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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 16 OCTOBER, 2019

AT 9.30AM

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THE COMMISSIONER: Right. Any administrative matters?

MS WRIGHT: Not at this stage, Commissioner.

MR YOUNG: Could I just raise one, Commissioner?

THE COMMISSIONER: Yes.

10 MR YOUNG: Just in relation to the scope and length of Mr Soliman's cross-examination or examination. As you'd be aware the parties were informed by the Commission on 4 October that it was proposed to recall Mr Soliman. It was a three paragraph letter. The second paragraph relates to the extraction report and the mobile phone that was seized from Mr Thammiah. It's then said that the Commission proposes - - -

THE COMMISSIONER: No, well, can I just confirm that. Was it from Mr - - -

20 MS WRIGHT: Thammiah's phone.

THE COMMISSIONER: It was.

MS WRIGHT: Yes, the WhatsApp is from Mr Thammiah's phone.

THE COMMISSIONER: Mr Thammiah, okay.

30 MR YOUNG: Now, the third paragraph says that it's proposed to recall Mr Soliman to give evidence in relation to that material on the first day of the inquiry. Towards the end of yesterday, Mr Soliman was asked questions in relation to completely different material relating to Mr Hamidi and messages that were "remind yourself" messages on his own phone and I mean it has nothing to do with the scope of the inquiry as far as we were notified of it.

THE COMMISSIONER: Well, no – and I'm sorry, so, have you got an application or are you just raising this with me?

40 MR YOUNG: What I seek, Commissioner, is simply guidance as to whether it is proposed that the matter should be limited as it was previously notified, or is it now a roving inquiry in relation to all matters on which it might be sought to ask Mr Soliman questions, because I didn't object at the time because I was rather hoping that the cross-examination might finish yesterday afternoon, but I am told that it is going to go some hours today and I am concerned that there may be matters again that are outside the scope of the material that was notified to us on 4 October. I mean, it's to a legal basis of objection but I do think we're entitled to know, particularly when we are informed that a particular subject is going to be the scope of the matter on which Mr Soliman's going to be examined and then a

completely different matter is raised, which is not even tangentially relevant to any issue relating to Mr Thammiah's phone or the extraction report.

THE COMMISSIONER: Ms Wright, have you got any response to that?

10 MS WRIGHT: Commissioner, the material that became available in August also included four very small sets of data from Mr Soliman's phone and one of those sets of data comprises the extraction report which I tendered yesterday. So it's only a very small amount of material and it wasn't available to the Commission prior to August. I don't have any other questions. I can indicate that - - -

THE COMMISSIONER: On that - - -

MS WRIGHT: At this stage I anticipate not having any other questions of Mr Soliman on topics other than those arising from the large set of WhatsApp material on Mr Thammiah's phone,

20 THE COMMISSIONER: And also it wasn't a matter that Mr Soliman had to be resummoned. I did not excuse him on the last occasion on the very basis that I anticipated there may be some additional questions to be asked just because Mr Thammiah was going to give evidence afterwards. So my intention of, excuse me, bringing Mr Soliman back was that although it was going to concentrate, excuse me, that it would obviously concentrate on the new phone material, it wasn't going to be limited to that. But in any case, Counsel Assisting has indicated that material was cross-examined on yesterday, or examined on yesterday and she's not returning to it. So I assume, Ms Wright, we're just returning to the WhatsApp, are we?

30 MS WRIGHT: Yes, Commissioner. And I also point out that the material I went to yesterday afternoon is on Mr Soliman's own phone so it's material he's aware of. It's not material from anyone else's phone.

THE COMMISSIONER: All right.

40 MR YOUNG: No, I accept that point, but when one's given certain information, obviously people who are going to be examined are given advice as to the matters on which they're going to be examined about. Now, where a very particular limitation is given in a letter that he's going to be examined in relation to the material that was uploaded from an extraction report from the Samsung Galaxy phone seized by the Commission from Mr Thammiah's residence, obviously he has been given advice that that is the matter on which he is going to be examined. That's my concern, that if it's going to range beyond that, and I'm told not that it's not going to be, that that will obviously increase the length of it as well.

THE COMMISSIONER: Well, you've raised your concern. You've heard what Counsel Assisting is saying so we'll resume the examination of Mr Soliman. Mr Soliman.

THE COMMISSIONER: Right. Ms Wright.

MS WRIGHT: Mr Soliman, I'm going to remind you of some evidence you gave in June this year about the tender process for RMS procurement of the 125 portable weigh scales, and that should come up on the screen. I'll first take you to some evidence you gave on 6 June, 2019 at page 1239 of the transcript, starting at about line 16. I asked, "It's managed by you to get Novation selected in two tenders worth significant value in order to make money for yourself and Mr Thammiah?" Answer. "I had nothing to do with the first tender, first of all." Question. "Well, I suggest that that is a lie." Answer. "Well, nah, I wasn't in the, in the actual country, first of all, and even during that time me and Mr Thammiah for a period of time were, I guess the word is distanced." Then at page 1431 on 11 June, 2019 - - -

THE COMMISSIONER: Sorry, what was the page again?

MS WRIGHT: 1431.

THE COMMISSIONER: Thank you.

MS WRIGHT: About line 8, I asked you about halfway along line 8, "You recall that three companies tendered in response to the RFQ, Accuweigh, Novation and NEPEAN?" Answer. "Okay." Question. "You recall that?" Answer. "No. I wasn't on, I was on, I was on leave." Question. "And you were aware that Accuweigh responded to this RFQ, weren't you?" Answer. "Mmm, when I got back I was, yeah." Question. "And you found out that Accuweigh had responded, yes?" Answer. "Mmm, when I got back, yes." And then across at page 1432, line 10, you were asked some questions about the size dimension requirements in that tender and I asked you whether a particular scale was totally excluded from eligibility for the tender on the basis of the size restriction, and I asked, "You agree with that?" Answer. "I don't know if it was excluded, I wasn't there." Question. "Are you suggesting - -" Sorry, I'll just complete your answer. "I wasn't there but again that's not a mandatory thing that will knock anyone out." Question. "Are you suggesting that the scale size requirement was not a mandatory thing?" Answer. "Yes, I don't think it was or should have been." Question. "What do you base that on?" Answer. "Just what Jai told me when I was back." And then at line 34, question. "And so your evidence that the size restriction would not knock out potential scales is not correct, is it?" Answer. "I still maintain it's correct. I don't see any evidence that it's knocked anyone out." And then the next page, 1433, line 1, I asked you, "You've given evidence that you weren't on the Tender Evaluation Committee." Question. "So you weren't on this committee but you were ensuring the outcome of this tender evaluation from the sidelines or the background, weren't you?" Answer. "I don't agree with that." At line 32,

“Now, you were aware, were you not, of the amount which Mr Thammiah was charging for these scales?” Answer. “I know, I don’t think I ever found out until the second tender.” Just pausing there, is it your evidence that you didn’t know of the price of Novation’s scale until the tender for the 425 scales, Mr Soliman?---Based on the messages I saw yesterday it seems like I did know before that. I just don’t know at what point exactly.

So you change your evidence to what I’ve just - - -

10 MR YOUNG: I object to that. I object to that. He’s not changing his evidence. I mean, he said based on the material he accepts that, that’s not changing evidence.

THE COMMISSIONER: Mr Soliman, what Counsel Assisting has outlined to you in the evidence you gave back in June, your evidence now is different?---I think so, yeah. Based on the messages I saw it seems that, it seems I knew it earlier but again I’m not sure what date, around what date it was exactly.

20 Ms Wright.

MS WRIGHT: Then going over to – if we could just have page 1433 back on the screen. Then I asked you some questions about Novation’s quote number 2-0-4 for the scales in the 125 procurement and I showed you that document. And then going over to page 1434. At line 5 question, “Can I suggest you discussed the price with Mr Thammiah prior to Mr Thammiah submitting his quote as part of Novation’s tender for this procurement?” Answer, “Mmm, I don’t agree with that because when I came back I asked Jai how he got so close to the mark and he asked me too so I was thinking to myself did I let it slip out or did Mr Jones tell him because they were meeting lots. I don't know.” And then I suggest the questions and answers sought to clarify your evidence and if we go down to page 1435, line 5 you clarified. You said, “I just remember coming back from leave sometime in March and Mr Singh was giving me kind of a run by on what, what had happened. This was one of the matters obviously and, yeah, he said he was kind of just, just over the budget and I started thinking did I let it slip out but then I thought, you know.” And jumping down to line 15. Question, “Did you let it slip out at your wedding that he attended?” Answer, “Yeah, I think he said he was there for 20 minutes so I didn't actually see him. He was in hospital with chickenpox he said or something but that was another thing happening.” Question, “Just as you lined up the price for the 420 scale procurement you lined up the price and what Novation would charge for the 125 scale procurement I suggest.” Answer, “That's not what happened here at all.” Question, “And in fact you went further and you sought funding from RMS based on the unit price that you and Mr Thammiah wished to charge RMS I suggest.” Answer, “I don’t agree with that because I know I wasn’t seeing him here for a long time.” Question, “And you told Mr Thammiah what the available budget was.”

Answer, “No, I don’t recall telling him and I was shocked myself when I came back.” Question, “And you came up with the quantity of 125 scales which would exhaust the available budget as at the beginning of 2018.” Answer, “No.” And then you again gave an answer that you didn’t recall Mr Thammiah telling you what Novation would be charging for each scale. Do you see that?---Yes.

10 Question, “And you were aware of what IRD was charging Novation for chargers.” Answer, “I don’t recall him telling me.” Now, I’ll just come back to the messages I took you to yesterday just before we adjourned, and if we could have around page 420 of the WhatsApp messages. Do you see here a message you sent on 5 February, 2018 where you tell Mr Thammiah, “I’m only here at work this week to make sure this tender goes through”? ---Yeah.

And your wedding had been on the previous weekend.---Yeah.

20 And in that week commencing 5 February the responses to the request for quote for the 125 scale procurement were submitted. Do you agree?---I accept that. Okay.

And Novation submitted its response on the Friday, on 9 February. Do you agree with that?---Yeah, sure.

And NEPEAN also submitted its response on Friday, 9 February.---I don’t know obviously.

30 Okay. Well, I’ll just take you to that. Volume 10, please, at page 48. Do you see here Mr Cleary’s submission for this bid on 9 February, 2018 at 11.26am?---Yep.

And that is even copied to you at your RMS email address. Do you see that?---Yeah.

40 And so when you gave evidence in June that you were not even in the country and you didn’t know which companies had tendered until you came back, that was not correct, that evidence, was it?---No, that’s not really fair. I mean the wedding was on the 3rd and the new, the new, the new manager, Arnold, started on that week so now that I saw those messages I know why I had to be there.

THE COMMISSIONER: We’re not asking you why you had to be there. Ms Wright is putting to you that in the past you’ve given evidence on oath that you weren’t here in the country at the time that those tenders were put in and the WhatsApp message and that email suggest that that was not correct. Do you accept that your evidence before was not correct?---Based on that message it looks like, yeah, but I think I left the day after, so it’s very hard to tell obviously.

All right.

MS WRIGHT: You were on leave from 12 February, weren't you?---I'm not sure. I think it was basically the day after Arnold started or something like that.

All right. Well, I'll just, we'll come back to that. But in any event, you received NEPEAN's submission yourself by email. You agree with that?
10 ---Yeah, but that's the first time I saw it I think.

When you say it's the first time you saw it, the first time you saw it was when it was sent to you on 9 February, 2018, wasn't it?---Yeah, but I don't, I don't recognise that email so I think that's the first time I've actually seen it.

THE COMMISSIONER: Sorry, so when you say the first time I saw it, you're talking about in the witness box. Is that your evidence?---Yeah.

20 MS WRIGHT: Well, I suggest that's not the case, Mr Soliman. You've told Mr Thammiah on 5 February, "I'm only here at work this week to make sure this tender goes through." You've then personally received a submission from one of the companies who puts in the tender.---Well, I mean, I didn't ask for it and I was cc'd and I wasn't the tender manager, so if he did send it to me like that, it wasn't meant to come to me and I don't recall even seeing it.

THE COMMISSIONER: Mr Soliman, what Ms Wright is putting to you is that when you send a WhatsApp message, "I'm only here at work this week
30 to make sure this tender goes through," and then you get a copy of one of the tenderer's quotes, not Novation, not your best friend or your near brother's company, a competitor to them, it suggests that your evidence of I didn't, first time I saw it was in the witness box or I wasn't interested in it doesn't really sound credible. I think that's what Ms Wright is putting to you.

MS WRIGHT: Yes.

THE COMMISSIONER: So what do you say about that?---Well, I was
40 married on like, the day prior, a couple of days prior and I was about to go on leave so it's not a big jump for me to, you know, not see that email until now really.

A big jump?---Yeah, I mean I still don't - - -

MR YOUNG: It's not a big jump.

THE COMMISSIONER: Oh, sorry, I missed the not. Thank you, Mr Young.

THE WITNESS: I mean again this is the first time I've seen that email but -
- -

10 THE COMMISSIONER: Even though you're telling Mr Thammiah, "I'm only here at work this week to make sure this tender goes through"?---That was, one of the main things was obviously there was no senior manager I think for a couple of days so if I wasn't there, there was no one to obviously sign the, sign the tender docs I think and I had to be there for when the new, new manager started so I was forced to come back.

Yes, but you don't say that in the WhatsApp. You don't say, "Look, I'm only here at work because Arnold's starting in a couple of days," or, "There's an absence of a manager." It quite clearly states, "I'm here this week to make sure this tender goes through".---Okay.

20 But you maintain your evidence that you never saw NEPEAN's tender?---I don't, I don't recall seeing it. I don't recall seeing it.

You don't recall seeing it.---Until now.

MS WRIGHT: Well, I suggest you were so determined to have Novation win this tender that you came to work the week after your wedding.---That wasn't the main reason. The new manager started.

30 And your evidence in June, that you were on leave, was not the full picture, was it?---No, it was the full picture. As I said in the witness box - - -

You were not giving truthful evidence to the Commission when you suggested that you had nothing to do with this tender because you weren't even in the country?---That's not true. I mean, I mean - - -

THE COMMISSIONER: Sorry, what's not true?---That I wasn't in the country. I mean, I left, you know, one or two days give or, give or take so it's hard to know exactly what day I left based on when the tender came in. It's not an easy thing to remember a couple of years after.

40 MS WRIGHT: And I suggest it's not the case that you only found out who had tendered when you got back from leave. You knew Novation had tendered, correct?---Yeah, I think so, yeah.

And you knew that NEPEAN had tendered as well.---I don't recall knowing that they tendered.

Now, if we could have volume 16B at page 120. I'm just going to show you your leave dates so that there's no dispute. Do you see here your leave

dates from the 2nd – sorry. Start date 12 February, 2018, to 2 March, 2018. Do you see that?---Yep.

And they were your annual leave dates, you don't dispute that?---There's also the 2nd. There's also the 2nd.

The 2nd you were on a flex day.---That's a day off, yeah.

10 And that was the day before your wedding, a Friday, correct?---That's correct.

And even during – that can come down, thanks. Even during the period you were on leave, you were liaising with Mr Thammiah about this tender. Do you recall that?---It's possible, I don't know.

If we could have the WhatsApp messages again.

20 MR LONERGAN: Sorry, Commissioner. Just on that, there was a second entry which was 5 March through to the 9th. So the total period of time that he was on annual leave was actually an extra week beyond that line item.

THE COMMISSIONER: Oh, okay.

MS WRIGHT: In March?

30 MR LONERGAN: In March, yeah. It's a continuous period but it's obviously two different sets of annual leave. So if you see there, there's the annual leave, 12th of the 2nd, through to the 2nd of the 3rd and then there's above that 5th of the 3rd, which would be the Monday, presumably, through to the 9th of the 3rd.

MS WRIGHT: Yes.

MR LONERGAN: So there's a continuum of an addition week there.

THE COMMISSIONER: Okay.

40 MS WRIGHT: That's fine. Thank you, Mr Lonergan. Could we have page 444 of the WhatsApp. So do you see here messages that you've sent from 10 February, 2018. Mr Thammiah's asked you, "How many submitted?" You say you couldn't open them, "All the panel members weren't there. They'll be opened on Monday." And then over the page 445. "I'm guessing there will be three. Don't worry. We can't lose this. Even if we do I don't have to accept any quote for any reason I like." Because you had a decision-making capacity in this tender, didn't you?---No.

Well, you've told him that you can accept any quote for any reason you like. That's because you had the capacity to influence decisions about the tender.

Isn't that the truth?---No, I don't think I was there even when the panel was making their choice.

THE COMMISSIONER: But you're telling him you don't have to accept any quote for any reason I like. That suggests some kind of power or decision-making role, doesn't it?---That could have meant the team itself. Again, I wasn't, I wasn't, I don't think I was even in the country when the committee was making their choice. I mean - - -

10 Well - - -

MS WRIGHT: Well, that's not – I'm sorry, Commissioner.

THE COMMISSIONER: Sorry. No, you go, Ms Wright.

MS WRIGHT: That's not a message about the committee's decision about the tender. It's a decision about a quote that you're telling Mr Thammiah you have control over.---Yeah, well, I didn't.

20 You weren't telling Mr Thammiah a lie, were you?---No. No, but it depends on what the context of what we were talking about what I was thinking then.

And the context is talking about a quote that relates to the tender for 125 scales that RMS is conducting. That's the context, isn't it, Mr Soliman? ---Oh well, I mean if there's something that doesn't meet spec the, the team obviously doesn't have to award it. That's probably what I, what I meant.

I don't have to accept.
30

THE COMMISSIONER: Yes.

MS WRIGHT: You're not talking about the team.---Well, I mean - - -

THE COMMISSIONER: You're using the word "I".---Okay, but the team and I go kind of hand in hand. Again, it depends who, who you're talking to.

MS WRIGHT: These were private - - -
40

MS HOGAN-DORAN: Could Mr Soliman speak up, please.

THE COMMISSIONER: Yes. Mr Soliman, can you try and – I think it would help if you - - -?---Is that better?

All right. Speak again.---Is that better, yeah?

I think that's better. Yes, thank you.---Okay.

MS WRIGHT: These were private messages which you knew were encrypted where you spoke very frankly to each other, didn't you?---Well, yeah. It was a WhatsApp chat, yeah.

Yes, because you didn't think anyone else was listening to them.---No, of course not.

10 Or reading, you didn't think anyone else would be reading them.---Of course not.

And so you spoke with utmost honesty and candour in these messages that you sent to Mr Thammiah.---I think so, yeah, generally.

So when you said, "I don't have to accept a quote," you weren't talking about your team, were you?---Well, I mean, I mean, I was part of the team so - - -

20 Well, that's a given, Mr Soliman.---Yeah. I mean - - -

Page 448. On 21 February, 2018 towards the bottom of the page noting that you're still on leave you're telling Mr Thammiah, "Sweet. Let me know. I can stop the process if something went wrong. Just need to know a.s.a.p. and I can't exactly call Jai now and ask. Looks too dodgy." Is it the case that to your knowledge Mr Singh didn't know that you and Mr Thammiah had your heads together in relation to this tender?---No, he knew that we were, we were friends.

30 But to your knowledge Mr Singh didn't know that you had your heads together in rigging this tender.---Well - - -

Was that your belief?

MR YOUNG: Well, the second part of that question was put yesterday and it was not accepted. Now it's - I mean, it's a trick question. I mean, it's designed to concentrate on Mr Singh and to get an implicit acceptance of a proposition he rejected yesterday.

40 MS WRIGHT: Commissioner, he's not accepting any proposition which is put to him. Now, in my submission the term "rig", which is his word at page 340 of these messages.

THE COMMISSIONER: Yes, I thought you were picking it up from the word he used in one of his messages.

MS WRIGHT: Yes, yes, and if he assigns a meaning to that which is contrary to the widely accepted common sense meaning of the word "rig" that's a matter for him, but it's his word.

THE COMMISSIONER: Yes. No, I allow the question.---Okay. I'm happy, happy to answer it. I mean, I still don't think I rigged it. Like I said, I was, I crossed the line between friendship and helping a friend, friend's business but - - -

10 MS WRIGHT: The question is, to your knowledge, Mr Singh was not aware that you and Mr Thammiah had your heads together to rig, in an attempt rig this tender?---Well, I don't think Mr Singh knew that I had crossed, crossed a line to help Mr Thammiah. So no.

To your knowledge, Mr Singh wasn't aware that you were liaising with Mr Thammiah over WhatsApp while you were on leave about the tender?---I don't think so. Why, I mean, no.

20 Now, so you accept that even while you were on leave, you're liaising with Mr Thammiah about this tender?---I could have been. I mean, I was talking to lots of people on WhatsApp when I was on leave. I didn't die. I mean - - -

THE COMMISSIONER: No, no, no. You're not being asked that. You're being asked whether you accept the proposition, while you were on leave you were sending messages via WhatsApp to Mr Thammiah about the tender. Not whether you're sending messages to anybody else, whether or not you died. Whether you were sending messages to Mr Thammiah while you were on leave about the tender. Do you agree with that?---Yes, I do. It, it seems that way.

30 Good.

MS WRIGHT: Now, if we could go back to page 338, please, of these messages. In fact, I might just go back to 327. To remind you of the context, Mr Soliman, a message I took you to yesterday is this one, which is the second blue message on 16 November, you informed Mr Thammiah that the fact there would be a tender means, "Is that we go to open tender with strict requirements for the size of the scales to fit into the current slots and we know only the PAT scales fit." Now, when you referred to the current slots, you were referring to the housings in the inspectors vehicles?---Must be, yep.

40 And then if we go over to 337, on 20 November you said to Mr Thammiah in a message, "My tender will specify that the scales must fit into existing vehicle set-up so," dot, dot, dot, "PAT scales only fit, boom." Do you see that?---Yep.

So the way, I suggest, you were going to rig this tender would include setting size restrictions that only IRD and Novation's PAT scale would satisfy. That's the case, isn't it?---No, I don't really agree with that, no.

That's what you've said here, that you would set size restrictions to fit the current housings that only the PAT scales would fit, and if you've said that, that's what you meant. Isn't that the case?---No, because other things, which were happening obviously, like I've said previously.

10 What other things are happening?---Well, number 1, they were the racks which were in the cars so it would cost a lot to change those racks. Number 2, the users wanted the PAT, the PAT scales. So they're the main things going in that they're the user specified needs.

So you're agreeing with me that the size restrictions were intended to exclude any other scale other than the PAT scale?---No. That's not what I, what I'm saying. It was mainly a cost thing, I think.

20 Well, you're giving reasons why you say it was justified to include size restrictions, but your answers I suggest are consistent with the purpose of those size restrictions being to solely favour the PAT scale. Do you agree with that - - -

MR YOUNG: Well, I - - -

MS WRIGHT: You've said, Mr Soliman - - -

MR YOUNG: Well, I object, unless it, I object unless it's, a distinction is drawn between purpose and effect. I mean if by purpose it is meant that that was your subjective intention, that should be put, because as is clear from the recent Brexit case, I mean purpose can also include effect.

30 MS WRIGHT: It's quite clear from my question I'm talking about the purpose of the size restriction.

MR YOUNG: No. Is it the effect or - - -

MS WRIGHT: I'm talking about the criteria.

40 THE COMMISSIONER: I thought my note was that you used the word purpose and my understanding was that was the aim of the question was to ask Mr Soliman about his purpose. Did you use that word, Ms Wright?

MS WRIGHT: I did use the word purpose.

THE COMMISSIONER: And when you use the word purpose, you're talking about his subjective intention?

MS WRIGHT: Well, I'm getting at that his answers are consistent with the purpose of the size restriction, so the actual criterion in the tender specifications being to exclude scales other than the PAT scale. Mr

Soliman's answer was that the inspectors had indicated a preference for that scale and that the particular housings I think he said fit that scale. So those answers, both of those factors are consistent with that particular requirement being aimed at favouring the PAT scale.

THE COMMISSIONER: All right. Put your question again in those circumstances.

10 MS WRIGHT: Mr Soliman, do you see that the reasons you've given for the size restriction are consistent with the purpose of the size restriction itself being to ensure that the PAT scale wins?---Again, no. I mean I think you're skipping over some critical issues.

What are the critical issues that are being skipped over?---That there was a very large cost to change this and number 2, as we found out, other, other scales did actually fit and number 3, from memory I don't think the dimensions were even a critical factor in the tender, they were all scores.

20 When you say a large cost to change this, you're talking about a large cost to change the housings in the vehicles?---Yes.

And therefore it was the preference to maintain the existing housings in the vehicles?---It was not a preference, it will go into the score, scoring of, of the tender obviously.

30 And therefore the size of any scale to be procured needed to fit those housings?---It didn't need to, it was part of the tender scoring. You would weigh up obviously the cost versus the benefit, whatever the committee, you know, chose, that's what the committee chose.

And you've said to Mr Thammiah that only the PAT scales will fit.---I think that was a couple of months prior to the tender happening so as I found out, other scales did fit.

40 We'll go back to page 337. Then you make it clear at the bottom of the page that you're referring to the housing and then over at 338 you say that the charger and plug is PAT, and he asks, "Isn't that the specs you want to specify?" And you confirm, "I already got the housing dimensions, need the charger plug and charger specs." Now, you're asking him to give you the charger plug and charger specs, aren't you?---Yep.

And the reason for that is to put them in the requirements in the tender documentation as criteria that had to be met?---Yeah, but that was a mistake, as we realised after.

The reason that you were asking him to give you the charger plug and charger specs is to include those specs in the tender documentation as criteria which any scale had to meet?---Yes, but like I said, it was an error

and we actually took it out because we found that the chargers were not a universal fit.

We'll come to that. I'm just talking about why you're asking him for the charger specs at this point.---I asked him because all the chargers for scales were a universal fit so that's what we should ask for in the tender, but we learnt that they weren't universal so we took that spec out.

10 You didn't believe they were universal because you've told him at the top of page 338, "The charger and plug is PAT."---Yeah, but I thought that was the same for all scales.

You want the charger specs in order to favour the PAT scale.---That's not correct. We took the specs out, I mean - - -

I'm not talking about what happened subsequently, I'm talking about at this point in time when you're sending these messages. This is why you've asked Mr Thammiah - - -?---No.

20 - - - for the specs because they will favour the PAT scale in your assessment.---That's not why I, I asked him.

All right. We'll go over to page 339.

THE COMMISSIONER: Can you speak up again, Mr Soliman, thank you. ---Yeah.

30 MS WRIGHT: Mr Thammiah says, "That's like a guarantee then." See? ---Yeah, what's a guarantee?

And you understood that to mean a guarantee for the PAT scale in the tender, didn't you?---Not necessarily, no.

Then going on, you suggested the, as an example, the type of information you needed. "Example 5 volt 12 pin plug," and a description and photo. ---Yep.

40 And you say, "Exactly." And I suggest that's a response to his comment that that's like a guarantee. What do you say about that?---That's several messages after. I mean - - -

THE COMMISSIONER: It's one message after.---Yeah. I mean, I would have answered straight away if that's a response. That doesn't make sense.

MS WRIGHT: Well, there's a number of examples, I suggest, where you both respond to each other to different thoughts going through these messages around the same time.---Yeah, I don't know.

Over at page 340, you ask him to ask Fernando to issue you a letter stating that the PAT charger only works with PAT scales and plugging in other scales is not safe, therefore the existing scales had to be preferred. That's the purpose of that letter from IRD that you're requesting here, isn't it? ---I'm not sure. There must have been an issue with the actual charger.

10 Mr Soliman, you're asking him to get evidence from IRD, that Novation can use in the tender submission it puts in, that only the charger will work with PAT scales. Only the charger in the existing vehicles will work with PAT scales.---Okay.

That's what this is about, isn't it?---I'm not sure exactly. Maybe there was an issue with the actual chargers but - - -

You can't give any other reasonable explanation for why you were asking for a letter stating that only PAT scales would fit the existing chargers, can you?---I'm not sure exactly what the cause of that or what the reason if that was.

20 THE COMMISSIONER: So you can't give another explanation?---Not that I can recall what I was thinking then.

MS WRIGHT: And then you say, "That's all I need to deal the deal. The rest, leave to me. I'll rig it accordingly, LOL." Do you see that?---Yep.

30 Now, you gave evidence yesterday that rig means set or establish. I suggest it had another well-established meaning, and solitary meaning, and that is to manage something fraudulently so as to gain an advantage. Do you agree that's the meaning of, "I'll rig it"?---Not necessarily. I mean, I could mean several things and I put, "LOL," at the end. So again, I don't know if it was a joke when I, when I said it or - - -

And so when you said other things like at page 347, "This will ensure Novation wins," was that also a joke?---I'm not sure.

40 See you've said many, many times in these messages, I suggest, things to the effect of that you will rig it and you will do things to ensure that Novation wins and I suggest that's because that was manifestly your purpose throughout this period of time, Mr Soliman. Do you continue to deny that?---Yeah, I do. I mean, like I've already said several times, I've, I, I see now that I crossed the line and I helped a friend's business way, way too much. I realise that.

And do you accept that the crossing of the line involved you rigging a tender for 124 scales conducted on behalf of RMS?---No, because I didn't think, I mean, that was what's happening back then.

Well, we'll keep going. 341. Mr Thammiah has confirmed that he will try and get a letter regarding the use of the PAT chargers and then you say to him, second blue message, "Yeah. It will be noted during the tender review so all other brands would be void by default." Do you see that?---Yep. Why would they be void?

And I suggest that's inconsistent with your evidence that you weren't trying to exclude other brands of scale.---Sorry, why would they be void? I'm missing the subject.

10

Those are your words. "They will be void by default." They can't fit the housings, that's what you think at this point in time.---Yeah, I don't think so because I know there was other options that did fit.

THE COMMISSIONER: Are we talking about fitting or are we talking about the chargers?

MS WRIGHT: Well, sorry, in my mind it's chargers fitting but - - -

20 THE COMMISSIONER: The same thing.

MS WRIGHT: The same thing. But, yes, it's chargers being compatible I suppose is the word with particular scales.---Yeah, I'm not sure, I'm not sure what that, what it means by "they would be void by default".

They didn't make the requirements, that's what it means, isn't it?---It seems like it but again, we, I took the spec out.

30 THE COMMISSIONER: You took that spec out?---Yeah, because we, we found out after that it's not a universal fit.

MS WRIGHT: We're going to come to that because you've dealt with that quite explicitly with Mr Thammiah, haven't you?---Dealt with what?

What you've just said, that you had to change the tender requirements, didn't you?

40 THE COMMISSIONER: That you took the spec out, or you took that out of the spec I suppose you're actually saying.---Yeah, eventually we did, yeah.

MS WRIGHT: And you are the person who did that, didn't you?---From memory I was talking to Jai about it so one of us.

Well, why don't we skip to that now at 417. See you say, "Updated RFQ about to be issued for scales procurement."---Yeah.

“Put the cost quote for chargers on a separate line to the scales.” Now, I suggest that this chain of messages relevant to that conclusion starts at about 406. If we could just go back to 406 lest it be put I haven’t put anything to you. You tell Mr Thammiah on 31 January, “You sent the wrong charger info. LOL. The old scales use these chargers.” And you sent him an attachment, “Three pin. You sent the pics of the chargers for the new scales. LOL.” Over the page he asks, “What are you talking about, Fernando?” And you say, “Yeah, whoever sent it to you.” And he says, “I haven’t sent any charger info to anyone though.” Then over at 408 you say, “David Jones complained.” And then although time consuming if we could just have volume 10, page 37. Thank you. You see here Mr Jones has sent an email to Mr Singh copied to you. The second paragraph I suggest is the relevant one. “The specification in the RFQ is for a six pin connection. However, our RMS current charging units are incompatible.” And then if we just go down I think Mr Singh says to Mr Jones in the previous email on 29 January, “The RFQ requirement is for the scales to fit in the current charging port.” So this is the complaint, or the subject matter of the complaint you’re telling Mr Thammiah about on 31 January on page 408 of the WhatsApp messages.---I’m not sure.

20

Mr Jones is the person who had noticed the incompatibility between the RFQ requirement for a six pin connection and the current charging units. ---It looks like that, yeah.

And if we could go back to page 408, please. You see you’ve said, “David Jones complained, said the tender isn’t valid, he’s right.” See you said that he’s right?---Yeah.

30 Because you had set the tender requirements with the charger specifications which you had asked Mr Thammiah to give you in the messages I took you to, and they were wrong.---That’s not what I meant. I mean like I said, we, we thought that the chargers were universal.

You accept that you had set the charger requirements because you asked Mr Thammiah for them, didn’t you?---Well, you have to set the requirements, of course, you know, you can’t put nothing.

40 And it was you who set the requirements, Mr Soliman.---Don’t know if it was me or Jai but one of us obviously put it in the document.

And your evidence to the Commission on 6 June that you had nothing to do with the tender of the 125 scales was false.---No, that’s not false. I wasn’t in the country when, when the team made their, made their choice.

A truthful answer would have been that you were involved in setting the requirements for the tender, wouldn’t it?---That’s not what I was asked.

You were trying to suggest in your answer that you had nothing to do – or you weren't trying, you did say expressly, "I had nothing to do with the tender. I wasn't even in the country."---Yeah, I wasn't in the country when the committee ran the tender.

Now, just completing that sequence while we're there, at 408 you see you've told him that David Jones complained and then over at page 410, having sent him or told Mr Thammiah that he'd sent the specs, he said, "Where's this pic from?" And you said, "From you. You sent them to me." 10 And he says that he didn't submit them. Over at 411, middle of the page, you tell him, "You sent the pics to me for the RFQ we issued." He says, "Which one, the parts?" And you responded, "The RFQ states the current scales use the six-pin round chargers." Over the page at 412 you say, "Not parts, new scales." At this time there were two RFQs on foot. That's the case, isn't it?---For scales or - - -

There were two. On 17 January, 2018, an RFQ was issued for spare parts. ---Okay.

20 That's the case, isn't it?---If you say so, yeah, that's fine.

And on the same date an RFQ was issued for the procurement of 125 new scales.---Okay.

And you and Mr Thammiah in these messages here at page 412 are clarifying which procurement you were talking about in respect of the chargers.---Okay.

30 And you tell him it's not the parts tender, it's the scales tender.---Okay.

Do you accept that?---Yeah.

And he says he hasn't submitted his tender and you tell him he's confused, and then if we go over to page 414, third blue message, you inform Mr Thammiah that you're extending the tender to next Friday. Over at 415 you informed him, "So we can amend the requirements for chargers." See that? ---Yep.

40 And that's because the PAT doesn't fit the charger specs that had been included, which you had got from Mr Thammiah. Correct?---No. Like I said, I've already given evidence, at some point we thought, we found out that the chargers were not a universal fit, so we took that specification out.

The true position was that the new scale needed new chargers, its own chargers or different chargers, isn't it?---Well, I believe that's the effect of my evidence, that the chargers were not a universal fit to any scale so - - -

There's no issue about universal fit. You wanted chargers that fit only the PAT scale.---I don't think that was the point of what I was doing. Like I said, from my memory, we thought that they were a universal fit.

And at 416, you've told him, "So we can charge for new chargers now." See that?---Yep.

10 And then at 417, you've updated the RFQ to reflect the provision of new chargers. You agree that's what you did?---Sorry, for what? I missed that question, sorry.

You agree that you updated the RFQ to reflect the fact that new chargers would be included in the tender?---Yeah. You would need to put the chargers in it, as we found out, yeah.

Then if we could go back to where we were, perhaps starting at 359. You informed Mr Thammiah here that the tender is going out today.---Yep.

20 And you ask him whether everything's okay and you say, "I'll make sure Novation wins and get the tender. Are you still cool with our agreement so there's no headaches again? Think about it and let me know."---Okay.

So your purpose was to ensure Novation won the tender, wasn't it?---Well, that wasn't my purpose, like I said previously, but I do know I crossed the line and I was happy if he won it.

30 Can you give one single reasonable explanation why you would be saying, "I will make sure Novation wins and gets the tender," if that's not what you meant?---Because basically that was the scale that everyone wanted so I was guessing that's what's going to win anyway, anyway. It was the best product.

You say that's the reason but your purpose remains, Mr Soliman, that you wanted and would ensure that Novation would win.---No. I mean, again, I couldn't ensure that. I wasn't in the country, I wasn't part of the tender. The tender happened, evaluation happened when I was climbing a volcano. So - - -

40 According to criteria that you were involved in setting. You didn't need to be there for the actual evaluation, did you, in order for Novation to win?---I don't agree. I mean, as you found out, there were other options that fit in there and that could have won. The best scale won.

There were no other options that fit, Mr Soliman.---One of the Intercomp scales fit, as we found out later.

If we could have volume 10, page 175. You've been taken to this before, Mr Soliman. It's the tender evaluation report of the committee. The first

line of the scoring summary is that the nominated scale, within the submission, won't fit into the current scale racks installed in the vehicles.---I thought during the evidence that we heard, it was found out that that was not correct. If I'm hearing it correctly, one of the Intercomp scales fit. I don't know which one it was, but I know, I'm pretty sure that's what the evidence was.

The Tender Evaluation Committee doesn't appear to agree with you here. AccuCorp scale was knocked out because it didn't fit.---I understand - - -

10

And you have said in these messages that you would ensure that no scale would fit according to size restrictions. So you achieved what you set out to do, didn't you, with this tender?---That's not correct. I was not part of this tender. I was not in the country.

It's manifestly absurd evidence.---I don't understand why it's - okay.

And then if we could turn over to page 360, we might have already been on 360, sorry of the WhatsApp. Down the bottom of the page you tell Mr
20 Thammiah, "I'll largely stay out of talking with Rish, keep it simple. All I do is issue the RFQ. Essentially if Rish fucks you and doesn't give the licence, then I'll fuck him and I'm not buying his scales." Now, I asked you whether you in effect forced Mr Malhotra to give Novation IRD's sole vendor licence and you disputed that you did.---Yeah, that was always up to, up to him.

Did you, do you agree that you pressured IRD to choose Novation or select Novation as its vendor of scales in New South Wales?---I don't agree with that. I don't agree with that. They just asked me who, what are the other
30 mass management vendors and they sold the competitor's product so - - -

So in your mind you hadn't applied any pressure or influence at all on IRD in their selection?---In my opinion, no.

All right. And then at page 369 I suggest you've told Mr Thammiah something totally contrary to the evidence you've just given, which is that you said in a message on 18 January, "Rish knows if he fucks you, I fuck him." See that?---Yep.

40 Because you had made it crystal clear to Mr Malhotra that if he did not use Novation, you would not buy his scales.---That's, that's not true.

Well, what else are you telling Mr Thammiah here, "Rish knows if he fucks you, I fuck him?"---Yeah, we're talking between mates here, that's how mates talk but - - -

THE COMMISSIONER: It's got to mean something.---It doesn't really mean much. I mean when I'm talking to Rish he was just asking what are the options, these are the options.

MS WRIGHT: It's not consistent with, "He knows if he fucks you, I fuck him." He knows it because you've told him. You didn't have to use those particular words if you're going to give me a technical answer, you conveyed to Mr Malhotra that if he didn't do the right thing by Novation, you wouldn't be doing the right thing by IRD.---I didn't. I never said that to
10 him. That's not fair.

And that's why you in May told Mr Malhotra he could meet with Accuweigh.---That's not true.

And then coming back to 360 where again you've said, "If Rish fucks you and doesn't give the licence then I'll fuck him and not buy his scales," and the over at page 361 you tell Mr Thammiah, "He knows that though." And you're referring to Mr Malhotra knowing that that is your position, the top of page 361. That's what you meant, didn't you?---I don't know.
20

Mr Malhotra knows that my position is that if he doesn't do right by you and doesn't give you the licence, then I'm not buying his scales.---I don't know. You've made a lot out of a few words. I don't know.

That is a message sent eight seconds after the message on 360 where you've said precisely that, if he doesn't give you the licence, I'm not buying his scales, he knows that. So in your mind Mr Malhotra was aware of your position on this. Correct?---No.

30 What you're saying is contrary to what you said at the time. What do you say?---Well, I never, I never forced him to choose any vendor. He was asking me who are the mass management vendors and he went to all of them and the other vendors were selling the competitor product. He was free to choose and he did choose whatever he wanted.

Then we'll go over to 376. You tell Mr Thammiah, "It's all up to me. Trust me. This is solid. Rish knows I'm protecting you. He's not stupid." Mr Thammiah says, "Yeah, that's fine." Over at 377, "Now that he told me he's not passing on costs I'll expect he follows through." You're referring
40 here to the 125 scale procurement. That's the case, isn't it?---That was around that date I think, yeah.

Now, around this time was also the spare parts tender. You agree with that?---Yeah.

And then at page 384 I suggest you and Mr Thammiah got your heads together about the spare parts tender as well. Do you agree with that?---No. Can you, can you show me if you like.

At page 384 you sent to Mr Thammiah a document which has been extracted at page 697 in which Mr Ferguson of AccuCorp informs Mr Singh that "Due to the current arrangements for the supply of spares, Accuweigh is unable to make a submission in response to the scale parts tender." Do you see that?---Yeah.

Why were you sending that to Mr Thammiah?---Not sure. Maybe I was curious if they asked for a quote from him. I don't know.

10

Because you knew that Accuweigh would need to get any parts through Novation, didn't you?---At that point I think they did have to, yeah.

And then Mr Thammiah appears to think that's funny, "Ha ha ha ha." And over at 385 he says to you, "A quick question. Done all my sums. The total is 357,221 based on pricing. Obviously about 220 so I just reduce it to fit the mould." And what you understood by that was he was asking you whether he should reduce his pricing to fit the budget for the scale parts tender.---What was the budget, sorry?

20

You understood that when he said, "so I reduce it to fit the mould", that he was asking you to confirm whether he should reduce his quote from \$350,000-odd to fit the mould being the budget available for the scale parts tender.---It's possible. It's hard to tell by, by these messages.

He's just told you that he's done his sums and the totals in the 300,000 is based on pricing.---Okay.

30

And then he says, "Obviously about 220," and he's asking you whether he should fit the mould. He's clearly asking whether he should reduce his pricing, isn't he?---Like I said it's possible but it's hard to tell by these messages. I don't know what he means. "Obviously about 220," and what mould means.

All right. And then at 386, you tell him, "It can't be? Me and Jai based the RFQ requirements off your last pricing." This is on 25 January, 2018. And so you have based RFQ requirements of Novation's last price list, haven't you?---Of course, yeah. How else are you going to price it?

40

So that Novation is the winner of the tender.---No. I mean, the parts only come from one place so you need to set the specification somehow.

Well, what's the point of an RFQ if it's predetermined who will win it? ---Well, that's not the way the real world works. I mean, you need to base the RFQ on something.

All right. And then he asks you, "So what's the total?" You say you must have miscalculated and he asks, "Do I work it out as packages?" Over at

387 he says, "All right. Sweet." And you say, "Should be around the 220 excluding GST. Yeah, packages." And he says he will update his spreadsheet, and then over at 388 he tells you he's got 180 excluding GST. Now, the evidence indicates that on 25 January Mr Thammiah sent his quote for the spare parts tender and it came to 220, around 220,000, and that's at volume 9B at 245. And then if we could just go to the next page, do you see here, Novation's quote comes to about 218,000 and then I'll just – do you accept that, Mr Soliman?---I can see that here, yes. This is the first time I think I've seen this though.

10

And then at page 227 of this same volume. I'm sorry. If we could just turn to the next page. That's just an email from Mr Singh issuing the RFQ, dated 17 January, 2018. And then the next page, 229, please. And then the next page. See this RFQ didn't set out anything about prices, did it, just the types of parts and the quantities. Do you see that?---Yeah, of course. Yeah.

And that's the whole point of an RFQ, isn't it, to get tenderers to give their, to quote their price and then RMS determines if that's value for money?
---Well, yeah,

20

That's the whole purpose of an RFQ, to determine whether the quoted price is value for money, isn't it?---That's not the only purpose but that's one of them, yep.

And you had informed Mr Thammiah that he should quote around 220 on page 387 of the WhatsApp.---Sorry, where?

Page 387.---I understand can't see it, sorry.

30 It's coming. It just takes a moment for documents to appear. Should be around the 220 excluding GST. You are not supposed to tell a tenderer the amount to quote, were you?---No.

Because they can – I withdraw that. You're not supposed to tell a tenderer the budget because they can then determine their prices based on the available budget and that doesn't provide for RMS best value for money, does it?---I'm not sure the rules around budget, but you definitely can't tell them what to quote for obviously.

40 They may tailor their prices to the budget if they know what the budget is. It stands to reason, doesn't it?---It's possible obviously, yeah.

And I suggest you went even further in – I use this word broadly – corrupting this particular RFQ process in that you eliminated Accuweigh by requiring it to go through Novation for prices for PAT scales?---How did I eliminate them? I don't understand.

Because you sought to ensure that IRD only dealt with Novation.---That's completely false. That's like if Apple sells to Samsung. I mean, no, it doesn't make sense.

It was predetermined in your mind, Mr Soliman, that Novation would get this spare parts contract.---At the time they had the licence anyway so I mean - - -

10 You were the decision maker.---What was I deciding?

On this RFQ for spare parts.---I don't think so. I thought it was Jai.

You decided, not Jai, who would get this contract for spare parts in the early part of 2018, didn't you?---I don't understand how. I mean, Novation had the licence already and - - -

20 THE COMMISSIONER: So your evidence is you didn't make that decision?---I don't think so. I thought I just saw Jai on there, on the document.

MS WRIGHT: Jai answered to you. You were the manager. He couldn't make a decision about this without your say-so, could he?---Why not?

THE COMMISSIONER: Do not, please, Mr Soliman, answer a question with a question. Do you disagree with that proposition that was put to you that Jai would not be able to make this decision without involving you or referring it to you?---I disagree.

30 Do you disagree with that?---I disagree. He could have, yeah.

MS WRIGHT: I'm just going to ask you a few more questions about the 125 scale procurement. Your messages go on at page 390 to inform Mr Thammiah that the dimensions listed in the tender don't include the handles. Do you see that there at the bottom of the page?---Yeah.

At 391 you told him that when he quoted to list the scale dimensions not including the handles.---Okay.

40 And so the size dimensions were all important, weren't they?---Yeah.

And then at page 392 he asks you what the price point should be. He says, "And price point?" Do you see there?---Yeah.

You understood him to be asking about the price of the scale. Well just go on. 393. You see here the first message is, "By the way I'm creating the contract for parts today. We won the tender." And then you answer in the next question his most recent message which was, "What's the price point?" And you say, "Price point 15,000 per scale."---Yeah.

So you informed Mr Thammiah what price he should quote for the scale?
---I don't think so. I'm sure he would have told me that's probably what the prices are.

And when you gave evidence at page 1433 at line 33 in June that he found out, sorry, that you found out Mr Thammiah's price for a scale at the time of the second tender, that was not correct or true evidence, was it?---Sorry? I don't understand the question, sorry.

10

I took you to some evidence this morning that you gave back in June, and one of the things you said was that you thought you found out the price of Novation's scale at the time of the second tender.---I think that's what I said, yeah, I'm not sure.

And you were suggesting that you didn't know the price prior to the tender for the 425 scales later in 2018 when you gave that answer.---Okay.

20 And these WhatsApp messages, which weren't available to the Commission when I asked you about that back in June, indicate on page 393 that Mr Thammiah has asked you what price the scale should be and you've told him it should be \$15,000 per scale.---Okay.

So what I'm suggesting is that your answer wasn't truthful when you were asked about your knowledge of Novation's pricing.---No, I don't agree with that. I mean I gave answer to the best of my memory at that, at that point.

30 And you know that telling a tenderer what their price should be is totally contrary to procurement policy.---I'm sure I wouldn't have, I wouldn't have told him that if he, if he didn't tell me prior that's what he's going, going to charge.

He's asked you.---Maybe he was checking but - - -

"Price point?"---I mean there's no way I could just pull kind of a number out of my arse like that, I mean - - -

40 THE COMMISSIONER: Yes there is, because you go on and say, "That's what I based this funding request of, off."---But it must come from somewhere, I mean how do I know how much he should, he should charge? I'm sure he would have told me at some point.

MS WRIGHT: You've put in a funding submission which maximises the profit and you've worked out how many scales to procure based on a very healthy profit which you and Mr Thammiah would derive from that price. ---I don't agree with that. I don't think I came up with a price. I mean it seems a weird number just to come up out of nowhere, sort of thing.

And you were well aware that IRD's scale wholesale price was well below A\$15,000, weren't you?---I think he told me sometime during 2018 or '17, I don't know when.

Now, going over, Mr Thammiah says, "Sweet." And he asks, "Will David see the prices?" And that you understood to be a reference to David Jones? ---Must be, yeah.

10 393. And then at 394 Mr Thammiah says, "Wondering if that might affect his decision." And you answered, "Yeah, he will have no choice." Thammiah, "Cool, cool." And then you say, "Because you should be the only one that meets the criteria." So price didn't matter as Novation would be the only one to meet the criteria. You agree with that?---No. I mean others met the criteria too I think.

And you're referring here mainly to the size criteria?---Yeah, but again, you just have to put it into the scoring of the tender process.

20 And you understood Mr Thammiah was expressing concern that if David Jones knew the price he might not choose this scale because the price was so high.---It looks like that's what he means. I'm not sure what - - -

You understood that's what he means because you said, "He'll have no choice. You're the only one that will meet the criteria."---Yeah, that was a guess, I guess, I'm not sure.

30 And then at 395 you ask him in the second blue message on the page, "Any issues let me know so we can finalise the submission together." So you were prepared to be involved in the drafting of Novation's submission for this tender?---No, but like I said, I did help him way too much and I crossed the line between friendship and his business.

So isn't the answer yes to my question, that you were prepared to - - -?---I was willing to help him, yeah.

40 And then at 396, this is where you tell him David Jones is, you say, "Kicking up a stink that the current chargers aren't compatible with new scales," and you suggest that Mr Thammiah, in his tender response, state that he's providing chargers free of charge. You see that?---Yep.

MS HOGAN-DORAN: Just for the benefit of the transcript, perhaps if the words that were used in the message be used in the question by Counsel Assisting. Sorry, there's just - - -

MS WRIGHT: Yes. Well, I'm not sure what the purpose of that would be. It's just to shorten things.

THE COMMISSIONER: Yes. Keep on going, Ms Wright.

MS WRIGHT: I am doing that when I think that's very germane to the answer.

THE COMMISSIONER: Yes.

MS WRIGHT: I've taken you to the messages in relation to your decision to change the tender specifications in relation to charges, so I'll skip over to page 404. Mr Thammiah raises with you, in the second green message,
10 "Hey, there's a comment about providing evidence that the scales are capable of being used for at least 10 years." You say, "Yeah." And you say, "I put that in there to make sure we win. All you have to do is list countries/states that have used PAT scales longer than 10 years." Now, you said, "I put that in there to make sure we win," because you had included a criterion that tenderers provide evidence that the scales are capable of being used for at least 10 years in order to ensure that Novation would win. That's the case?---No, it was more of a durability thing. Obviously if you spend that much, you know, you need to make sure it lasts. You only buy these things once in a lifetime.

20

THE COMMISSIONER: So you haven't put in your answer, "I put it in there to make sure that they're durable and going to last." What you put in your message was, "I put that in there to make sure we win."---Yeah. That wasn't really the real purpose of the criteria, obviously. You need a durability criteria.

MS WRIGHT: If you said it it's because you meant it, Mr Soliman.---I don't think so. I mean - - -

30 Because these were private, secure messages in which you were speaking very candidly with Mr Thammiah about your scheme to rig, your word, this tender process.---I don't agree with that. I mean, you have to have a durability criteria in there. That, I mean, it wouldn't make sense not to have it in there.

And then you tell him, "All you have to do is list countries/states that have used PAT scales longer than 10 years. Obviously New South Wales's one. Boom," exclamation mark. And isn't boom, which you've used now a couple of times in these messages, intended to convey "and we win"?

40 ---No. Just like, you know, it's hard to explain what that means but - - -

Well, I'm familiar with the word boom and I'm putting to you that what you meant in this context is "we win".

THE COMMISSIONER: Do you agree with that or not?---No.

MS WRIGHT: Now, I'll just take you back to 426, or forward to 429, but it's a page I took you to yesterday. Do you remember I took you to a

message where Mr Thammiah asked you whether anyone else from your work was at the wedding?---Yep.

And then at 427 you told him that you were meant to invite the team but decided against it, didn't want drama if someone recognises your name also.---Yep.

10 And that is because you were misleading your team at RMS into thinking that you were independent of Novation, weren't you?---Mmm, not necessarily, but I think at this point, you know, I was thinking had I crossed the line or not, so maybe that's the term, that's the lines I was thinking.

And you were seeking for it to remain a secret at this stage that you and Mr Thammiah had a personal friendship.---No, like I said, Mr, Mr Singh knew so it wasn't like it's a secret.

Mr Singh was at the wedding.---Yep.

20 And you've said here that you didn't invite anyone else from your team to the wedding.---I mean, I didn't really talk to anyone else. They weren't friends, so.

That's not what you've said here. You said, "I was meant to invite the team but decided against it to ensure they didn't realise that you were there and that you're my mate."---Okay.

30 That's because you were hiding your personal relationship with Mr Thammiah from RMS. It's obvious, isn't it, Mr Soliman?---Well, like I said, I mean, probably around this point, sometime in 2018, I was thinking, "Have I crossed the line just to get the job done?" But maybe that's, that's why.

And you even went so far as not to invite people you otherwise would have invited - - -?---No.

- - - because I suggest your greed was completely out of control at this point.---No, I would not ask someone to come to my wedding that's not my friend, you know.

40 And then at page 428 you say, "Anyway, it's all set for this tender. My job is done. LOL. Fuck, what a slog for two years. Over to you, son. We'll talk about specifics about how I'll get cash from you later on once we've jumped this hurdle. Two to 4,000 every week is still reasonable but we'll talk later." You see that?---Yep.

So it's all about you receiving monetary reward for using RMS's procurement processes to favour Novation and benefit yourself and Mr Thammiah financially.---I said that's not the way I saw it. I've already said

that, you know, I crossed, crossed the line and, yeah, he was, he was, he was giving me alone. That message there is during the time of the build of the house. I mean, I don't know, what else do you want me to say?

And then at 433 - - -

10 THE COMMISSIONER: But no reference to loan, nothing about "I'll be borrowing from you" or anything like that. "We'll talk about the specifics and how I'll get cash from you later on, once we've just jumped this hurdle. Two to four K per week."---Yep.

Not a mention of a loan.---Well, we spoke about the loan before everything, how it was, we were planning to pay back after the actual house finished. I mean, it doesn't make sense to talk about - - -

It's your division of the proceeds, isn't it?---No. That's, that's not fair. That's not correct.

20 It is fair. It's a fair reading of all of these WhatsApp messages, isn't it, Mr Soliman?---No, I don't agree at all.

All right.

MS WRIGHT: Then at 433, on 9 February, 2018, to add to what I took you to earlier about NEPEAN's submission, you tell Mr Thammiyah on 9 February that NEPEAN Transport has just sent their quote and it's for \$5,600 for the Intercomp LP600 model. You see that?---Yep.

30 And you tell him that "It technically meets the requirements for dimensions, but he didn't respond regarding your requirements like the longer handle, et cetera. Jai will disqualify them based on that." You see that?---Yep.

Had you discussed that with Jai?---I don't think so. I don't recall.

40 What's the basis of your assertion here that Jai will disqualify NEPEAN based on the fact they didn't respond to other requirements?---Not sure. It was a guess that, you know, if you don't meet a mandatory requirement or, I don't know, to be honest, I don't know what that meant exactly. I don't know if he told me or if it was a guess.

You had confidence that Mr Singh would manage his involvement according to your instructions, didn't you?---No.

And did you instruct Mr Singh to disqualify NEPEAN for not responding to other criteria notwithstanding that NEPEAN's scale in your assessment met the restrictive size requirements?---No. I was not in the tender. I was not in the country when they made their choices and ran the evaluation.

Then at 440 Mr Thammiah tells you as long as we get the, or he says, “Long as we get the scales tender.” Now, I suggest that that's followed some messages about maintenance of scales. Do you accept that from me?
---Yeah, that's fine.

And you stood to earn much more – I withdraw that. You both knew that you stood to earn much more money from the procurement tender than from the spare parts tender. Do you agree?---No.

10 And then at 445. I've already taken you to that where you inform him that we can't lose this and that you can decide on quotes. Then I'll just skip over to 464. Now, here is some messages on 12 March, 2018. You were back from your leave about this date. Do you agree with that?---I think it was, no, I think it was after. I'm, I'm not, I'm not sure, sorry.

That is, this was after your leave and you were back at work.---It's possible. Okay. Yeah.

20 And you said to Mr Thammiah that the process was halted like I thought and you tell him they chose the Intercomp scale.---Okay.

And was it the case that you had learned that the Intercomp scale had in fact been selected by the Tender Evaluation Committee?---That's correct. I think Jai told me when I was back, yeah.

30 And that was because Mr Jones had raised an issue with this tender in which he had complained that he thought the size restrictions were too restrictive. ---Yeah, I think Jai answered back that, I mean, he was the one, Jai told me that it was weird because they were the one that gave the specification so
- - -

40 And then going over to page 465 you inform Mr Thammiah that “I stopped the process. Meeting my exec director today to reverse the decision. Lucky I came today. I will get approval this week for the contract so get IRD ready a.s.a.p. PS don't trust DJ. He was the one who picked Intercomp over PAT.” Over to 466, “He is the one who stopped the process. He refused to sign the tender report which recommended Novation.” So this was, this made it necessary for you to intervene in this tender process, didn't it?---No, I don't think I did intervene. I think it was already out before I got there.

You told Mr Thammiah that you did.---I don't think I did though.

Well, you've told him in the past tense, “I stopped the process.”---Yeah.

And you're meeting with your executive director to reverse the decision. “Lucky I came in.”---I'm pretty sure Jai had already sent, sent it out, so again misuse of the word “I” and “we” or - - -

THE COMMISSIONER: So did you or did you not stop the process?---I don't think so. From memory Jai had already stopped it and pushed it up, up the chain to recommend the PAT scale before I even came, came back.

MS WRIGHT: All right. Well, I'll take you to 472 where you say something I suggest which is contrary to the evidence you've just given. You tell Mr Thammiah you're putting your arse on the line, "Executive director wanted assurances from me that whoever I pick will have the scales within three months max. I pinkie-promised her and she let me select whoever I want, so Novation is in. Tender documents will be signed today."---Yeah, that was a joke. I don't even, the "her" doesn't make sense because I was probably talking about Arnold.

It's not a joke, Mr Soliman.---Yeah, that was a joke because I didn't pinkie-promise anyone.

There's nothing in there to even suggest an inkling of humour. You're telling Mr Thammiah facts here, aren't you?---Well, I didn't pinkie-promise anyone. That would be stupid, to even pinkie-promise your manager, you know.

It's just an expression, isn't it?---It's a joke.

It's a light-hearted way to say that you had told your executive director that Novation would deliver within three months max in order to cause her to allow you to select Novation's scale.---That's not true, as we've, no, you're missing a lot of things here, you know. I think Jai was basically told by Arnold and Brett to get this over the line with the PAT scale prior to me getting there. That's what stopped the process.

THE COMMISSIONER: So when you said at the bottom of page 471, "Sorted." And then on the next page, "Putting my ass on the line though. Executive director wanted assurances from me," my reading of that is it indicates that you've had a very active involvement in getting Novation to be the successful tenderers. Are you saying this isn't true, what you've been saying in the WhatsApp?---Don't think so but I just remember Arnold came, came to me, it was like, his first month or something, he said, "Make sure this happens quickly," you know, because he knew obviously the risk.

No, no. All right. So this isn't true, you didn't sort it, you didn't put your ass on the line, you didn't give any assurances to the executive director. Is that what you're saying to me?---Not to the executive director. I think that must be a mistake. It's just my senior manager. I'm not sure why that's in there.

MS WRIGHT: Commissioner, would you wish to break? I'm content to keep going but - - -

THE COMMISSIONER: Is that a convenient time for you?

MS WRIGHT: Yes, yes.

THE COMMISSIONER: All right. We'll have a morning tea break and resume at about 5 to 12.00.

10 **SHORT ADJOURNMENT**

[11.33am]

THE COMMISSIONER: Right. Mr Soliman.

MS WRIGHT: Mr Soliman, on 15 March, 2018, did you send to Mr Thammiah the complaint by Mr David Jones that he would not be signing the tender evaluation report in relation to the tender for the 125 scales?---I don't know but I'm sure you can show me.

20 If we could go to page 488 of the WhatsApp bundle. See here your message containing an attachment. And then if we turn to page 703, the extraction report indicates that the attachment which you sent to Mr Thammiah was indeed an email from Mr Jones to Mr Singh which was copied to you in which he said he would not be signing the tender evaluation report, the RFQ was too restrictive regarding dimensions and other applicant submissions were unable to meet specified dimension, and it goes on. So you accept you did send it to Mr Jones?---Thammiah, yeah.

30 I'm sorry to Mr Thammiah, yes. And if we go back to page 488, you then use some very disparaging comments to describe Mr Jones in another message to Mr Thammiah. Do you see that?---Yep.

And you say, "I'll be removing him from all future tenders." You see that message?---Yep.

You did in fact deliberately exclude Mr Jones from the next Tender Evaluation Committee for the tender of 425 scales on June of 2018?---No, I didn't.

40 He was not on that committee, was he?---That's right. He didn't, he didn't want to be.

He had raised issues with the 125 scale tender process?---Not the process, no.

And that could have upended your goal of having Novation selected in that tender?---No. I mean, that's not what happened, you know?

And as a consequence you told Mr Thammiah that you would be removing him from all future tenders?---That's not what happened. I was probably just talking myself up but no, I didn't.

It just happens, coincidentally, to be consistent with the facts.---That's not true. I told, like I said earlier, I told Jai to, to get, to get him in there and then Jai came back and said, "He doesn't want to be part of it."

Well, I suggest that evidence is false, Mr Soliman.

10

MR YOUNG: Well, I object, Your Honour. As far as I am aware, there's been no evidence at all that Mr Soliman ever excluded Mr Jones from future tenders.

THE COMMISSIONER: I thought there was evidence – oh, I'm sorry, Ms Wright.

MS WRIGHT: Well, it's an inference that I'll be submitting can be drawn from a range of material, including what I submit is an admission on page 488 of these WhatsApp messages.

20

THE COMMISSIONER: All right.

MR YOUNG: It's inconsistent with other evidence but anyway.

MS WRIGHT: Then you told you Mr Thammiah, on page 489, to which we will turn now, that the LP788 model is promising. That was an Intercomp scale, correct?---Yep.

30 And you asked him to use that information when he spoke to Rish about dropping his wholesale price.--- Yep.

"Because technically, there is no way we can win the next tender now that we are made aware of a cheaper alternative." And over the page at 490, you suggest that, "Mr Malhotra realistically needs to drop his price to ██████ US otherwise he sells zero." See that?---Yep.

40 Then over at page 498, sorry, 497. If we could just go back. You tell Mr Thammiah that it's been successful and you're referring to Novation's selection in this tender on 15 March?---I assume so, yep.

And at 498, you message him, "Calling now." Do you see at the top of 498?---No. Oh, yep.

And you had a conversation with Mr Thammiah on the phone at that point. This is at about 10.30 in the morning on 15 March. Is that the case?---I'm not sure. There's no WhatsApp call here.

Well, you tell him, "Calling now."---Yeah. I generally use WhatsApp to call him.

And then you say, "That call was just for Jai's benefit by the way. Got to buy his trust." Do you see that?---Yep.

And so you had had a conversation with Mr Thammiah in front of Mr Singh at about 10.30 on that date?---I guess if that's what these, these messages say, yeah.

10

And the subject matter of that conversation was the successful tender by Novation for the scale procurement?---Yeah, I'm not sure.

And in that message I suggest you asked Mr Thammiah how much he had to pay IRD.---Sorry, during the phone call?

Yes.---I don't think so. Why would I ask that?

20 All right. I'll take you to the messages. But just dealing with the call being "For Jai's benefit," why did you say that?---No, because he was running it so, I think he was, so he must have been probably tying up the contract and everything like that.

But why is the call, "Just for Jai's benefit"?---Well, he must have needed some more information I guess. I'm not, I'm not sure.

30 Don't you mean that because you say in your next message, "Got to buy his trust." Does that shed any light for you on why you said, "Just for Jai's benefit"?---No, but maybe Jai and Steve have to kind of trust each other to get through the next step. I don't know.

I suggest there was a much more calculated purpose in this call, Mr Soliman. Do you agree with that?---Well, what's, I don't understand what you're saying, what was the calculation?

40 You were trying to buy Mr Singh's trust by having a telephone call in which you appeared to be having an at arm's length conversation with Mr Thammiah about his successful tender.---That doesn't make sense. He already knew that I was friends with him, I mean - - -

THE COMMISSIONER: Knew you were friends but didn't realise the extent of your involvement in the tender process as revealed by the WhatsApp messages. Isn't that the case?---Yeah, he didn't, he didn't know that I was, I guess, talking to him about, about his business, but what's, I don't understand what that's got to do with it.

MS WRIGHT: You're having a conversation with Mr Thammiah for appearance sake in which you appear to be giving him information and

asking him for information which you don't already know and which you knew in the background because you'd been scheming together.---I don't know. I don't know.

And you knew that Mr Singh was not aware about your scheming to secure this tender for Novation. That's why you made that call for Jai's benefit. Isn't that what you mean in these messages?---Don't know what was said on the call so I can't answer that.

10 All right. Well, I'll take you to that now. If we just stay on 498. After you say, "Got to buy his trust," Mr Thammiah says, "All good." You say, "All good. We won!!" Over the page at 499 Mr Thammiah says, "Yeah." You, "Good work, bro." Mr Thammiah, "Now I've got to try and squeeze IRD." And you say, "Yeah, as soon as we get the quote from you we will issue the letter of acceptance." And Mr Thammiah says, "No. Letter of acceptance first then quote from me." And over the page he asks for a purchase order. Do you agree with that?---Yep.

20 And he says, "Jai will do it." And he says, "LOL. You can't ask how much money I need to pay IRD, that's like saying how much I'm making off the deal." And at page 501 he says, "Crazy bastard, I avoided that trap." And you understood what he meant by all of that, didn't you? "You can't ask how much money I need to pay IRD."---(No Audible Reply)

Do you understand the messages, Mr Soliman?---Yeah.

You had said to him on the phone in front of Mr Singh, "How much money do you need to pay IRD?"---I don't know. I don't think so.

30 Hadn't you?---Why would I ask that? I mean it doesn't make sense.

And Mr Thammiah said that he hadn't answered that question because that would be a trap and that would indicate how much he'd made off the deal, that would reveal how much he'd made from the deal, because it would reveal his very extensive mark-up or profit in revealing the wholesale price, wouldn't it?---Potentially, but I don't, I don't see why I would ask that, what's that got to do with me, you know.

40 Well, you tell him over at 502, the second message you say, "Yeah, I asked that just for Jai's benefit." Do you see that?---Yeah.

See that message?---Yeah.

And I suggest that's your response to his messages on pages 500 to 501 in which he says, "You can't ask me that. It's like saying how much I'm making. I avoided that trap." And you say you asked that just for Jai's benefit because you already knew what Novation was making based on

IRD's wholesale price, didn't you?---No. Then why would I ask it? It doesn't, this doesn't make sense. There's something missing.

THE COMMISSIONER: Mr Soliman, the answer there is clearly in the second message you give on page 502, "Yeah, I asked that just for Jai's benefit."---It sound like Jai was asking. I mean - - -

10 And again, you're putting on this performance or appearance that you know none of the details of the Novation bid and its relationship with IRD because you want to keep away from Mr Singh your integral involvement with Novation. That's why we've had two messages where you're talking about putting it on for Jai's benefit or, yes, 498 was in the same terminology, "That call was just for Jai's benefit." That's what you were - - -?---Yeah.

- - - trying to do, wasn't it? That's the inevitable inference that one would draw.---Jai's benefit means that he was asking. That's the information he needed. I mean, I don't understand how the other - - -

20 I'm not asking about that. I'm asking about your use on two occasions that you've asked or you've called for Jai's benefit.---That's right, yeah.

And it's to put that appearance forward that you're not part of Novation. You're not in integral part of this Novation successful tender.---No. I mean, it sounds like I want to say for Jai's benefit. Jai was asking something.

So you disagree with that inference I've put to you?---Yeah. That's not, I don't think that's what I was trying to do. Definitely not.

30 All right.

MS WRIGHT: At page 508 on 15 March you've asked Mr Thammiah for \$17,500.---Yeah.

And you ask him how soon he can make a withdrawal. Do you see that? ---Yeah.

And that money is directly connected to Novation's business.---What do you mean?

40 Well, you were getting that money for your work in relation to Novation's business, weren't you?---No.

At the same time – I withdraw that. At page 522 Mr Thammiah sent to you an attachment. Do you see that?---Yeah.

And do you recall receiving that?---I can't see it.

Well, it's at page 705. Do you see, it is a bit difficult to see but it appears to be a draft email to Rish. You can just see the last two letters s-h.---Yeah, I do remember this, yeah, yeah.

Yes. And he says, "Saying I am insulted that IRD are asserting that I should accommodate the price reductions as requested by the end customer," and it says, "and rude of me to ask IRD to disclose their manufacturing baseline cost sales commissions, and yet you have chosen this path. It shows a lack of business maturity." It appears to be a complaint by Mr Thammiah to
10 IRD. Do you agree with that?---Yep.

And then if we go back to the messages, 522. He told you he was going to send that to them now, the last message on the page.---Yep.

And over the page at 523. You say to him, "Whoa, no, no, no. That incriminates me first of all. Delete that, bro. Really unwise especially since you need to cooperate with them to make sure you meet the 90-day deadline for this tender." And he asks, "What incriminates?" over at 524. You tell
20 him, you give him a quote from his draft complaint to IRD in this message, "The winner of this tender will have a great chance to win the other tenders." Do you agree with that?---Yep.

And then you say at 525, when he sends you the same complaint, perhaps with some amendments, you say, "Remove the first line. I am not allowed to discuss price at all with vendors." And over at 526, "Remove all references to the customer. That incriminates me, showing I've been discussing price with you." So you knew full well that what you were doing in discussing price with Mr Thammiah was wrong, didn't you?---Yeah.
30 Like I said, I think it was around this time I was starting to ask myself had I crossed the line but I wasn't really focusing on that. I just wanted to get the scales renewed.

It was well before this time that you had that realisation, I suggest, Mr Soliman.---No. I think was around the time I was starting to ask myself, you know, is this, have I crossed a line with my friend's business but - - -

And then at 536. You tell Mr Thammiah that you've spoken to Mr Malhotra of IRD and I suggest that's clear from 533 onwards, but there's a whole chain of emails. If we could just flick back briefly to 533. He tells
40 you that Rish has just called and he tells you he's negotiating price and then on 535, you say he just tried to call, so Mr Malhotra had tried to call you. Do you agree with that?---Sounds like it, yeah.

"I'm not getting involved, not calling him back." And then at 536 you say you answered his call. "I was vague but clear, price must drop. Leave me out of it. You deal with Steve only." So they are things that you told Mr Malhotra when you spoke to him, that IRD's price must drop, to leave you out of it and deal with Mr Thammiah only. Is that the case?---I'm not sure.

And to start manufacturing immediately, as you said in the final message on that page. See that?---Yeah.

And then on 537 you say to Mr Thammiah that he asked you, “To drop the price now or can it wait for the next order. I said ‘Talk to Steve but if Steve’s quote for the next order is lower, it doesn’t look right.’” See that?---Yep.

- 10 And you and Mr Thammiah wanted IRD to drop their price so that you could maximise your profit, didn’t you?---Again, I mean that was nothing to do with me to be honest, no.

But you were trying to look like you were impartial bystander when you told Mr Thammiah that it had nothing to do with you and he should deal with Mr Thammiah, were you?---No. I mean, but it had nothing to do with me and they shouldn’t have been talking to me about it. I mean, what’s it got to do with me?

- 20 And at 548 you informed Mr Thammiah that the executive director had signed the purchase order for approval of the transaction.---Yep.

And you even sent to him the email confirmation from her assistant, you see at page 707?---Yeah.

And then you told him that RMS would pay within a fortnight on the bottom of page 548.---Yep.

- 30 And then at 566 you say, “I mean that if we get paid, dot dot dot, and Rish fucks us, dot dot dot, it’s no good.” I suggest “g-o-o-s” should be “good”. So there was some question whether IRD would deliver at this point and you’ve referred to “we” get paid, and by that you’re referring to the payment by RMS for the 125 scale procurement.---Hmm, I’m not sure which one, but probably the scales if that’s what’s happening around then, yeah.

And it’s your money too, isn’t it?---No.

- 40 And at 574, if you just spend a moment familiarising yourself with this page.---Yeah.

You were asking Mr Thammiah to contact a company about fibre-optic WIMs equipments to get that extra business for Novation.---I think Steve was asking about this, he was curious about the fibre-optic technology.

You’ve said to him, “Here’s the new fibre-optic WIM company.” So you were introducing the idea to him, weren’t you?---No, he was talking about it and obviously I’d come across one or something like that.

And you both thought there would be opportunities to expand Novation's business?---I don't know. I mean that had never been used before so there was no kind of like perception of what it could or couldn't do.

Then at 589 on 26 April, 2018, you said to Mr Thammiah that it was, "Now time to work the bureaucracy for the next tender." Do you see that?---Yeah.

10 Because you now set your sights on securing a win for Novation for the procurement for the balance of the portable weigh scales.---No. There was no funding at this point I believe.

And it was time to work on the bureaucracy to assure that funding and to assure that a second tender would be conducted.---Well, we need to basically, they make bids and stuff like that but the whole branch was a bureaucracy so - - -

20 And Mr Thammiah on this page sent you a letter of apologies from IRD about a mess-up with some dynamic software. Do you recall that? I can take you to page 712.---I vaguely recall what the subject matter, yeah, it's fine.

Mr Malhotra wrote directly to you at RMS and in the third-last paragraph he stated that "As a testament to our commitment to RMS, please accept six SAW 10A III Australian version scales out of the 125 already ordered at no cost to RMS or Novation Engineering." He said they took responsibility for the unfortunate situation and that concerned a problem with some software for the Dynamic scales that had been provided.---Yeah.

30 And you said to Mr Thammiah on page 590 that there was a risk in this mea culpa by IRD because Novation wasn't passing on refunds. You said, "Seeing as Novation isn't passing on the refund to RMS . . . this is risky. Tell Rish to send it to you." Do you see that?---Yeah. That's not correct, no.

40 And what you meant was you didn't want to receive it yourself because it would become apparent to RMS that it was not receiving refunds that had been passed on by the manufacturer or the supplier in Canada to Novation. That's the position, isn't it?---No. Because again, there's something missed here. I believe Steve replaced it with other scales not a refund. I think. Got to ask him.

You knew that Novation wasn't passing on refunds to RMS, didn't you? ---Yeah. I think he made a replacement.

I'm not asking you that. Your email is, your message, "Seeing as Novation isn't passing on the refund to RMS this is risky," is premised on you

knowing that Novation wasn't passing on refunds to RMS. Do you accept you knew that fact?---That's what it says here but that wasn't the purpose.

THE COMMISSIONER: Not asking the purpose. She's asking you about the message you sent where you assert that Novation isn't passing on the refund to RMS and you knew that at the time that you sent that message must be the case.---Yeah, I knew because he was going to give a replacement not, not a refund.

10 MS WRIGHT: Then at page – I'll just stay on 590 you tell him that Cross finally responded and that related to the WIM, the fibre optic WIM's equipment.---Yeah.

And at page 591 you say, "I'm going to refer them to you as the RMS mass management partner." And you say you've cc'd him, that is Mr Thammiah, on your response to Cross referring Novation. You made a referral to Cross of Novation for that work, didn't you?---I think I told them they were the ones that were supplying the mass management hardware or something like that. I don't know exactly what I told him.

20

And your purpose in doing that was to tell them that no other vendor should be selected other than Novation.---No, I don't know. No, I think I was just telling him - - -

Well, you've said here to Mr Thammiah, "so no other vendor has a shot".---I think I just told them who the current vendor that's getting the mass management hardware is.

30 And if we go over to 601. On 10 May you told Mr Thammiah, "Okay. So I called Rish. Well, he called me on WhatsApp. LOL. I said thanks for the refund, blah, blah. Then to the licence I said IRD has to finalise their preferred licence reseller for a three year period because I'm going to tender for all three years' worth of scales at once. He initially said no he can't. Only one year." 602, "Then I said well . . . I can't award a tender to a vendor that can't guarantee delivering the product for a three year period. He said he'll check with his legal guys and chat to you." You were lining up a situation where IRD was required to use Novation and where Novation would be selected in a future tender for the remaining scales, weren't you? ---No, but it's the same thing I've said before several times. It's a big risk to keep on changing vendors year, year to year like this.

40

This was a major contract so far as portable weigh scales were concerned for RMS that was coming up, wasn't it? A contract worth upwards of \$9 million?---Sorry? No, there was no funding at this point at all, or no even breath of funding coming.

This is in May, Mr Soliman. The 125 scales procurement has been completed and you're referring to a tender for a further set of scales for RMS, aren't you?---Yeah. So there was no funding in for the next round.

And you've told Mr Malhotra that you wouldn't be able to award a tender to a vendor that can't guarantee delivering the product for a three-year period? ---Yeah, it's a big, that's a very big risk.

10 You just made that up in order to put pressure on IRD to sign with Novation for a further three years, didn't you?---No. That's true, it's a very big risk to, to go with a supplier that obviously can't, can't basically give the whole scales which we purchased.

603, 604. You told Mr Thammiah that \$7 million had been granted for the scales procurement. Do you see that on 11 May?---Oh, yep.

So you knew on 10 May that funding was imminent, didn't you?---I'm not sure exactly when. I thought it was much, much after this.

20 And you had put in submissions for funding to replace the entire fleet of scales.---Myself and Paul, Paul Hayes did previously, yeah.

And you knew that funding was going to be forthcoming.---Definitely not. There were five years where it wasn't forthcoming. This was a fluke because of the risks that the senior management have put on themselves by not answering any of the warnings.

30 And then you said at 603 to Mr Thammiah that you're trialling the Intercomp scales with David Jones on Wednesday. Do you agree?---Yep.

And then over at 604 you tell Mr Thammiah to drop off the new scale to him on Monday and you say, "I'll be getting videos and photos on the trial day for the scoping study which will ensure that PAT scale is recommended." Do you see that?---Yep.

So you were going to interfere with a trial to ensure that the PAT scale came out of top?---No but I mean, if it was the best one, then that is what is the best scale, basically.

40 THE COMMISSIONER: But you're saying, "So I will be getting the videos and photos on the trial date for the scoping study which will ensure the PAT scale is recommended."---Yeah. Because it's the best one.

So you're – do you say that in the message? You're pre-judging, aren't you pre-determining what the result's going to be?---Not necessarily but I mean

- - -

That's what you say, isn't it?---Well, I mean, you can't say everything over a message, you know? What, what's in your, in your head.

MS WRIGHT: And then 605, you told Mr Thammiah, "Think I'll trial them over a few days at least. Really want to break the Intercomp." Can you see that?---Yep.

And then you say, "Which will seal the tender for us." Do you see?---Yep.

10 So you were prepared to rig this trial to ensure the PAT scale was recommended?---No. That wasn't the point of it.

And that would even extend to you physically breaking another scale to ensure that the PAT scale was selected?---No, that's not – you're reading it wrong, actually. You know, the whole purpose of one of these trials is to basically try to break it to see if it's durable.

And you would ensure that the Intercomp broke, wouldn't you?---No. And as it turned out it broke before I got there so - - -
20

And you then sent some negative feedback about the Intercomp scale to Mr Jones which you cc'd to Mr Singh and Mr Lee about that matter, didn't you?---Yeah, well, he's the one that gave me the feedback.

THE COMMISSIONER: Did you or didn't you, yes?---I think so, yeah.

Good.

MS WRIGHT: And you were taken to that. Now, at 619 you texted or sent
30 WhatsApp messages to Mr Thammiah during the scale trial itself on 24 May.---Okay.

Do you agree with that?---(No Audible Reply)

Do you see you say, "Formal trial?"---Okay, yeah.

And you tell him, "Today is just me gaining buy-in from DJ to ensure they vote PAT."---Yep.

40 So you weren't there for any open-minded or independent purpose to test different scales, you were just there to garner support from your colleague, Mr Jones, for the PAT scale and to ensure if necessary that you could break the Intercomp.---That's not true. I mean like I said, it got, it broke before I ever got there and DJ was the one who said very bad words about the Intercomp scale.

You thought through every aspect of these tenders in a very detailed and calculated way, I suggest, Mr Soliman, didn't you?---Not really.

All of the details involved - - -?---I don't think it was everything but obviously I was way too close to Steve and that was the issue.

And then at 645 you discussed with Mr Thammiah RMS's payment of invoice 204/02 which was its invoice for the first tender. Do you see here at the top?---Yep.

10 Perhaps if we just go back slightly, 644, Mr Thammiah tells you – in fact I might just – I'm sorry. There's just so much detail, Commissioner. 642 you tell Mr Thammiah, "Let's chat about financials tonight. We've got to plan for the next financial year. \$5 million approved for this coming financial year for scales procurement. At 15,000 each we can get 333." This is on 8 June, 2018, so you were already thinking about what unit price you could charge for a scale to exhaust the budget made available by the NSW Government.---No, I was thinking how many, how many scales can I get at his price.

20 A price which you gave him.---No, I didn't give him that. I'm sure he would have told me that's what his price was.

Well, we've seen the text messages in which you gave him the price of 15,000.---No, there's no way I would have, I would have chosen a price just out of nowhere like that. I don't know what his costs are or anything.

30 And then you ask him at 643, when he says, "I had to escalate the second payment yesterday," you say, "What's wrong with the payment?" "The last day to get paid is like through next week." At 644 Mr Thammiah says that, "TSS said it's not in their system, I should escalate it." And you ask him, "What's not, the invoice?" And he says, "Yeah, the invoice too." At 645 he gives you the invoice number, 20402, says he'll call Jai. And you say, "Jai's with me now, call him later." And at 646 Mr Thammiah agrees with that. So you're discussing with him in detail the money that is coming to Novation and at 647 he tells you that the money has been paid and you ask, "For the second million?" "Yeah, done." And you say at 648, "Okay. Mad." And then you start asking him questions which I suggest relate to the second procurement. You ask him, "How many states?" You ask him, "How many states around the world can say that has had PAT scales for 10 plus years." And at 649 you say you're working on the tender docs. And 40 then you ask him at 649 to tell, you say, "You just need him to tell us what's the max states around the world he can say has used PAT scales for 10 plus years." And you're referring to Mr Malhotra there?---(No Audible Reply)

THE COMMISSIONER: Yes? No?---I'm thinking. Either him or Fernando, I don't know who he was talking to.

All right. But it was somebody from IRD.---Must be.

MS WRIGHT: And that subsequently became a requirement in the tender for the 425 scales.---Of course, yeah, a durability.

At your behest?---What do you mean?

At your initiation?---Hmm, I'm not sure if it was me or - - -

10 Okay, but does page 650 clarify that for you? You say, "So I can put that as a requirement for the tender."---No, because we knew that the durability had to be a requirement but I guess we had to put a specification in there somehow.

And at 656 you tell Mr Thammiah, "I'll be running the tender." That was the 425 scale tender?---(No Audible Reply)

THE COMMISSIONER: Yes?---Yep.

20 MS WRIGHT: Yes. And at page 672 you told Mr Thammiah that you were trying to rule out the HAENNI scale. Do you see that?---Yep.

Now, you viewed the HAENNI scale as a competitor to the PAT scale, didn't you?---It was another option, yeah, but it wasn't really liked by the users.

But you saw it as a real competitor that could be selected by RMS, didn't you?---Hmm, I don't know. I didn't think the users liked it at all.

30 Let me go to page 380. This is back at the time of the procurement process for the 125 scales on 19 January where the chargers issue has arisen, and you say in a message to Mr Thammiah, "I told them both that I only have funding for scales, not chargers." That was a reference to IRD, wasn't it? ---Probably not, no. Why would I be saying that to him? No.

Well, it's not important actually at this point. But, "So if I need to go to tender for chargers also I will be forced to go to open tender, in which case IRD are unlikely to win. HAENNI would come in cheaper than your prices."---Yeah, they would have been cheaper than Steve's price, yeah, I think.

40 And you say, "IRD are unlikely to win."---If it was just based on price I guess.

So it's not the case that the HAENNI scale was terribly unpopular and unlikely to be chosen on its merits?---That's what, what do you mean, sorry, I don't even think they applied for the tender.

And you've told Mr Thammiah at 674 that the HAENNI would be ruled out because it's 20 kilograms. Do you see that?---Yeah. That's the current one, yeah.

And at page 673. You say, "I added a requirement for the scales to be max 18 kilograms." Do you see that?---Yep.

10 And so you added that criterion to tender specifications for the 425 scales tender, didn't you?---I don't know if it was me or Alex or Nathan but obviously there had to be a specification.

You said, "I added a requirement for the scale to be max 18 kilograms," and that's because it was you who added the requirement. Isn't that the case? ---It's possible, I don't know. Because we were meeting as groups basically, so we went through what should be the specifications and - - -

20 Your purpose in doing that was to rule out the HAENNI, which was 20 kilograms, as you said in your message to Mr Thammiah.---No. Because there is a lighter HAENNI one. That was just the current one, which is over that.

You said what you meant in these messages, Mr Soliman, didn't you?

THE COMMISSIONER: Yes or no?---Maybe I was talking myself up. Maybe, I don't know, that's a, that's a while ago but I know there's a lighter HAENNI, HAENNI scale. I know it didn't rule them out, so - - -

30 MS WRIGHT: And at 682, you informed him that you were aiming for 1 August release date of the RFT online. "Okay, we're rock solid. A miracle will mean we lose this." And that's because you had total control of the tender specifications which you tailored to fit Novation's proposal, didn't you?---Like I said previously, you know, that's not the way I see it. The best scale was always going to win with or without me.

40 And even faced with extensive statements which you've made, you are not willing to acknowledge what I submit is obvious about your intentions and your actions at the time of each of these scale tenders?---I believe I have. I have, I have said that I, I helped a friend too much with his, with his business. I mean - - -

And 689 - - -

THE COMMISSIONER: What about at - sorry, did you take him to the top of 683?

MS WRIGHT: Well, 683, if we could go there. Following your statement to Mr Thammiah that "A miracle will mean we lose this," you tell him,

“Lots of risk with me running it, but fuck it, I’m getting this done for us. Jai is not running this tender.”

THE COMMISSIONER: Where it’s suggested to you by Mr Thammiyah, “Just,” I think it’s, “run it again with Jai instead.” And down the bottom you say, “Jai is not running this tender.” Across the page, “I am, all up to me. Not risking it.”

10 MS WRIGHT: See, Mr Soliman, there’s a lot of things that you’ve said in these WhatsApp which you are telling the Commission you didn’t actually mean. That’s the effect of your evidence, isn’t it?---Well, when you’re speaking with a best friend, you kind of talk things up a lot. I mean, but the facts speak for themselves. I wasn’t part of the committee. I mean, I wasn’t in the tender group. I didn’t make those choices. So - - -

20 And at 689, you say, “The prerequisites for the max dimensions and modifications needed will mean that basically all submissions will be excluded because they won’t meet the prerequisites.” And you meant all submissions, except Novation, who by some miracle would not be selected in the tender of 425 scales because of your involvement in ensuring that they would be selected?---Again, that’s not what happened. That’s not the way I saw it and one of the Intercomp scales fit also and it could have been chosen if it had met the specifications that the users wanted.

I have no further questions, Commissioner.

THE COMMISSIONER: All right. Who’s next?

30 MR LONERGAN: I don't know where Ms Hogan-Doran is, Commissioner.

THE COMMISSIONER: I think she’s retreated to the back row.

MS HOGAN-DORAN: Apologies, Commissioner. I was just getting some instructions.

THE COMMISSIONER: That's all right.

40 MS HOGAN-DORAN: I did speak with Counsel Assisting to see if it was possible that those in Mr Thammiyah’s interests go ahead of the Roads and Maritime Services if that was convenient to you.

THE COMMISSIONER: So that would be Mr Lonergan?

MS HOGAN-DORAN: Correct.

THE COMMISSIONER: Mr Lonergan, do you want to go next or do you mind going next?

MR LONERGAN: We'd prefer - - -

THE COMMISSIONER: We could break for lunch if you don't want to start immediately.

MR LONERGAN: That would be preferable. I'd prefer to go after the RMS.

10 MS HOGAN-DORAN: I don't want it to be said that because I've raised and I've examined on a particular series of messages that there's no need for the subject matter of those messages needing to be traversed by those acting in Mr Thammiah's interest and we don't hear the position of Mr Thammiah on those matters until he goes back in the box.

THE COMMISSIONER: Look, Mr Lonergan, I am keen to try, and I understand Mr Thammiah is outside, isn't he?

MR LONERGAN: Yes.

20 THE COMMISSIONER: Because we hope that we might start him today. Look, what I'm minded to do is say that you'll go next, just because I don't want, if RMS goes next then you ask some questions and there's some application for leave to ask further questions. So I might ask you to go next, but instead of saying we'll use the next three minutes, we'll break now and then you can start your questioning at 2.00.

MR LONERGAN: If the Commission is minded that way but, you know, we're happy to reserve leave for RMS.

30 THE COMMISSIONER: No, no, you'll go at 2.00.

MR LONERGAN: As it please the Commission.

THE COMMISSIONER: All right. We'll adjourn and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[12.57pm]