that point Mr Nguyen started to use SDL in relation to the dummy bidding process?---Yes. Yes.

40 And Seaview was an example of that later in 2017.---Yes.

Did you at that point start to make arrangements in relation to actually paying Mr Nguyen?---No, that was still by Seng.

That was still by Seng.---Yeah.

Okay. Can we go to volume 18.4, page 10. Mr Nguyen says to you here, and this is back in June 2017, “I bags all the small jobs like the kitchen upgrade at Hannaford Centre. Got, like, 20 of them.” And you say, “I’m going to do that consolidation with SDL pretty soon when I get back so I will sort you out. 20% of all works to date, cash before it happens.”
10 “Okay.” Do you recall what the consolidation with ADL you’re referring to there is?---All the jobs that SDL did with the Inner West Council.

So where you say, “I’m going to do that consolidation. I will sort you out 20% of all works to date, cash”, do you know whether you’re referring there to SDL works or Constructicon works or both?---Yeah. I think that would have been, yeah, probably both, yep.

And so where you say “consolidation with SDL”, is that a consolidation of
20 the profits that had been derived so far?---Correct.

Did you have anything to do with a company called Remtech?---No. That was Seng.

Did you have access to any of Remtech’s systems?---No.

Can we go to volume 18.3, page 181? Do you see this is early June 2017? You say, and this is again a series of messages with Mr Nguyen, “I got access to admin@remtech”.---Yep. I was given that by Seng.
30

You were given that by Seng?---Yep.

Did you understand how Seng came to have access to admin@remtech?---I think Seng used to work with Remtech, yep.

So was that an email address that you used, admin@remtech?---I, I give, I gave that to Tony.

So when you say, “I got access to” - - -?---Yep, yep. So I got that from
40 Seng.

That suggests that you could use, does it, "I got access to", do you remember?---I, I got the login details from Seng.

And you passed them onto Mr Nguyen?---Yep. Correct, correct.

Do you know what he did with them?---Yep. I believe he used it for, for tenders.

Was that the dummy quote process that we've been talking about?

10 ---Correct, correct.

Did you ever use the admin@remtech email address?---No.

We've just seen a message about you preparing a consolidation and I think you said that related to working out what profits were up to that point in time. Can we go to volume 6.1, page 28? Do you recognise this document?---Yes.

20 And what's this document, Mr Nguy?---Oh, it's just a tracker of, of works, works completed.

A tracker of work completed?---Yep.

That's work completed on behalf of Inner West - well, work completed by who?---By Constructicon for Inner West Council jobs.

I think we've just seen the following page. Is that now page 29? Is this a document you prepared?---Yes, that's right.

30 And this is the second page of the document. It also contains a number of jobs. Do you recognise this second page?---Yes.

And so where there's a column that says TN Contribution, if we can just stay on that page, "20% of net profit" appears at the top of that column there. Does that reflect your agreement with Mr Nguyen in relation to payment of a kickback of 20% of net profit?---Yes, it does.

And so you see some figures there. The total sum coming to \$2,813.49.
---Yes.

40

Did you pay that amount of money to Mr Nguyen?---No, I don't recall paying Tony that. I gave him a mobile phone but, yeah.

Right. So on the right-hand side there it says paid 17/8/17.---Yeah, from memory I gave him a mobile phone in exchange.

Right. You recall giving him a mobile phone. You don't recall paying him.---No.

10 Is it possible that you did pay him?---Yeah, possibly, but I don't recall.

Is there a reason why you would have put paid in the Paid column if you hadn't in fact paid him that amount of money?---Yeah, from memory that was in exchange for a mobile phone.

Right. You think you bought him a mobile phone at that time.---Yeah.

Can we go to volume 1.12, page 3. Perhaps if we scroll up to the previous page so that Mr Nguy can see what the document is. This is Mr Tony
20 Nguyen's bank statement - - -?---Yeah.

- - - covering the period from 8 August 2017. You recall on that spreadsheet document we just had up the paid figures were on 17 August 2017.---Yeah.

If we scroll down back to page 3 now, you see on 17 August 2017 a transfer from Monty Nguy "net back Monty owning one" and there's a figure of, well, initially it says \$2,813.49. It seems that the credit was in fact \$2,913. Perhaps there was an error in typing the amount. Do you, that's on the same
30 date as shown as figures being paid on the spreadsheet of the kickbacks. Does that prompt your memory in relation to paying Mr Nguyen?---Yeah, I don't recall that but, yeah. It looks like it.

Would you accept that that looks like you in fact paid a kickback to Mr Nguyen on that day?---Yes. Yes.

And that \$2,813.49 column corresponds with the total we were just looking at on the kickback spreadsheet, does it not?---Yes.

40 Even though it seems you actually transferred a \$100 higher figure.---Yes.

Yes. I'm sorry. That is the balance on the right. The credit figure is in fact \$2,813.49.---Yes.

Do you recall making other payments to Mr Nguyen?---No.

Do you recall giving him any amount of money in cash?---No.

You referred to purchasing a phone for him.---Correct.

10 What was the context in which that occurred?---I was upgrading my phone so the old one I gave to him.

Okay.---Yeah.

Did you understand that to be something that you gave to him as a result of the work that you'd gained for Inner West Council?---Yes.

Do you remember when that happened?---I don't recall.

20 Okay. Commissioner, I'm about to move onto a different topic, if that might be a convenient time.

THE COMMISSIONER: Mr Nguy, we're going to continue your evidence tomorrow.---Okay.

Do you understand?---Okay.

If you can be here tomorrow. The Commission will adjourn.

30

THE WITNESS STOOD DOWN [3.58pm]

AT 3.58PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.58pm]