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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 4 JUNE, 2019

AT 9.45AM

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THE COMMISSIONER: Any administrative matters?

MS WRIGHT: Good morning, Commissioner. No, although I've just had a conversation with Mr O'Brien and I anticipate he has an objection to some evidence which will come up shortly with Mr Singh.

THE COMMISSIONER: All right.

10 MS WRIGHT: I suggested that it could be dealt with at the time the question is raised. I'm not sure if Mr O'Brien wants to be heard at this point.

THE COMMISSIONER: Can we wait, Mr O'Brien?

MR O'BRIEN: I'm in your hands, Commissioner. It relates to the admissibility of the, and the purported tender, as I understand it to be, of volume 9C, which is the investigation report.

20 THE COMMISSIONER: Oh, right.

MR O'BRIEN: So I'm happy to deal with it at any time. If and when the question comes up, that's when I can deal with it, otherwise another time, but I'm hoping that it might be dealt with in camera.

THE COMMISSIONER: All right. Ms Wright, can you continue with your questioning to a certain point - - -

MS WRIGHT: Yes.

30 THE COMMISSIONER: - - - when the 9C, volume 9C is raised - - -

MS WRIGHT: Yes.

THE COMMISSIONER: - - - and then we'll deal with it then?

MS WRIGHT: Yes, Commissioner.

THE COMMISSIONER: All right. Mr Singh. And it was an affirmation?

40 MR SINGH: Affirmation, yes.

MS WRIGHT: Mr Singh, in late November 2017 did you issue a request for quote for the supply of spare parts for portable weigh scales?---Yes. I thought it was early 2018 but if it was November 2017, that could be correct.

10 Did you issue two requests for quote, one in November and one in January, do you recall?---I can't recall, sorry.

I'll take you to the documents.---Yep.

If we could go to volume 9B, page 165. Do you see here an email you sent to Novation Engineering, NEPEAN and WeighPack on 29 November, 2017, attaching a request for quote for the supply of parts?---Yes.

And that's for the PAT 10A Series I scales?---Yes.

20 And this is after the Heavy Vehicle Maintenance Panel was up and running? ---Yes, I believe so.

And if we could go to page 166, you were the manager of the RFQ?---Yes.

And at the top it says it's for the supply of parts for the RMS fleet of PAT SAW 10A Series I portable weigh scales?---Yes.

30 And page 168 you listed the parts and quantities required to be supplied - - - ?---Yes.

- - - by a successful tenderer?---Yes.

Over the page at 169 are the rest of the quantities.---Yes.

And it stipulates that, "The tenderer is to provide a fixed price quotation for the supply of parts listed above." Only one company was the distributor of PAT parts in New South Wales at this time?---That's correct.

40 And so what was the point of this RFQ if it was only Novation who could distribute parts in New South Wales?---From what I recall I did ask this question of Samer and it was, his answer was around the procurement guidelines, if it's over a certain value you need to issue multiple, a RFQ to multiple contractors, yeah.

You had not before this time issued a RFQ specifically for the supply of parts, is that correct?---Before - - -

Before this time, 29 November, 2017?---I don't recall issuing an RFQ for spare parts before this time, no.

But you'd received invoices to a value of thousands of dollars - - -?---Yes.

- - - from Novation, throughout 2017?---Yes.

10 When is it that Mr Soliman said to you that there needed to be an RFQ because of the value of the parts?---It was when he requested me to raise the RFQ. I don't recall exactly when that was. I thought there was only one RFQ, because these quantities are really high.

Okay, we'll just deal with this one at the moment.---Yep, sorry.

This is late November, 2017.---Yep.

Was it necessarily sometime before you issued it that he requested that you raise the RFQ?---Yeah, it was before.

20 Shortly before, or how far before?---It would have been shortly before.

And you issued it to which companies?---Oh, there was Novation, NEPEAN, and WeighPack and Electrical. Yeah, that's who Samer requested me to send it to.

And so, NEPEAN, CIC, did you say? No.---Oh. Sorry, I thought I said WeighPack.

30 Sorry, I didn't hear you, someone - - -

THE COMMISSIONER: You said Novation, NEPEAN, WeighPack. ---Yeah, I'm just trying to recall that email I just saw then. I think it was those, yeah, those three.

MS WRIGHT: So the email at 165 was sent to those three companies. You didn't send it to any other companies?---No, I would have sent it to who, that Samer would advise me who to send it to.

40 CIC was also a member of the category B Heavy Vehicle Maintenance Panel?---That's correct.

And was the idea that you would issue the RFQ to the members of the category B panel?---That was my understanding, but Samer requested just to send it to three members of the panel.

And CIC was also a member of the panel as was AccuWeigh?---Yes.

But it wasn't issued to those two?---No, it doesn't look like it.

And do you know why that was?---Again, it was that Samer's requested to send just to those three.

And at page 182 of volume 9B, did NEPEAN inform you that it was unable to respond to the RFQ?---Yes, I do recall them – again, I thought it was for that one in early 2018 – but I do recall them responding that they're unable to respond.

10 So this was an email dated 30 November, 2017.---Yep.

So did you speak to anyone from NEPEAN at this time, or did you only receive this email?---I can't recall, sorry, no.

Now, if we could just go back to page 161, the RFQ was issued on 29 November, on the same day that Mr Soliman asked you to order parts as per the attached, and he's attached an Excel spreadsheet which is at page 164. ---Yep.

20 Now, his email said, "Please order parts." What was that about? Who were you to order the parts from?---Well, that would have been, there would have been a discussion following that email about raising an RFQ for the, those parts, because I, I mean, just that message alone wouldn't have made sense to me at the time, so I would probably ask further questions about it, so, which is where the whole RFQ came into, yeah, play.

And you're guessing that's what occurred, but is that what you remember occurred?---I, I can't remember, but an email just saying "please order parts," there would have had to have been some discussion. But I can't recall.

30

Was there any time when you ordered parts from Novation?---Directly from Novation?

That you personally ordered parts from Novation, that you raised an order with Novation?---No, not that I can recall besides that one in early 2018, yeah, prior to that I can't recall.

40 Did you ever speak to Mr Thammiah to discuss parts with him?---I can't recall. Again, 2018 I may have asked for updates on the status of the delivery of the parts and also during that time there was a discussion because there was, David Jones reported screens were, there was cracked screens on two of his scales so I did get in touch with Mr Thammiah about that but again that was, I think that was this year, sorry. Yeah. Actually, no, it was last, 2018, sometime in 2018.

But 2017 is it your evidence that you didn't speak to Mr Thammiah even during the period when you were receiving regular invoices which I took

you to yesterday?---Yeah. I can't recall talking to him about parts during that time.

Now, page 183, volume 9B. This is an email a week after you issued the RFQ in which Mr Soliman asks for you to let him know the status of the RFQs for parts for the scales and he refers to a meeting with AccuWeigh this morning and he asks, "Has the contract been awarded?"---Okay.

10 Do you recall meeting with AccuWeigh?---This may have been the initial meeting after awarding the maintenance contract to AccuWeigh. Regarding the status of the parts. I'm not sure what the status of the parts was because I recall another RFQ was issued early 2018 with lower quantities. So I don't, yeah, there's, no contract would have been awarded.

Well, you've issued an RFQ on 29 November for parts.---Yeah.

And NEPEAN has said it is unable to respond.---Yeah.

15 Isn't Mr Soliman asking you for what the status is in respect of responses to the RFQ?---Possibly, I just can't recall, yeah.

And then at page 184 on the same date he sends you an agenda for a meeting that day with item "Scales parts RFQs panel tender matrix of scores." What did that mean, panel tender matrix of scores?---I don't know. I can't recall discussing anything about panel tender matrix of scores.

20 And the third item on the agenda is "Contracts, reminder to finalise archive completed contracts, and I don't see the PAT dynamic scales scoping study contract in the list attached. Did you receive a quote and create a contract?"
30 Now, what was that referring to?

MR YOUNG: Well, I don't want to be overly technical but there is not a distinction. Questions are being asked as to what was the intention of Mr Soliman. Now, it's a legitimate question to ask what did the recipient take to be that but they are being put as what did Mr Soliman mean by - - -

MS WRIGHT: I'll rephrase it, Commissioner.

40 THE COMMISSIONER: Thanks, Mr Young.

MS WRIGHT: What did you understand the reference to the PAT dynamic scales scoping study contract to be referring to, Mr Singh?---I can't recall. Just reading that alone I can't recall what he meant by that.

THE COMMISSIONER: There's a reference to a list attached.---Yeah.

And then there's attachments compliance contract update. Do you know what - - -?---I'll need to see that attachment.

But looking just at this email- - -?---Off the top of my head, yeah.

- - - you can't recall what it's all about?---I can't recall. Yeah, I can't recall what it's all about.

MS WRIGHT: Could we have volume 4, page 28A. Do you see here an email dated 6 December, 2017?---Okay, yeah.

10 From AZH Consulting. "Hi, Jai, please find attached a quote for PAT 10C III ITS technology trial."---Yeah, yeah.

And the email below suggests that you sent an email to Mr Hamidi on 6 November, 2017 - - -?---Yeah.

- - - with a request for quote for the scoping study?---Yes.

20 Did you draft the request for quote?---From what I remember, Samer drafted the request for quote, it was just a template he put together, it was just rewording bits and pieces of it.

And the PAT 10C III was a dynamic version of the portable weigh scales? ---That's correct.

And so here you've received a quote for the trial and scoping study for the dynamic PAT scoping study?---Yes.

30 And so then going back to the agenda item on the same date, being 6 December, 2017, where Mr Soliman wants to speak about spare parts, that was volume 9B, 184, page 184, he also wants to discuss the PAT dynamic scales scoping study with you.---Okay, so it must be related to that work.

So it's related to the AZH project and quote.---Yes, yes.

And what do you know about that trial?---I don't recall anything about that trial. I'm not sure what discussion was had here about it.

40 Do you recall raising a purchase order for that scoping study project? ---I can't recall raising a purchase order, no.

The records suggest that you did not create a purchase order.---Okay.

Why would that be when you've received a quote from Mr Hamidi? ---Don't know. I don't recall, sorry, yeah.

Is it true that you don't recall?---Yeah, I don't recall. I mean I know there was issues with the software of the 10Cs, so I mean I'm only speculating

that the decision was made not to progress with the scoping study, but I can't recall.

You weren't helping Mr Soliman to facilitate contracts to both Novation and AZH, knowing this was favouring his friends and your friend, Mr Hamidi?

---No, I was just doing as I was directed.

10 Now, on the same day, page 189, Novation sent to you its response to the RFQ for the supply of spare parts, and this is the day that you have met with Mr Soliman. Is that the case?---6 December, yes.

And what did you discuss at the meeting?---I don't recall what was discussed. Usually sometimes he just used to just come around my desk, he'd send me a meeting invite and he would just come around my desk to have a discussion, but I can't recall what was discussed.

This seems like a more formal meeting with an agenda, do you agree?

20 ---It does, but again sometimes he would just come around to my desk as we sat close to each other and just have a discussion at my desk. There weren't many meeting rooms available in, in the Octagon Building so sometimes we just had to have our discussions at our desks, yeah.

Even if he'd sent you a formal calendar with an agenda?---Yeah (not transcribable) to have a discussion about items.

Then at page 191 is the Novation quote for this RFQ, and do you see the fixed price specified on the quote is US\$590,000 excluding GST?---Yes.

30 And Novation have attached at page 192 what they refer to as a quotation on parts, and that's dated 6 December.---Yeah.

And you saw that at the time?---Yes, I would have.

And did you see that this was just a price list with an unspecified total, there's no total at all specified?---Yes, it's just a price list.

40 And what did you understand to be the \$590,000 fixed price indicated on the schedule 2 quote response form?---My understanding would have been that's the price for the RFQ, the quantities of parts required, that was requested in the RFQ.

So the RFQ specified types of parts and quantities needed.---Yes.

And did you understand the quantities specified to be for each scale or over a certain period of time, how were those quantities arrived at? We could go back to it if that would assist.---Yeah, I don't know. Looks like Samer sent me that Excel spreadsheet with the quantities, I don't know how he came up with those quantities.

And you used that spreadsheet when you produced the RFQ?---Yes, for the quantities, yes.

And if it says, for example at page 168, 100 sealing screws but the amount installed per scale is only two, did you have any understanding of what the 100 related to or how that was derived?---I thought that was per screw.

10 THE COMMISSIONER: Sorry, say that again?---Per, like, a sealing screw.

Yeah.---I thought that was like 100 screws itself. That was my understanding.

MS WRIGHT: Well, we can see it's 100, but how has that quantity been determined?---Oh, I don't know. The spreadsheet was forwarded to me by Samer. I don't know how he came up with those quantities.

20 You didn't ask any questions at all about this?---No, I didn't at the time. I can't recall asking any questions.

And then you get a quote from Novation in the order of US\$590,000. ---Yes.

Was that a surprising figure, Mr Singh?---Um - - -

Page 191.---It's not at the time, I guess not, because of the amount of purchase orders Samer had me raise prior, yeah.

30 Did you think that was a surprising figure?---At the time, no, I didn't.

What about now when you look at it?---Well, now after hearing everything and, yeah, it's a, it's a big figure.

But even without hearing anything, for spare parts, US\$590,000, it's a startling amount, isn't it, Mr Singh?---It is, and as in the previous evidence I provided when I first saw a parts list I did raise a question about prices and yeah, Samer did tell me that these needed to be fabricated in Switzerland or Sweden, so yeah.

40 What did you do with this quote?---I don't think any, this, any progression was made with this quote because I recall having to issue an RFQ in early 2018 for parts.

Do you know the reason why it didn't progress and you issued a further RFQ?---I can't recall the reason. I mean, the price might have to, have something to do with it, because I recall in the RFQ for early 2018, Samer said there was a budget of, I think, 220,000 for spare parts.

THE COMMISSIONER: Sorry, say that again?---220,000 for spare parts. So pricing may have been the reason why this didn't progress.

MS WRIGHT: Did you say he'd told you that in early 2018?---When I, before I issued that, that second RFQ, he said the budget was, I think it was 220 or 240, something, something along those lines.

10 Could I take you to Novation's price list at page 192? Would you have interrogated the price list at all, that is, looked at the prices?---Not at the time, no, I can't recall.

So you didn't compare this price list with its previous price list at all?---No.

You'd had no interest in the prices it quoted, essentially, is that the case? ---Well, no, I didn't do any comparisons, at the time, I didn't, didn't cross my mind to compare with previous price lists, no.

20 Did you even look at it?---I would have looked at it, I would have looked at the total price, but, yeah.

Now, page 196. You forwarded responses from Novation and AccuWeigh for parts to Mr Soliman on 14 December, 2017?---Yes.

And if we could turn to page 205, what you forwarded to Mr Soliman was this email and its attachments. Do you agree with that?---Yes. The date appears to be - - -

The date of their submission is 6 December, 2017.---Okay.

30 But you'd issued this RFQ on 29 November, 2017.---Yeah. Yes.

How do you explain that discrepancy in the dates?---I don't know what happened there.

Well, you'd issued an RFQ on 25 August, 2017.---Yep.

And you see – perhaps if we go over to page 211. Just, do you see the AccuWeigh covering letter to you, "Dear Jai" - - -?---Yep.

40 - - - dated 6 September, 2017, has the subject line, RMS Portable Weigh Scales Maintenance Verification and Repairs?---Yes.

Was that not the title of the RFQ issued on 25 August, 2017?---I believe it was, yes.

And so this is I response to that RFQ, it seems. Would you agree with that? ---Yes.

Surely you recall that being the case, Mr Singh?---I, yeah, I'm not sure why I forwarded this to Samer, though. Can we go back to that email of the, the one I forwarded?

Yes, certainly.

THE COMMISSIONER: I think it's 196.---Yeah, honestly, I'm not sure what's happened there.

10 MS WRIGHT: Well, see, I took you through who you issued - - -?---Yep.

- - - the RFQ of 29 November to, and you said, "WeighPack, NEPEAN, and Novation."---Yes.

They were the recipients of your email.---That's correct.

And that did not include AccuWeigh.---No, it didn't.

20 But AccuWeigh had apparently responded to the RFQ of 25 August, 2017. ---Yeah. Yes.

And you forwarded that to Mr Soliman as being, on 14 December as being one of the responses for parts you've said in your email?---Yeah. Can we go back to the AccuWeigh submission because I'm thinking there may have been prices for parts which you may have wanted to look at.

30 Yes. So page 218 AccuWeigh sets out, "The spare parts are supplied in packages from the local distributor. AccuWeigh will break them down as required and charge accordingly. The prices are for parts packages only. Exclude labour." So is this the reason you sent it to Mr Soliman?---I think so. I think so. I think he wanted to have a look at the prices from AccuWeigh as well even though it was as prior response.

Did you understand AccuWeigh would be getting parts through Novation from IRD?---That was my understanding, yes.

So that its prices here would be based on prices provided to it by Novation with possibly its own mark-up?---That's, yeah, that's correct.

40 Was this all, were you conscious of all of this at the time?---No, no, I wasn't.

And AccuWeigh's submission, if we could just turn to page 211 and then 212. If we could just flip through it, 213, 214. It provides its labour rates, overtime rates and it's providing a spare parts discount of five per cent. So those are its servicing fees schedule.---Yeah.

And then 215 and 216 and 217 we get back to the spare parts price list, and 218. And it goes on and then 223 some company information. 224, 225 and then from Novation all you receive is the price list. Do you agree with that?---Yeah, yes.

And no corporate information, nothing whatsoever in support of its quote for the supply of parts. Nothing but a price list.---Yeah. In their response, yes.

10 Now, is it your recollection that there was no outcome from this particular RFQ because another was issued?---Yeah, there was another one issued in early 2018 from what I remember.

If we could go to page 227. This is an email you sent on 17 January, 2018 attaching a request for quote for the supply of parts for the SAW 10A Series I scale.---Yes.

20 Are you able to be any more specific about why you were issuing yet another RFQ in early 2018?---I think it had something to do with the budget allocated for spare parts.

Had there been a decision in the interim about the available budget? Is that what you mean?---Yeah, because I recall Samer telling me there was a budget of I think again 220 I think it was, 220,000 or 240,000 for spare parts so the decision was made to issue the RFQ with a lower quantity of spare parts.

30 And at 244, sorry, if we could just perhaps remind you that 228, the RFQ, you're the manager.---Yes.

And it repeats the information that it's a quotation for supply of parts. And then over at page 230, did you set out the parts required?---Yes, the quantities, yes.

And the quantities, and you've reduced the quantities from the November RFQ?---Yes, the quantities were reduced.

40 Why was that?---Because the original, the quantities in the original RFQ, again came down to the budget allocated, the quantities had to be reduced.

Who told you that?---Well, Samer told me that, you know, the budget is 240,000 and, yeah, the quantities had to be reduced to, yeah, to meet the budget.

Did he tell you anything about how the budget had been determined at that stage?---No, he didn't tell me anything like that.

Did he suggest that it was a decision by anyone superior to him or above

him in the organisation?---No, I didn't ask him that question, I just assumed that it would have been, he would have had discussions with, yeah, upper management about this and this, or with the Finance team and determined that, you know, this was the budget for spare parts.

Now, page 244, in response to this RFQ, did you receive an email from AccuWeigh saying that, "Unfortunately, due to the current arrangements for the supply of spare parts AccuWeigh is unable to submit a competitive offer?"---Yes.

10

And what did you understand, "The current arrangements" to be referring to?---So if AccuWeigh had to source the spare parts they were going to have to source it through Novation because they are IRD's supplier for, yeah, parts.

So AccuWeigh's doing the servicing but it can't get the parts itself from the overseas supplier?---Yeah. I don't know exactly what actions of what steps they took, whether they went to IRD directly or whether they went to Novation, yeah.

20

But that's your understanding, that it was doing the servicing at this stage but couldn't - - -?---Yeah.

- - - get the parts itself from the manufacturer.---That's right.

Wasn't that an unreasonable position for AccuWeigh to be in?---It didn't cross my mind at the time because AccuWeigh are a sole supplier for Intercomp so I mean for any, I mean my understanding is if you want anything from Intercomp you have to go through AccuWeigh, so it's a similar setup with Novation, so - - -

30

Well, isn't that decidedly different? How is that similar?---Well, because AccuWeigh's sole distributor for Intercomp scales, so Novation's the sole distributor for these scales, so - - -

But isn't AccuWeigh both servicing and supplying Intercomps?---Yeah, AccuWeigh do service and supply but yes, you're right, Novation just supplies.

40

And so if AccuWeigh want to repair or service PAT SAW scales they can't of their own accord procure the parts unless they go through Novation. ---They can service but if they need any parts they would have to go through Novation, yes.

And they would have to go at this stage through RMS. Is that the arrangement?---So this, the purpose of this RFQ is for RMS to procure the spare parts and have them delivered to whoever was maintaining, so AccuWeigh, if AccuWeigh could source the spare parts then I don't know

what, it would have had to be, a different process would have had to have been set up for that. But in this instance the RFQ was awarded to Novation so RMS have to manage the parts being delivered from Novation to AccuWeigh.

10 How was that managed?---So it was just myself just keeping, getting updates from Novation on the status of the spare parts and then once it was delivered to AccuWeigh I got in touch with AccuWeigh and just confirmed that the quantities that I ordered in the RFQ matched what was delivered.

How often did you make those checks?---I can't recall how often. Once it was confirmed by AccuWeigh, I didn't, I can't recall doing any follow-ups.

THE COMMISSIONER: Sorry, once it was confirmed that - - -?---The, the numbers, the delivery was confirmed then the quantities matched what was requested, I don't recall following-up any further with AccuWeigh.

20 But each time there was an order and a delivery to AccuWeigh, did you do that checking?---It was one order.

Oh, it was only one?---There was just one order.

Oh, okay.---Yeah.

MS WRIGHT: Now, you received a quote at 245 from Novation, and it attached, it's a schedule two response at page 247. That was the schedule to the RFQ, which Novation, you understood, had filled out?---Yes.

30 And it's a quote in the amount of \$218,796, excluding GST?---Yes.

And did you accept that quote?---Well, I don't have the delegation to accept this quote. It was Samer Soliman.

At page 264, on 1 February, 2018, you see halfway down the page, you wrote to Novation Engineering, attaching a letter of acceptance, accepting, advising that Novation's tender of 25 January was accepted by RMS.---Yes.

40 How did that come about, that it be accepted?---That would have come about, Samer, Samer's decision to accept the quote. And then, yeah, advising me to raise the purchase order.

Did you have a meeting where you discussed the quote by Novation with Mr Soliman?---It would have -- I don't know if there was a formal meeting. It would have been a, a discussion at our desks, because we sit opposite sides of each other. Yeah.

Who did you issue this RFQ to? AccuWeigh and Novation, to anyone else?---I think it was CIC, I thought it was everyone on the panel, except for WeighPack because of that legal dispute. That was my understanding.

Are you sure about that?---I can't confirm, because I thought I did send it to CIC as well, and NEPEAN.

10 And if there's no response from CIC, would that be usual, or would you expect there to be a response from CIC?---I would have expected a response from CIC.

What about NEPEAN?---I would have expected a response from NEPEAN as well. Yeah.

20 Is it possible that you issued it only to AccuWeigh and Novation?---No, no, it would have at least had to have been three because of what Samer advised prior regarding the value, and you have to have, at least have three, issue it to three contractors. My, I thought it was to four, because of WeighPack, because of the legal dispute with WeighPack, they weren't included, but I thought CIC and NEPEAN were also sent the RFQ.

Now, the Novation quote which comes in just below 220,000 – you said you'd been told by Mr Soliman that the available budget was 220,000?---I think it was 240. I think it was 240. It was just, the 220 was because of Novation's response was around 220. I think it was 240, the budget.

Including GST?---I didn't ask that question, sorry.

30 Did you think it coincidental that you get a quote from Novation around the top of the budget?---No, because I think the, using the price list provided before it was worked out to be that that any, any responses they would fall under the \$240,000 budget.

Sorry, using the - - -?---The price list.

- - - the Novation price list that you had been previously provided?---Yes.

40 How was that used?---It was just, because I think the price list, it had packages and the values of each package was included in each package so it was worked out within that how much parts you could order and, yeah, for each the quantity of parts and then, yeah, and whether it would fall under that \$240,000 budget or not.

THE COMMISSIONER: So that price list was the one received in December from Novation?---I think so. I think that's the one that was used, yes.

MS WRIGHT: To your knowledge was the budget worked out based on Novation's prices?---The budget was, I was given the budget prior to issuing that second RFQ.

Was the budget conveyed to Novation to your knowledge?---Not to my knowledge, no.

10 Now, page 247. If we could go back to that. Do you see halfway down the price list Novation has quoted for a weigh pad 10A and the unit price is \$9,212?---Yes.

And it quotes for eight over \$73,000?---Yes.

Did you have any understanding of what that item was, whether it was a scale, a new scale?---No, I'm not sure. Yeah.

20 These were the Series I scales, weren't they?---Yeah, it just says weigh pad 10A. It would have had to have been related to the Series I because that's the, that was the purpose of the RFQ.

And so at this stage RMS is buying eight new weigh pads of the old stock? ---Yeah, I'm not, I'm not sure what they would have been.

It's a bit curious, isn't it?---Yeah.

This is in early January.---Yes.

30 And were you aware that at this stage there was funding to purchase the new model of PAT SAW scales?---I recall receiving an email from Samer when I was on leave. He was just saying we received \$2 million to replace scales. I don't know the exact date of that email. Yeah, I'm not sure about that weigh pad 10A. Yeah.

And \$32,000 for locking rings it seems.---Yeah.

Then at 251, sorry, at 254 you created the purchase order request.---Yes.

You were the requester at page 256 for the spare parts.---Yes.

40 Based on Novation's quote.---Yes.

And Mr Soliman signed as the delegate.---Yes.

And then on 5 February, at page 251, Mr Thammiah sent you a formal quote for the \$218,000 order.---Yeah.

And then at page 263 on 21 February, and this is at the bottom of the page,

Mr Singh, you've written to Mr Thammiah and asked for an estimated time of arrival on when the parts are expected to be delivered.---Yeah.

And you say, "AccuWeigh are the vendor that currently maintain our fleet of scales so parts will need to be delivered to them. Let me know if you require a delivery address."---Yes.

And then Mr Thammiah responds at page 263 that he requires upfront payment.---Yeah.

10

And did you raise any issue about that request?---I would have spoken to Samer about this prior and he would have yeah, given, provided his approval for this payment terms.

When you say he would have, did he?---Yes, he, he did.

And you asked for an invoice, that is, you asked Mr Thammiah on page 263 for an invoice?---Yeah.

20

And he sent you one on 1 March, and the invoice is at page 266.---Yes.

And Mr Thammiah had asked you about the delivery address for the parts. ---Yeah, he, he would have.

I'm sorry, that's at page 263. And at this stage, so do you see he, about three-quarters of the way down the page he asks for the delivery address? ---Yes.

30

So he has no idea about what is happening to the parts. Is that the case?

MR O'BRIEN: Well, I object to that.

MS WRIGHT: If that is Mr Thammiah, if he's asking you for the required delivery address is that because he just has no idea where these parts need to go?

MR O'BRIEN: I object to that.

40

MS WRIGHT: In your, is that your understanding, Mr Singh?

THE COMMISSIONER: Does that cure it, Mr O'Brien?

MR O'BRIEN: No, I think, no, my objection is that that question is just too broadly framed. What is understood by the witness in the context of that email is one thing, but to suggest or import a meaning into it I think based on that email is unfair to the witness. That it could possibly suggest that is an import into that email that doesn't truly arise. That he doesn't know

anything about what's going on was the effect of the question from that email is just - - -

THE COMMISSIONER: Oh, no, I think the - - -

MS WRIGHT: I think I'll reframe it, Commissioner.

THE COMMISSIONER: All right. Thank you.

10 MS WRIGHT: I think it might short circuit it. Do you see Mr Thammiah is asking you for the required delivery address?---Yes.

And did you understand he was asking you where the parts should be delivered?---Yes, because in my previous email I said, "AccuWeigh are the vendor that currently maintain our fleet of scales," and I think I did ask him if he needed to know the delivery address.

THE COMMISSIONER: Yes.

20 MS WRIGHT: Yes, yes.---Yeah.

And so Mr Thammiah, to your understanding, is just the middleman for the supply of the parts, he's getting them from someone else and then he's asking you where they should be delivered?---Yeah. So he's the sole distributor for IRD so he would have to get the parts from IRD and then deliver them wherever I advise him to.

And it would have been obvious to you that you could have, that is RMS could have made the order yourself without the involvement of Mr
30 Thammiah in this process?---You mean go straightly directly to IRD?

Yes.---I was told that we have to deal with the local supplier, yeah.

THE COMMISSIONER: Who told you that?---Oh, Samer Soliman said at the beginning that Novation's the authorised supplier so if we need anything from IRD you have to deal direction with Novation, yeah.

MS WRIGHT: And at this time, so this is February 2018, you were convening a Tender Evaluation Committee for the procurement of 125
40 scales?---Yes.

And Mr Jones had some misgivings about the procurement process after the Tender Evaluation Committee had taken place?---Yeah, he had concerns about the dimensions.

And he wrote to you about that on 28 February, 2018, where he said he refused to sign that report?---Yeah, I don't know the exact date but - - -

THE COMMISSIONER: Do you remember that email?---I remember the email, yes.

MS WRIGHT: And yet right now you're approving an invoice which includes, seems to include the purchase of eight new 10A, so that's the old model, scales at \$9,000 an item, as well as a whole lot of parts for old scales.---Yes, as per my direction of my manager.

10 Did it not appear unusual to you at all, Mr Singh, to be making such a large purchase of old scales when you were procuring 125 new scales?---Yeah, I don't understand, I don't know the reason why those old scales were procured, but the parts needed to be procured for, to maintain the old fleet of sales, but yeah, I don't understand the, yeah.

So you understood that pending the replacement of all the scales, the old scales still needed to be maintained?---To be, yeah, maintained and repaired if necessary.

20 Now, you referred to a legal dispute between AccuWeigh and WeighPack in 2017.---Yes.

And did that concern a request for quote that had been issued on 12 December, 2016 to your knowledge?---It was for the prior, for the year prior, yeah.

And did you understand that that dispute had resulted in the commencement of legal proceedings - - -?---Yes.

30 - - - in the Federal Court of Australia?---I don't know where, but Samer just said there was some legal proceedings as a result of this dispute.

Did you become aware that a subpoena had been issued by AccuWeigh to RMS in that dispute?---I thought it was from WeighPack.

You thought it was - - -?---Yeah, I was told that a subpoena was going to be issues, yes.

THE COMMISSIONER: Who told you that?---Samer Soliman.

40 MS WRIGHT: And did he say it was going to be issued or it had been issued?---He said, so what he told me was that a lawyer gave him a call, advising of this legal dispute and that this lawyer was going to issue a subpoena. I thought it was WeighPack and Electrical but maybe it was AccuWeigh, I don't know.

Did you understand or did he tell you what the subpoena would require RMS to do?---Um - - -

MR O'BRIEN: I'm going to take an objection, as foreshadowed, in relation to this line of cross-examination and any further line of cross-examination on the basis that it is outside of the scope of the proceedings in this Commission's summons as set out and published. The - - -

THE COMMISSIONER: Hold on for a sec. Mr O'Brien, when you foreshadowed your objection this morning I thought it was more on a little bit down the road. I thought these questions about the legal dispute would have been all right.

10

MR O'BRIEN: No, they inevitably leaned, lead to a position whereby Counsel Assisting will be going behind that information to, intending on discovering what was a document that is said to have been backdated – oh, in fact, a series of documents that are said to have been backdated, and into an investigation which was conducted within the RMS and is part of 9C. The problem with that line of enquiry, which has now already commenced, and any further line of enquiry along those lines, is that, as I've suggested, it's outside of the scope of the summons upon which the witness, my client, has attended these compulsory proceedings.

20

THE COMMISSIONER: Now - - -

MR O'BRIEN: Commissioner - - -

THE COMMISSIONER: Can I just stop you there? Ms Wright, are you about to move into more of the content of 9C?

MS WRIGHT: Yes, Commissioner. Yes.

30 THE COMMISSIONER: So is it an appropriate time to have this argument?

MS WRIGHT: It is.

THE COMMISSIONER: All right. Now, before we progress further, you foreshadowed an application about how it will be heard?

40 MR O'BRIEN: I've reflected on that. It's not necessary. I'm simply going to say as much as I've said in relation to the content, and of course you, Commissioner, will be aware of the material. It's on the restricted portal. I don't intend to make an application in camera.

THE COMMISSIONER: I just – all right.

MR O'BRIEN: And I don't think it's necessary that my client be excused from the hearing or in the context of this particular application of mine.

THE COMMISSIONER: All right. Can I just pause you there? Ms Wright, do you agree with that? We don't have to close the hearing room, and Mr Singh can remain?

MS WRIGHT: Yes. Yes, Commissioner.

THE COMMISSIONER: All right. Now, Mr O'Brien, could you just clearly articulate to me, your objection to moving to the material in 9C and questioning is one of relevance, that it doesn't come within the scope of the matters that I'm enquiring into? Is that it in a nutshell?

MR O'BRIEN: Yes, well, that is the, part of the objection. It is a little bit more broad-reaching than that. But if I can just advance that proposition first of all.

THE COMMISSIONER: Could you just first outline, very shortly, what the grounds are?

MR O'BRIEN: Yes.

THE COMMISSIONER: So we have a relevance ground?

MR O'BRIEN: Yes, relevance slash, I suppose, jurisdiction ground. The other objections really go to the tender and relying on these reports, and they go to overarching submissions related to fairness and procedural justice being afforded to the witness. My submission is that these reports that are going to be relied upon by Counsel Assisting are – and as I understand it, are going to be sought to be tendered – are opinion. They are hearsay evidences and there is no ability to test them. There is no proposals, I understand it, to call the authors of those reports. Mr Singh, importantly, did not receive legal advice prior to being involved in those, the interviews giving rise to those reports, and relied on very heavily in the documentation contained within the reports. They - - -

THE COMMISSIONER: All right. Can I just stop you? I think you're now moving more into your submissions.

MR O'BRIEN: Yes.

THE COMMISSIONER: We'll go back to the beginning. Your first ground, which I described as relevance, but you've also described as jurisdiction. So the relevance/jurisdiction argument.

MR O'BRIEN: Thank you, Commissioner. The summons to appear and give evidence is contained and confined. It says that between July 2015 and February 2019, RMS employees Samer Soliman and Jainesh Singh partially and dishonestly exercised their official functions in relation to the awarding of contracts to Novation Engineering and AZH. This material that is about

to be embarked upon relates to a tender process that involved WeighPack, and the awarding of work to WeighPack. The court proceedings that have been asked about relate to a dispute in the Federal Court as between AccuWeigh and WeighPack. There is no involvement by Novation and AZH, or nor AZH in relation to that particular legal dispute. And there was no involvement within the – in fact, there is not in the relevant report associated with this particular investigation, any involvement of Novation in particular, but there’s certainly not AZH. The only manner in which this report would be relevant is that it’s relevant to this particular employee, then
10 employee at RMS and that of, and the employment also of Mr Soliman. Commissioner, I think it was Justice Basten in the case of A and the Independent Commission Against Corruption’s 2014 NSW CCA. Now, that was a case, Commissioner, you’re probably - - -

THE COMMISSIONER: Have you a judgement number?

MR O’BRIEN: It’s judgement 414.

THE COMMISSIONER: Thank you.

20

MR O’BRIEN: That was a case largely involving a company seeking to at least effectively set aside an order to produce at a compulsory hearing but Justice Basten at paragraph 25 of that paragraph said something helpful on this particular point. He said, “The Act expressly requires that the person required to attend either a compulsory examination or a public inquiry is in each case entitled to be informed of the nature of the allegations or complaint being investigated. Whether the additional entitlement to be informed of the general scope and purpose of the inquiry under section 31 extends to the information required to be provided is not clear is not
30 presently relevant. The information must be supplied before commencement of the compulsory hearing pursuant to section 33. The entitlement to be so informed is entirely understandable. It would be remarkable if a citizen could be required to attend before a Commission and be interrogated without notice of the possible scope of the interrogation. However, the obvious purpose of providing just information will be nullified if the interrogation could never extend without reference to the purpose. If the witness is entitled to other questions so contained it is reasonable to imply a right that the witness to object to questions which appear to cross the boundary.” And His Honour then goes on to set out that
40 the boundary might be more porous than if the Evidence Act did apply. But this is a case where Counsel Assisting is seeking to extend beyond the boundary set out in the scope provided by the summons in the Commission’s inquiry because these questions as I understand it go almost entirely to credit in circumstances where we are dealing with the awarding of work to a company other than those two companies named within the summons. So that, Commissioner, is my principal objection but there are other reasons - - -

THE COMMISSIONER: Can I just pause you there. You've identified that it may be relevant for credit of Mr Singh. Doesn't that give me jurisdiction or make it relevant?

MR O'BRIEN: No, not if it's outside of the scope of inquiry. Take, for example, by way of analogy if Mr Singh had a criminal history. Now, he doesn't, but let's say he did for a burglary at any time, perhaps even close to the time when the matter is being investigated. It wouldn't necessarily enable Counsel Assisting to simply say well, you've got an offence of dishonesty, therefore you've acted it can be assumed dishonestly in this event. Now, that wouldn't be open to Counsel Assisting in those instances and it's not open in this instance either. That there might be a suggestion of dishonesty doesn't simply open the gates for that to enable a general proposition to be put in relation to the witness's credibility. That is the – I mean fairness isn't just making sure that he understands what he's going to be asked about, but fairness also incorporates notions that are captured in the Evidence Act such as that their prejudicial value might be overwhelming as against the probity value and that's where we are at right now in relation to this line of examination. Commissioner, the other concerning aspect of this is that there are more broad-ranging features associated with fairness to the witness and - - -

THE COMMISSIONER: So this is your second ground?

MR O'BRIEN: Correct. This report is an opinion, it's an opinion that has been acted upon by the RMS in giving rise to his termination. It is not a report that can be tested in any meaningful way because it is, in fact there is two reports, each report is the opinion of the author having analysed material which is not necessarily available to the Commission and might include material that the Commission has – sorry, and might not include material that the Commission has. Incorporating into this inquiry the findings of another inquiry really subverts the purpose of this inquiry, and where we can't test the author, and I have been in inquiries such as these and others, Commissions of inquiry where authors of reports have been called and the, and the test, and testing can be done as to the validity of the analysis, the validity of the methodology and the validity of the outcomes and results and findings can be relevantly tested. They cannot be here, unless these authors are called, and I see no reason why they would be and of course there's no foreshadowing that they will be.

Importantly also Mr Singh did not have the protections that are available under the Act governing these proceedings, in those proceedings. He wasn't enabled first of all a legal representative, he didn't have one with him, he wasn't legally advised prior to undertaking the RMS investigations as you'll come to learn from him, he wasn't legally represented during the course of the inquiry when he was interviewed, and that interview was electronically recorded, and of course those protections are fundamental and available in relation to this Commission's inquiry. So importing, under particularly

section 33, and also the procedural guidelines under section 31B, those type of protections were not afforded to him then and they are necessarily afforded to him in these proceedings. So importing the transcript which is part of 9C into these, into these proceedings presents a stark level of unfairness to the witness. He was also not given the opportunity to take objection pursuant to a declaration similar to that of 38, in those other proceedings, and that is particularly important for obvious reasons. Also it may, and again, the importation of those transcripts and that evidence into this inquiry presents some real difficulties and is unfair to the witness for obvious reasons.

The last point that I'd make, Commissioner, in respect of this application is that this investigation report is a sensitive document. It is a personal document, it is a document that appears to have been generated because of Mr Singh's cooperation with those investigating and recording and making findings pursuant to this report, and it could not have been foreseen that it would be attended and used against him in these proceedings, or at least as not, as much is not made clear from the document itself. The report relates to sensitive personal, personnel material held by an employer over an employee and in relation to an employee, and for those reasons also the sensitivity of the document ought be regarded as a reason why it in fairness should not be presented against him in these proceedings and relied on against him in these proceedings by way of tender in any form.

THE COMMISSIONER: Can I just ask you about that last submission. One thing that is available to me and that I can indicate I would be attracted to at a minimum is if I don't agree with your submissions and I allow the tender of volume 9C, whether I make a suppression order over it so it won't be available to the public at large, it will only be used in the hearing room for these proceedings. Would that satisfy your concern about that personal sensitive nature of the material?

MR O'BRIEN: That would satisfy that concern alone, yes.

THE COMMISSIONER: Okay.

MR O'BRIEN: Commissioner, as may be clear, I have had an opportunity of speaking to both Counsel Assisting and your solicitor assisting in relation to this objection in foreshadowing it both yesterday and this morning. As I initially understood and apprehended the position is that this would be used in relation to credit. I think that has changed and there's been some, there's been some, there's been some movement in relation to the basis upon which this is going to be led and it relates to, as I understand it, the relationship between Mr Singh and Mr Soliman. Can I say that all of the arguments are advanced in relation to it being largely not probative of that, and that it is nothing that hasn't already been achieved in the, what I submit ultimately as being the candid and frank approach by this witness in the witness box, and

that is that he, to a very large extent, relied upon what Mr Soliman told him and did, as was required of him by Mr Soliman.

THE COMMISSIONER: Can I just raise that. In the absence of any questioning or submissions from the parties, one view of the material is it's rather, it corroborates Mr Singh's evidence that he's given about his relationship with Mr Soliman and possibly to his advantage of being before me.

10 MR O'BRIEN: Well, you'll have plenty of submissions from me on that very point and I don't disagree with it. It doesn't, what I say, it doesn't advance what is ultimately a credit point by Counsel Assisting really hedged in this suggestion that it's about the relationship, because that relationship has been canvassed in very great length over a large number of days, will no doubt be canvassed as against Mr Soliman in days to come, and for that reason it, it, it again falls into this area where we say it would be unfair, because it doesn't really assist you, Commissioner, in making those important findings as to that relationship. Those are my submissions.

20 THE COMMISSIONER: Thanks, Mr O'Brien. Ms Wright?

MS WRIGHT: Commissioner - - -

MR YOUNG: I don't know whether it would be appropriate for me to be heard in relation to this matter at this stage.

THE COMMISSIONER: All right. All right, Mr Young.

30 MR YOUNG: I'll try and be, I'll try and be brief. Firstly I - - -

THE COMMISSIONER: Do you agree with Mr O'Brien or - - -

40 MR YOUNG: I do. I should make one matter, and I think it's already quite obvious, and that is that I accept that the issue of the relationship between Mr Soliman and Mr Singh and the extent to which Mr Singh was compliant, as he puts it, with Mr Soliman is an issue in the proceedings and Mr Soliman will not accept what Mr Singh has said in relation to the nature of the relationship. That said, with that exception, I endorse the submissions of Mr O'Brien. It goes to, in my submission, three issues, that is when one looks at the scope of the summons that the two of them, I'll put it, partially and dishonestly exercised their official functions in relation to the awarding of contracts to Novation and AZH. That goes to three separate issues.

Firstly, it determines what is relevant to the inquiry. Secondly, it goes to an issue of jurisdiction in relation to the scope of the inquiry. Thirdly, it raises an issue of procedural fairness. And that is the same as in relation to other kinds of inquiries, for example, in relation to a medical practitioner where one has allegations made by the particulars. Here it's a confined inquiry in

relation to partial and dishonest – and they are very pejorative expressions – in relation to their official functions in relation to the awarding of contracts to Novation and AZH. Now, the case that my learned friend Mr O’Brien referred to of A and ICAC, which I think is 2014, New South Wales Court of Appeal, 414, there were a number of issues raised in that. That was slightly different in that I think the issue in that case was relating to a summons to produce documents. But the Court of Appeal determined that the challenge to the decision of the Commissioner could effectively only be made on the grounds of jurisdictional area, that is the grounds relevant to judicial review. That, in my submission, places a significant burden on the Commission to ensure fairness and relevance, and also in relation to issues of jurisdiction when challenge is limited.

Now, this is a matter concerning two separate companies outside of the, a dispute between AccuWeigh and another company in the Federal Court of Australia, neither of which, they’re in the same industry but neither of which are the subject of the summons. The prejudice that this matter is capable of causing, in my submission - - -

20 THE COMMISSIONER: Is that to Mr Soliman?

MR YOUNG: To Mr Soliman and/or to Mr Singh.

THE COMMISSIONER: All right. I think I’m only interested in the possible prejudice to Mr Soliman.

MR YOUNG: To Mr Soliman, yes. On the guise of credit, now, if Ms Wright says to the Commission, “I will not seek any finding in relation to this matter. I will only put it in terms of the credit of Mr Soliman in relation to the matter the subject of the summons,” I might review my position.

THE COMMISSIONER: Can I just stop you there. So if Ms Wright said, “I will not be seeking any findings in respect of the material in volume 9C,” so are you saying if Ms Wright says I’m not going to be seeking ultimately in my submissions to me that a finding should be made that Mr Singh backdated documents at the direction of Mr Soliman, for example - - -

MR YOUNG: Correct.

40 THE COMMISSIONER: - - - you would reconsider your position?

MR YOUNG: I would reconsider my position if it put that it is only relevant in relation to the partial and dishonest exercise of the official functions in relation to the awarding of contracts to Novation and AZH, that no finding is going to be sought in relation to this matter outside of that. In other words, it is relevant to you determining that issue, but it has no relevance of its own, if I could put it in those terms.

THE COMMISSIONER: Okay. Anything else?

MR YOUNG: Not at this stage, subject only to saying that I might seek to be heard again after Ms Wright identifies exactly the purpose to which the Counsel Assisting does seek to use the material.

THE COMMISSIONER: All right. Thanks, Mr Young. Ms Wright.

10 MS WRIGHT: Commissioner, I had understood that the objection was to the whole line of questioning around the backdating of documents, but there was a focus on the two investigation reports. If I could ask if Mr O'Brien could confirm what is being objected to. Is it the questions around this matter or is it just the two documents or is it the entirety of the volume as well as the questioning? That's just not quite clear to me at this point.

MR O'BRIEN: Yes. Most certainly I'll make that clear. I object to the tender of the entire 9C and I object to the questioning associated with what really is the contents of the investigation report dated 30 April under the hand of Mr Peter Moroney, M-o-r-o-n-e-y, of Nemesis Consultancy Group.

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MS WRIGHT: I thought it may have been able to be shortened because if I don't press the tender of the two reports, I do press the balance of what's in 9C, but if I don't press the tender of the two investigation reports, there's an investigation report and a preliminary investigation report, then if they were to resolve the objection then - - -

THE COMMISSIONER: Ms Wright, I anticipated what you would have been interested in in tendering was really the interview with Mr Singh.

30 MS WRIGHT: Yes. So I press the balance which is the interview and the associated documents.

THE COMMISSIONER: And then there are some documents which on their face just appear to be either business records or records of training and things like that which appear to be innocuous. So can I just identify, I am looking at volume 9C, there's an interview that commences at page 63 and goes through to 103. Is that the transcript?

40 MS WRIGHT: Yes, that's the record of interview with Mr Faust and Mr Singh but the two reports I'm referring to start at page 1 and page 37.

THE COMMISSIONER: So the first report, as you said, I think goes through to about page 32 or probably 33 and then there was another report, wasn't there?

MS WRIGHT: On page 37 through to 61.

THE COMMISSIONER: And the transcript that I've looked at, at page 63, is it the only transcript?

MS WRIGHT: There's another - - -

THE COMMISSIONER: There's another one at about page 223. Did you seek to rely on that as well?

MS WRIGHT: Yes, Commissioner.

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MS HOGAN-DORAN: Commissioner, by way of assistance, I note that the report, sorry, the transcript of interview at page 63 is replicated at page 262, so it's in twice.

THE COMMISSIONER: All right, thank you. So transcript at 63 to 103 and then 223 through to 261?

MS WRIGHT: Yes, and I also rely on the documents which are the documents which are said to have been backdated.

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THE COMMISSIONER: And also a number of documents that are already in the brief or already exhibits?

MS WRIGHT: Yes.

THE COMMISSIONER: All right. So the proposed tender is limited to that. Mr O'Brien, do you still maintain - - -

MR O'BRIEN: Yes.

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THE COMMISSIONER: Ms Wright.

MS WRIGHT: In my submission, the material goes to three matters, one is the credit of Mr Singh, another is the credit of Mr Soliman, and it also goes to the relationship between Mr Singh and Mr Soliman which is of central relevance to this matter and to how the alleged corrupt conduct occurred and specifically what Mr Singh says his relationship with his manager was. The signing of documents in the context of his job involving his manager, Mr Soliman, the two people, or two of the people who are persons of interest in this inquiry is relevant to this inquiry. But more than that, it relates to a matter which is at the heart of the spare parts aspect of the allegation, because there's an issue whether the arrangements with the maintainer facilitated or favoured or were orchestrated to favour Novation, and this RFQ was issued to maintainers at a critical time, in December 2016, being shortly after the evidence shows ELWC ceased to be both maintainer and supplier of parts to RMS and Novation was, it is alleged, positioned to take its place and to take over only one aspect of ELWC's prior role. And so, the question of who had the maintenance contract, why they had it, how they

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came to have it, and who was involved, and the question of any contact between the maintainer and the relationship between the maintainers and the key personnel at RMS are at the very heart of the spare parts fraud aspect of the allegations which you, Commissioner, have to consider in this matter. And so, it's relevant in all those bases, and in my submission it should be admitted, and the rules of evidence don't apply, so my friend's submissions about opinions and the like really are just questions of weight.

10 THE COMMISSIONER: Well, I think we can – we don't need to turn our mind to that, because you're not relying on the reports.

MS WRIGHT: Well, indeed. Yes.

THE COMMISSIONER: It's purely that the transcripts of the two interviews with Mr Singh – what about Mr O'Brien's submissions about fairness to Mr Singh, that he wasn't legally represented during the interviews?

20 MS WRIGHT: Well, Mr Singh cooperated with the interviews. I'm not aware whether he was offered legal representation and refused it. That's an enquiry I'd have to make.

THE COMMISSIONER: Well, at least on page 63 of volume 9C, he is in one way read his rights.

30 MS WRIGHT: He was sent a letter setting out the nature of the allegation, which is contained among the material – it will just take me a moment to find it – but he was sent a letter, and I believe there was a typo in the letter and he was asked whether he was prejudiced by the typo and he said he didn't, prior to the interview occurring. So he was on notice precisely about what was being investigated.

THE COMMISSIONER: And he's asked, oh, well, he's told, "You don't have to say anything," so his right to silence is being explained to him, at least in the interview at page 63.

40 MS WRIGHT: Yes, Commissioner. And he was given the usual questions about whether he felt threatened or induced to answer questions, and he was asked whether he wished to have an observer present, that's question 10. And he was told he'd be given an opportunity to review the transcript, and I would assume that that opportunity was actually afforded to him. And he was asked at question 399 whether the answers he gave were given of his own free will. However, I note that interview is not signed, at least the copy in the brief, but I could just check the duplicate.

THE COMMISSIONER: At page 262, down the bottom, there appears to be a JS.

MS WRIGHT: Which are his initials.

THE COMMISSIONER: And then a signature at the top.

MS WRIGHT: Yes, Commissioner.

THE COMMISSIONER: Mr O'Brien, could you assist on page 262.

10 MR O'BRIEN: Would you excuse my client from the witness box that he might just join me over here for the moment.

THE COMMISSIONER: Yes, certainly.

MR O'BRIEN: So it's a signature on the top, Commissioner.

THE COMMISSIONER: Of Mr Singh?

MR O'BRIEN: Yes, and Mr Singh has initialled on the bottom.

20 THE COMMISSIONER: All right. Thanks, Mr Singh. If you can pop back. So we do have a signed copy commencing at 262.

MS WRIGHT: Thank you, Commissioner. I was just looking for the letter setting out the allegations which was sent to Mr Singh. It's at page 218. Now, that's after the first interview and that's the interview with, that relates to the interview with Mr Moroney starting at page 223. But the interview with Mr Faust doesn't appear to have been preceded by a letter although he must have been notified in some way. This is the entirety of the file provided to the Commission by RMS, Commissioner.

30 THE COMMISSIONER: Any other submissions you wish to make?

MS WRIGHT: No, Commissioner.

THE COMMISSIONER: Mr O'Brien, anything in response? And my understanding was – I'm sorry, I withdraw that. The anticipated tender by Counsel Assisting will be restricted to the transcripts of the two interviews and any associated documents.

40 MR O'BRIEN: Yes, I understand that.

THE COMMISSIONER: So we're not going anywhere near the reports or the opinions in the reports.

MR O'BRIEN: Yes, I understand that. Thank you, Commissioner. Can I make the following observations. There doesn't appear to be any evidence by way of documentary evidence or evidence thus far elicited that would

suggest that Novation was in any better a position whether it was AccuWeigh or – who was the other one – AccuWeigh or WeighPack.

THE COMMISSIONER: WeighPack.

10 MR O'BRIEN: WeighPack who secured the maintenance tender appointment. If that were the case I could accept Counsel Assisting's submission in relation to the first point she made, that is, that it happened at a crucial time and it was relevant that she has said in relation to Novation taking the supply of parts from that point forward off the pre-existing supplier. But there is nothing to suggest that this dispute between AccuWeigh and WeighPack which related to one company being unhappy with how that process had gone apparently and seeking information as to what had happened within the RMS. That doesn't seem to have affected at all whether or not it was Novation getting the spare part work or some other party, first of all, or secondly, it doesn't seem to have affected the workings of Novation at all. There's just not that evidence in this Commission in relation to documents or evidence thus far adduced.

20 Secondly, to have an observer present or offered to have an observer present is a million miles away from having a lawyer present. I mean, I don't just say that because I'm a lawyer on my feet speaking on behalf of my client, but that is what an observer can't do. To suggest you can have an observer present is to suggest you can have someone watching, not speaking, not advocating, not doing, not take the role of a lawyer. In fact, it suggests that what they have been, what he has been offered in that instance is something far less than a lawyer. In fact, someone who could do nothing but be a fly on the wall in that inquiry.

30 So the problems and challenges that you have, Commissioner, in admitting this is that you would be admitting something that doesn't protect and hasn't protected the witness as the Act governing this body is required to do. And of course, Counsel Assisting hasn't addressed the very important framework of section 38 and the declaration contained therein under which my client is compelled and gives evidence over objection in relation to these points because that was never offered and couldn't have been offered.

40 Lastly, in relation to the outcome, you've been taken to 118 or – in any event, the letter that set out the allegations and invited him into the second interview. By that stage an interview had already occurred. But most importantly, the outcomes portion of that letter all talk to discipline as an employee, dismissal, it talks of – sorry, excuse me.

THE COMMISSIONER: The letter, 218?

MR O'BRIEN: So if I can take you then to the letter to Mr Singh dated the 27th of March, that it talks about the possible outcomes in relation to this inquiry by the RMS on page 3 at the bottom. It says, "Disciplinary action

may include one or more of the following: caution or remand; deferral of a payment of an increment; reduction of salary and demotion; suspension from duty without payment of salary; and dismissal.” There isn’t in this document a referral in relation to the very serious allegations that have been made in this inquiry within the contents of the summons of this inquiry. It was entirely employment related. And then to import it into this inquiry in the manner in which Counsel Assisting wants to do it – related to credit, in relation to relationship, which is ultimately I think a point of credit – is fundamentally unfair because those very safeguards that operate to protect witnesses so that the truth can be learnt in this place wasn’t provided to him in that earlier inquiry. So it is extremely unfair to allow the admission of the limited amount of material that Counsel Assisting wants to bring in, and again we say it is outside the jurisdiction of the Commission.

THE COMMISSIONER: All right. What I intend to do is take the morning tea adjournment and consider my decision.

MS HOGAN-DORAN: Commissioner, before you – Commissioner.

20 THE COMMISSIONER: I’m sorry.

MS HOGAN-DORAN: Commissioner, before you rise, I have sought instructions into one of the matters that have just been raised, and I also have instructions into another matter that has been raised in relation to the adoptions of the records of interview. As Mr O’Brien has said, having consulted with his client, the first record of interview was adopted by Mr Singh, and that is his signature. However, I’m instructed that the second interview, that a copy of that transcript of interview was not provided to Mr Singh and he has not adopted that by his signature.

30 THE COMMISSIONER: Can you just hold on for a sec?

MS HOGAN-DORAN: Yes.

THE COMMISSIONER: So 4 February has been adopted. 3 April hasn’t been.

MS HOGAN-DORAN: Yes, that’s correct.

40 THE COMMISSIONER: And I would assume – yes, I’m just reading the beginning of the 3 April, is that it was taped, it was recorded.

MS HOGAN-DORAN: Yes.

THE COMMISSIONER: All right, then. Thank you for that. We’ll resume at about 5 to 12.00

SHORT ADJOURNMENT

[11.30am]

THE COMMISSIONER: Now, this is my decision on Mr O'Brien's application which was supported by Mr Young. I am going to allow Counsel Assisting to ask questions of Mr Singh arising from the subject matters covered in the two interviews that were conducted with Mr Singh by either RMS or a consultant to RMS. Without going into reasons, my view is that they are within jurisdiction and are relevant to my inquiry. However, 10 presently I do not propose to admit into evidence the transcript of the two interviews, though some of the documents that were referred to in the interview may be shown to Mr Singh, and if they aren't in evidence, may then be tendered.

MS WRIGHT: May it please the Commission.

THE COMMISSIONER: Right. Mr Singh.

MS WRIGHT: Mr Singh, before the argument that took place you gave 20 evidence that Mr Soliman told you that a subpoena was to be issued to RMS.---Yes.

And did he say what the subpoena would direct RMS to do?---All he told me was that it was going to request for an evaluation report from a previous RFQ.

And did he tell you which RFQ it related to?---No, he didn't tell me which RFQ.

30 When did he have this conversation with you?---I can't recall the, the, the date.

Do you recall the year?---It would have been 2017, yeah, sometime in 2017.

And it was a time after or around the time that there were legal proceedings between AccuWeigh and WeighPack?---That's correct.

And do you know when that was?---I don't know when that was, no.

40 And did you come to sign some documents?---Yes.

And did the documents relate to an RFQ?---Yes.

And I'll come to what the documents are in a moment, but do you recall how many documents you signed?---So there was two conflict of interests -

--

So two conflict of interest declarations?---Yeah. They, tender evaluation plan, and a report, from what I recall.

And was there also a confidentiality statement?---Yeah, there would, actually, yeah. (not transcribable) yeah, I think there was.

So five documents?---Yes.

10 And what were the circumstances in which you signed the five documents?
---So he told me that he hadn't put the evaluation report together for that RFQ, so he was just putting it together now, and he asked, yeah, and I, I think he, he needed two people on the, on the, to evaluate, so, he put my name down, and yeah, asked me to sign it.

When you say he, are you referring to - - -?---Oh, Mr Soliman, sorry.

And he, did you sign the five documents on the same occasion?---I did, yes.

20 Now, if I could show you volume 9C, page 108, please, you see this is a conflict of interest statement part one?---Yes.

And it contains a project name, RMS Portable Weigh Scales Maintenance and Certification?---Yes.

And your name is typed at the top?---Yes.

Your project role/function assessment panel?---Yes.

30 Do you see that?---(No Audible Reply)

And it's a declaration that you do not have a conflict of interest?---Yes.

And is that your signature at the bottom of the page?---Yes.

And it's dated 9th of the 12th, 2016.---Yes.

But you signed that sometime in 2017?---That's correct.

40 Were you on an assessment panel in December 2016 in relation to the portable weigh scales maintenance and certification?---No.

And then if I could show you page 157, volume 9C, you see this is a signature page with your name?---Yes.

And a signature next to it?---Yes.

Did you sign this document?---Yes.

And it's dated 21 December, 2016?---Yes.

But you signed in 2017?---That's correct.

And this is, if we could show page 152, the start of this document is titled Tender Evaluation Plan.---Yes.

And then on the signature page, 157, you're named as being part of a Tender Evaluation Committee with Mr Soliman.---Yes.

10

But that was not the case?---No.

And then at page 164, this is a Conflict of Interest Statement, Part 2.---Yep.

At, again, in your name, relating to the same project.---Yes.

And on page 165, did you sign this document?---Yes.

And it says it's executed on 12 December, 2016?---Yes.

20

But you didn't execute it on that day, you executed it in 2017?---That's correct.

And then, page 176, is this the confidentiality statement which you signed in 2017?---Yes.

And do you see how it's dated 21 December, 2017?---Yes.

30 What's your recollection of when you signed this statement?---It wouldn't have been in December, 2017.

It was before then?---Oh, yeah, it would have been before then.

And did you sign it at the time you signed the other documents?---That's correct.

And was this a typographical error in your view?---I think so.

40 It was intended to be a document relating to the maintenance and certification request for quote process?---Yes.

And then finally page 178. Is this the tender evaluation report which you signed?---Yes.

And if I could show you page 182 at the end of the report. Did you sign this report?---Yes.

And it's dated 21 December, 2016 but you signed that in 2017 after hearing that a subpoena was to be issued to RMS to produce documents relating to the, in the proceedings between AccuWeigh and WeighPack?---Yes.

Now, the tender evaluation report and the tender evaluation plan both stated that you were a member of a Tender Evaluation Committee but that was false?---That's correct.

10 In December 2016 you had not been a member of this Tender Evaluation Committee?---Sorry, that cough kind of muzzled it.

In December 2016 you had not been a member of a Tender Evaluation Committee for the maintenance and certification of portable weigh scales? ---That's correct.

And so you in effect backdated the five documents that I took you to? ---That's correct.

20 Who created the documents?---Mr Soliman did.

And what's the basis for your knowledge that he created the documents? ---He said himself that he's put the documents together and he requires my signature.

And did he present the documents to you for signature?---Yes, he did.

Where were you when that occurred?---I was in the office, so Octagon Building, Parramatta.

30 And when the documents were presented to you did they already contain your typed name?---Yes.

And all the other contents that are in the documents?---Yeah. The date was already there as well from what I recall.

40 Now, what did he say to you when he presented the documents to you?---He just said this is the, the evaluation report and the associated documents. He's just saying that the, the report says that the tender was awarded based on price, yeah, and, yeah, asked for my signature.

Did you understand who had been successful in relation to that request for quote?---It was WeighPack and Electrical and they were maintaining the scales prior to that legal dispute kicking off.

And so you were aware of that before these documents were presented to you for signature?---That's correct.

And so you were aware that the documents related to an RFQ which had resulted in WeighPack being awarded a tender – sorry, being awarded the maintenance job?---Yes.

And you were aware that there had not in fact been a proper tender evaluation?---I don't know if there was a proper tender evaluation. He just told me that there was no evaluation report. I don't know what evaluation was done during that time.

10 So you don't know, do you know who selected WeighPack as the maintainer?---It was Mr Soliman.

In December 2016?---Yeah. I recall there was an email sent out to all the operation managers when WeighPack came in place notifying them that, you know, WeighPack and Electrical are the maintainer of the scales and I think Mark Mitchell was appointed contact, yeah.

Now, when the five documents were presented to you for signing by Mr Soliman, did you raise any concern with Mr Soliman at all?---I did ask if
20 this is, this is okay and he assured me it was. It didn't feel right but I still signed it so - - -

You asked him if it was okay. What did you say to him?---I, I forgot exactly the words but I just asked him if this, if this is, if this is the right thing to do and he assured me it is, it's just showing that the, the, the RFQ was awarded on price, yeah, yeah.

And what did he say to you in relation, in response to your query whether this was okay?---He was just saying, yes, it is, it's just showing that the
30 RFQ was awarded on, on price, that's what the evaluation was about, yeah.

Did you say anything to him specifically about the date of the documents? ---I think I recall saying something about the date and he was just saying that that's when the evaluation report should have been complete and, yeah.

But when you signed these documents you knew, didn't you, that the dates were false on the documents?---Yes.

And you were representing that you had signed each document in December
40 2016?---Yes.

And for the document that was in fact dated December 2017 you though it said, you were proceeding on the basis that it was dated December 2016? ---That was only pointed out when I was having the interview with, I think it was the second interview, they pointed out the date. I didn't notice it at the time.

You're referring to an interview you had prior to termination of your role at RMS?---That's correct.

But when you signed the document you had thought that it said December 2016?---Yes.

And you knew, didn't you, that the documents would create a pretence that there had been an evaluation of the RFQ?---Yes.

10 And that you were part of that process?---Yes.

And the documents would mislead the court and the parties that the information contained in them was true and correct when it was not.
---Yes.

And you did that in order to mislead the court and the parties. Correct?

MR O'BRIEN: I object to that. There are some obvious foundational
20 problems with that question that haven't been asked about related to, well, I
think they're obvious, related to what he knew of the use of the documents
prior to them being provided, and of course rolling the parties and the court
into one question is somewhat misleading as to what the answer might be.

THE COMMISSIONER: Do you press it, Ms Wright?

MS WRIGHT: Well, he's already essentially answered the question, but I
do, I do press it, Commissioner.

THE COMMISSIONER: You knew that the documents were in a sense
30 being created to answer the subpoena?---Yes.

Did you turn – and you understand what a subpoena is?---Yes, not, not in
detail, but yes.

That you're compelled, whoever the recipient of the subpoena is, is
compelled to produce documents to the court?---Yes.

And, yes?

40 MR O'BRIEN: I'm going to protest, Commissioner, with respect. There
isn't evidence that a subpoena actually came into effect and was presented
to the RMS, as I understand it. This is done in anticipation, as I understand
the evidence, that a subpoena might issue from one of the parties, and
therefore, because there's an extremely serious allegation of course that
might be made related to misleading a court in their proceedings. Whilst
that might have been anticipated by some or others, perhaps even by this
witness, there isn't evidence that this was done other than in anticipation of
a subpoena, rather than upon the issue and execution of the subpoena, and I

think that is a significant difference, given the import of that particular allegation.

MR YOUNG: Could I just take it a step further. In my submission the questions cannot fairly be asked of either witness unless it is made clear whether there was in fact a subpoena, because if there was no subpoena the submission cannot be put and ultimately the questions can't be asked as to whether there was a misleading of the court.

10 THE COMMISSIONER: Isn't there a subpoena at page 186?

MS WRIGHT: There's a subpoena at 186, and I haven't actually asked whether he did mislead the court. I'm asking about, for what his intention was in signing the documents, and establish that he knew that it was in a response to a subpoena.

20 THE COMMISSIONER: Did you know – you gave evidence that Mr Soliman said to you something along the lines of, "I've been contacted by a lawyer who said anticipate a subpoena or a" - - -?---Yeah. Yeah, there's some legal dispute between WeighPack and AccuWeigh, and there may be a subpoena coming through for - - -

Did you know a subpoena was issued?---It was issued.

You did know that?---Later on, yes, there was the subpoena that came through.

So was the chronology, Mr Soliman had that discussion with you.---Yes.

30 He then presented you with the documents backdated.---Yes.

You signed them?---Yes.

And then subsequently you were informed that a subpoena to produce documents which included those backdated documents - - -?---Was issued.

- - - had been issued.---Yes.

40 And one would assume that the backdated documents would have then been presented.---Yes.

MS HOGAN-DORAN: Oh, Commissioner?

THE COMMISSIONER: Yes?

MS HOGAN-DORAN: Commissioner, is that question directed to his understanding, as opposed to what in fact occurred?---That was my understanding - - -

THE COMMISSIONER: That chronology?---Yes.

When you were asked by Mr Soliman, in the context of Mr Soliman saying to you, "A lawyer contacted me, a subpoena may be issued," and you backdated, you signed the backdated documents, did you turn your mind to these may be produced to the court, and the repercussions of that?---I guess not to that extent. It didn't feel right, which is why I actually, when I did my first interview, I was, I raised it with the - - -

10

You volunteered it?---I volunteered it, because, yeah, it didn't feel right, so I volunteered it in that first interview. Yeah.

All right. Now, you said your understanding was that a subpoena actually was issued.---Yes.

At that stage, did your feeling that it wasn't right heighten, or become more acute?---It was, oh, probably still the same. I mean, it didn't feel right. But yeah.

20

Why didn't it feel right?---Because it was backdated.

And also you're saying that you were part of an evaluation process - - -? ---Which I wasn't.

- - - which you weren't.---Yep.

MS WRIGHT: How long after signing did you learn there was in fact a subpoena?---I don't recall. The subpoena came to our senior manager. I don't recall how long after, though.

30

Okay, but was it a short period or a long period, or - - -?---Um - - -

Did this all happen within a matter of days?---No, I don't think it was days. I think it was longer than that. But I can't recall.

And what did you do with the documents after you signed them?---So I was instructed to put them on Objective.

40

Objective is the document database used by RMS?---Yeah.

And who instructed you to put them on Objective?---Mr Soliman.

And when did you do that?---Oh, I don't know the date, sorry.

Did you do it on the same day as you signed them?---It may not have been on the same day, but I thought it was around that time.

Okay, well, it – you wouldn't have done it months afterwards, would you? Would it have been fairly, well, first, could you answer that question? It wouldn't have been done a long time after you'd signed?---I can't recall. It seemed like there was some gap. During the second interview, they, they pointed that out, there was some gap. But yeah.

THE COMMISSIONER: Sorry, what was the gap?---There was some time between when I signed it and when it was uploaded. Yeah.

10 MS WRIGHT: A significant gap or a short gap?---I don't think it was significant, but yeah.

And when you signed you were aware that the purpose was to create documents to be produced pursuant to a subpoena issued by a court?
---Yes.

Now, Mr Singh, just changing topic, I asked you yesterday about the IMC report which was sent to you by IMC.---Yeah, yeah.

20 Do you recall whether you discussed that report with Mr Soliman?---I can't recall whether I discussed it with him or not.

Do you recall whether you saved that report on the RMS database, document database?---At the time I wouldn't have, no, I don't think so.

Do you recall giving the report to Mr Soliman?---I thought he was on the, that list of, I thought he was cc'd.

Yes.---Yeah.

30

But you don't recall any further discussion between the two of you about IMC's report?---I'm just trying to recall. When we got the email I know that he did say that, "Oh, IMC have produced their own report," and that was about it. I don't think there was, I can't recall any further discussions.

Now, did you go on a holiday with Mr Soliman at the end of 2015?---Yes.

Where did you go?---To the US.

40 And where in the US?---I think it was just Las Vegas.

And was it just the two of you or were you with friends?---There was another mutual friend.

So three friends.---Yeah.

And this is for the purpose of a holiday?---Yes.

Commissioner, I have no further questions.

THE COMMISSIONER: Thank you. Ms Hogan-Doran?

MS HOGAN-DORAN: Just one question that arose in relation to the last matter. Mr Singh, as you know, I appear for RMS. You don't have any knowledge, do you, as to the production or otherwise of documents to the court in answer to that subpoena?---I, I did provide the Objective link.

10

And when you say you provided the Objective link, to whom did you provide that?---That's, I don't recall who I sent it to, I think it may have been Paul Hayes who was the general manager at the time.

THE COMMISSIONER: And was that because there was some inquiry or, which referred to a subpoena and - - -?---The subpoena came to him and I think he just forwarded the request to Samer and then, yeah, I provided the Objective link.

20

MS HOGAN-DORAN: But nothing in the evidence that you've given to the Commissioner is to indicate to the Commissioner that documents were produced to the court?---I don't know if they were actually produced to the court, no.

Commissioner, we can provide some further information as to that, if that's of assistance.

THE COMMISSIONER: All right.

30

MS HOGAN-DORAN: But it would be to the effect that no documents were produced to the court in answer to that call to the subpoena because the subpoena was subsequently narrowed in scope and those documents were not required.

THE COMMISSIONER: All right. If I need that I'll let you know.

MS HOGAN-DORAN: Thank you, Commissioner.

THE COMMISSIONER: Right. Mr Young.

40

MR YOUNG: Yes. Mr Singh, when do you, in relation to the evidence that you've given in terms of the, what I'll call the subpoena issue, when do you say that you had a conversation with Mr Soliman?---I can't recall the exact date.

Well, what do you say that he said to you?---That he received a phone call from a lawyer, there's a - - -

A lawyer representing who?---I can't recall which, who was, I thought it was WeighPack and Electrical and, yeah, basically there was a legal dispute between AccuWeigh and WeighPack and Electrical.

But you already knew there was a legal dispute, didn't you?---No, I did not.

Wasn't that a matter that was well-known within RMS, that there was that legal issue?---At that time, no.

10

So you say that he said he'd received a call from a lawyer. What did he then say?---That there's a legal dispute between AccuWeigh and WeighPack and Electrical and a subpoena may be issued for the evaluation of that RFQ that was awarded to WeighPack and Electrical.

Now, is that it?---That's from what I can recall, yes.

All right. So what did you do then?---So afterwards he was saying he's putting together documents for that evaluation.

20

Sorry, can you speak up, please.---So after that Mr Soliman said that he was putting documents together for - - -

No, but you said that was the conversation at that stage. Before you had any further conversation with Mr Soliman did you do anything?---No, I didn't.

Well, did you check any records yourself?---Of a legal dispute?

30

No. Did you check -- you say that he had told you that he'd received a call from a lawyer and there was to be a subpoena issued about an RFQ awarded - - -

THE COMMISSIONER: Evaluation of an RFQ which was awarded to WeighPack.---WeighPack, yes.

MR YOUNG: So did that lead you at that stage to check any records?---No, it didn't.

40

Did you have a clear recollection of your own involvement or lack of involvement or whatever in terms of an RFQ awarded to WeighPack?---I wasn't involved in that evaluation.

Well, so as a result of that call you say you did nothing?---As in?

Of that conversation you say you did nothing?---After that conversation later on he did say he was putting documents together for the evaluation.

THE COMMISSIONER: So that was the subsequent conversation?---That was the subsequent conversation between those two - - -

MR YOUNG: So when was this, when was this conversation that you say that you had with Mr Soliman?---The second conversation?

The first conversation.---I don't recall.

THE COMMISSIONER: I don't think he can recall.---Yeah.

10

MR YOUNG: Approximately, can you give any - - -?---Well, I did say 2017.

So then there was a second conversation?---On the same day.

On the same day?---Yeah.

And what was said in the, what do you say was said in the second conversation?---That he was putting together tender evaluation documents and, yeah, he was going to need my signature.

20

Is that the – what happens then?---After that the produced the documents to me and I signed them.

THE COMMISSIONER: Was it on that day?---I don't know if it was on that day, sorry.

Shortly thereafter?---Yeah, I'd say shortly thereafter.

30 Can I just ask you, you said that it didn't feel right but you still signed them.---Yeah.

Why, if your gut reaction was it doesn't feel right?---Yeah, I know. I guess that just came down trusting a manager and a friend really, yeah.

MR YOUNG: But you say that he in this, at this stage you say in the second conversation no documents are produced but he says he is going to be putting together tender evaluation documents going to need your signature?---Yes.

40

Now, if you say that you had no involvement in any previous tender evaluation process you would just say that, wouldn't you?---Sorry?

If you say when he had the second conversation he says I am putting together tender evaluation documents that are going to need your signature - - -?---Yes. Yes.

- - - would you not say to him, hang on a second here, I was not involved in any tender evaluation process?---In hindsight, yes, I should have.

Well, what do you say you said?---I did ask, you know, if this is the right thing to do, but you know, he's saying it's okay, it's just showing that this tender was awarded based on price, and yeah.

10 But do you say that you said nothing about whether you had had any involvement in a tender evaluation process?---I can't recall saying anything, yeah, about that.

And then when do you say that he produced the documents to you for your signature?---I don't recall the exact date but it was, it was shortly after that conversations.

Well, shortly after the conversation as in when?---I don't know to be exact.

20 Well, are we talking a day, a week, a month?---I mean it could be a week, within a week.

And then after you had signed the documents, what do you say happened after you signed the documents?---I was instructed to put it onto Objective.

Well, it must have, on your version of events, worried you, what you'd done?---Like I said, it didn't feel right.

No, but it must have worried you, what you had done?---Well, it didn't feel right, worried, yeah.

30 So what inquiries did you make in relation to whether the, firstly in relation to whether the subpoena was ever issued?---What inquiries?

Well, if you've signed documents which your think are for a subpoena that is going to be issued, isn't it, doesn't it follow, like night follows day, you ask later on has that subpoena been issued yet?---Well, a request did come to our team for the Objective link.

40 Well, what was your knowledge of that?---That a subpoena was issued. I can't recall if it came from Paul Hayes or maybe the Legal team, I can't recall, but it was a request for the Objective link to the documents.

And what did the request say?---It was just a request for the evaluation documents for the RFQ in 2016.

Now, you did have an involvement in a process in 2016, didn't you?
---No.

MR O'BRIEN: That will have to be more specific.

MR YOUNG: Well, you did have involvement in a tender of, in a process of evaluation of WeighPack in 2016?---No.

Didn't you look at documents with Mr Soliman where he showed you quotes and the two of you selected WeighPack on being the lowest price?
---No.

THE COMMISSIONER: This was in 2016?

10

MR YOUNG: In 2016.---In 2016, no.

Just before Christmas in 2016?---No.

Well, do you know, who raised the purchase orders in relation to the WeighPack, to the WeighPack tender?---That would have been me. I was requested to raise a purchase order.

20 And did you ever inquire about how WeighPack had been selected?
---No, I did not.

Now, after you say that you saw something on Objective in relation to the subpoena, did you have any further conversation with anybody about it, prior to you ultimately giving an interview about it?---Not that I recall, no.

So were you never curious about whether the subpoena had been actually issued?---The subpoena was issued, that's why the request came to our team.

30 All right, as to whether the documents were produced to the court?---I don't recall any conversation like that, no.

Well, were you not curious as to whether the documents were produced to the court?---No, at that time, no.

40 So the matter which you say you didn't feel right about because you say that you thought that they were potentially misleading in the sense that not only were they backdated you say, but you had no involvement?---Yes, that's correct.

Well, you were never interested enough to inquire of anybody as to whether those documents had been produced to a court?---No, I didn't follow up on it.

Because, I suggest, you did have an involvement in 2016 and what you did was you signed the documents in 2017, not at the request of Mr Soliman but you simply saw, looking at the records, that you hadn't signed them.
---Sorry?

THE COMMISSIONER: There are a number of propositions there.---Yeah, yeah.

MR YOUNG: You, you've been shown a whole series of documents, for example the document at page 108 at 9C, in 9C at 108. Is that the - - -

THE COMMISSIONER: We'll just get that up.

10 MR YOUNG: Now, you say you signed that in 2017. Is that right?
---That's correct.

All right. Now, do you see the date of the month – I'm sorry, I'll withdraw that – the date in the month has been changed, it's been overwritten?---The day?

THE COMMISSIONER: Yes.

MR YOUNG: Yeah.---Yes, yes.
20

There's been an overwriting of the date.---Yeah, that's correct.

And you did that?---No. So if you look at Mr Soliman's conflict of interest it's got the same correction.

Well, that's - - -

THE COMMISSIONER: So how did the correction come about?---I don't know. I can't recall how the correction came about, but - - -
30

MR YOUNG: But isn't what you did to simply, to simply copy what was on his document?---No, these were already - - -

Even to the point of the correction?

THE COMMISSIONER: Hold on.

MR O'BRIEN: He hadn't answered that question.

40 THE COMMISSIONER: Sorry, Mr Young, just - - -

THE WITNESS: Sorry, I've completely – what was the first question? I've missed it now.

MR YOUNG: All right. Isn't what you did on this document in 2017 to look at what Mr Soliman's document said and to write in exactly the same thing, including to correct the date within the month?---No, this was already completed for me when it was presented to me.

THE COMMISSIONER: So the date was there?---The date was there.

You merely signed?---I signed it, yes.

MR YOUNG: And I suggest that each of the other documents that you were shown were documents that you signed in 2017 because you realised that you had not signed them in December 2016.---I wasn't involved in any evaluation in December 2016.

10

Well, do you say that you were never shown any quotes by Mr Soliman? ---The quote for WeighPack and Electrical would have been provided to me to attach to the purchase order I was requested to raise. That's about it.

Now, I'll leave that topic for the moment. Going back to the evidence that you gave about being on the Tender Evaluation Committee for the Professional Services Contractors Panel.---Yes.

20

Now, you have told us that you were the convenor of the committee?---Yes.

Which involved you having ethical duties as the convenor of that committee?---Yes.

And was also an opportunity for your own career development.---Mmm, I don't recall saying that.

30

Well, do you accept that as a proposition?---It, oh, mmm, yes, I guess so. I wasn't supposed to be the convenor for that. It was supposed to be WSP and it just got landed on me, but - - -

THE COMMISSIONER: Sorry, who was it supposed - - -?---WSP, so John, oh, not, sorry, Nathan Chehoud, from WSP, because he put the tender docs, documents together and he was obviously expecting it to run the same format to be the same as the, the Heavy Vehicle Maintenance Panel tender.

40

MR YOUNG: But when you became the convenor, you made enquiries as to why the panel had been created and what its purpose was?---So, I was there for the initial meeting with Samer and Nathan Chehoud, so I, I understood the purpose of the panel then.

And you understood that advice had been given by Mr Chris Evans of the Finance team in relation to the creation of that panel?---For both panels, I understand that was the advice of Chris Evans.

And that you understood that he had given advice that it would be beneficial to the RMS to have the two panels?---To the, yeah, to the RMS and to the team. I don't recall what the benefits were exactly, but yeah.

But if you had wanted to enquire any further, you certainly could have sought advice from Mr Evans?---About the panel?

About the reasons for, the rationale for the panel.---I guess so, I mean, it never crossed my mind at that point. Yeah.

THE COMMISSIONER: Sorry, can you remind me, who's Mr Evans?
---He's from, I think he works in the Contracts team now.

10 MR YOUNG: But I think your evidence was at the time he was working in Finance, is that right?---In Finance, Contracts, yeah. I, I - - -

THE COMMISSIONER: Okay.---Sorry, I - - -

That's all right.

MR YOUNG: Well, I'll just, you might be able to clarify, but what you said – this is at page 287, Commissioner – what you said is, “Advice was given by the Finance team. I think it was Chris Evans gave that advice to Samer.”---Okay. Okay.

So, when you say Finance team, are you using that interchangeably with people who are responsible for contracts?---Contracts as well, I think I am, yes.

Now, what is your, what do you say was your usual practice in relation to obtaining invoices?---Obtaining invoices?

30 Well, when you get an invoice what do you say you would do?---I would consult with either my manager if it's, if it was a purchase order he requested me to raise or I raised purchase orders for other members in my team. I would, consult with them to see if the invoice is okay to approve.

THE COMMISSIONER: Could you actually raise – you didn't have the delegation to raise a purchase order, you had to - - -?---Yeah, I had no delegation – I think my delegation was seven which meant I couldn't do literally anything so, yeah, it would always have to be at someone's request.

40 And it would either be your manager or another more senior team member?
---Another senior team member with, with a delegation, who had the delegation themselves to sign off as the delegator, yeah.

MR YOUNG: But you could progress the invoice without referring to a manager or somebody senior to you?---That's correct.

Now, but you say that you did not do that, that you always referred these to Mr Soliman?---That was my practice so when I took lead of the AccuWeigh contract November - - -

Well, we can come - - -?---I was going to, I was going to - - -

We can come back to that. I'm sure - - -

THE COMMISSIONER: No, no, no, I'd just like to, if you can give that example.---So, yeah, so when AccuWeigh, November 2017 onwards Samer gave me approval to approve the invoices without having to consult with him. Once Samer was suspended because of this I then raised it with my
10 acting manager at the time. Told him that this was the process that was put in place and if he's happy I can continue doing it. He was happy for me to continue to do so, just keep him in the loop so - - -

That's on the AccuWeigh - - -?---That's on the AccuWeigh, yes.

- - - invoices that you received after you were given responsibility?---Yes.

MR YOUNG: So if you say that you've received approval from somebody for progressing an invoice, what record is there of that approval?---I mean,
20 unless I sent an email asking for approval there wouldn't be a record.

Well, what is the purpose of seeking approval if there is no record of it taken?---It was just the practice I had because my understanding was I couldn't approve invoices either because of my delegation. Even though I could progress them I thought I had to consult with somebody, yeah.

And we've heard evidence that during various periods there were people other than Mr Soliman acting in his role.---That's correct.

30 And do you say that you adopted the same practice in relation to those people?---If it was an invoice they would be aware of I would but before Mr Soliman goes on leave there's, there's a handover process. He had discussions with all of us. Any issues that might arise whilst he's on leave he usually gives us directions and this from what I recall from time to time did include invoice approvals.

THE COMMISSIONER: So he would anticipate, if he was going on leave he would anticipate that an invoice might come through from X?---Yeah, he goes if there's an, he goes there's an invoice from X it's okay to approve
40 like, yeah.

MR YOUNG: So he'd have a meeting where he'd talk about all of the invoices that might come in during the period that he was on leave?---I don't know if he spoke about all the invoices just at a high level.

THE COMMISSIONER: And so this handover, was it individually or did you do it as a team?---Sometimes it was a team. Sometimes it was individually. Sometimes, as I said, he sat opposite of me so he would just

give me instructions over the desk. Yeah, it was, it was usually only formal for whoever is going to be acting in his role. He would have a formal handover but for the rest of us he would just, just give us a handover over the desk, yeah.

And when you said he would indicate that there was an expectation or an anticipation that an invoice would come from X, he'd identify, would it be a global look, if any invoices come in approve or would be an identification of particular vendors or contractors?---From what I recall it was usually
10 global for me anyway because I get the, the, not only Novation but the WeighPack and Electrical invoices.

Through your work process.---My workflow, yeah.

Workflow, sorry.---Yes, yes.

MR YOUNG: Well, you've agreed I think that in 2018 Mr Soliman was away from a period in January to a period in March?---Yes.

20 All right. Now, do you say that before he went away in January he spoke about all of the invoices that might come in during that period?---Well, at that point I'm only expecting to get the WeighPack, not the WeighPack, sorry, the AccuWeigh, AccuWeigh invoices because that began November 2017 onwards.

All right. Well, what about, what about invoices from AZH?---I don't recall getting any invoices from AZH in 2018.

30 You don't recall any invoices from them in 2018?---Not in 2018, no.

I notice the time, Commissioner.

THE COMMISSIONER: All right. Now, before we break, just to allow some organisation of the next witness, Mr Young, how long do you anticipate?

MR YOUNG: I would hope to keep it to about 45 minutes.

40 THE COMMISSIONER: Mr Lonergan:

MR LONERGAN: About 10 minutes.

THE COMMISSIONER: 10? Isn't that exciting. Ms Fryer, you're here today?

MS FRYER: Yes, Commissioner, I don't anticipate any questions.

THE COMMISSIONER: And Ms Dabliz?

MS DABLIZ: No questions for Mr Singh.

THE COMMISSIONER: Now, I haven't forgotten – oh, I'm sorry, I'm terribly sorry, Mr O'Brien?

MR O'BRIEN: Half an hour.

MS WRIGHT: None at this stage.

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THE COMMISSIONER: Okay.

MS WRIGHT: Sorry, perhaps one or two at this stage, Commissioner.

THE COMMISSIONER: All right. Okay, look, that's helpful. Thank you very much. We'll adjourn for lunch and resume at 2.00pm.

LUNCHEON ADJOURNMENT

[1.02pm]

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