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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION EMBER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 28 MAY, 2019

AT 9.30AM

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

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

THE COMMISSIONER: All right.

MS WRIGHT: Commissioner, I call Paul Hayes.

THE COMMISSIONER: Just before you do that, have we got some new people here that I haven't seen before?

MR SUKKAR: Commissioner, Mr Sukkar for Soliman.

10 THE COMMISSIONER: Oh, right, you're Mr Young's instructing solicitor?

MR SUKKAR: That's correct.

THE COMMISSIONER: Thank you.

MR SUKKAR: Thank you.

20 THE COMMISSIONER: Right, so - - -

MS WRIGHT: I believe Mr Hayes is at the back of the courtroom if he could come forward.

THE COMMISSIONER: Mr Hayes, please come forward. And an oath or an affirmation?

MR HAYES: An oath, thank you.

THE COMMISSIONER: Now, excuse me for a minute. Mr Hayes, you're not legally represented?---I'm not, no.

10 Are you aware that under section 38 of the ICAC Act, I can make a declaration which provides you with a form of protection, that is with the exception of two circumstances, the answers you give during this public inquiry can't be used against you in criminal proceedings or other associated proceedings. Now, as a witness, you must answer all questions truthfully and also if you are asked to produce a document that you refer to in your evidence and I order it, it must be produced. Now, you may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceeding or, subject to two exceptions, in any criminal or disciplinary proceedings. Now, this leads to the two very important exceptions. The first one is this protection does not prevent your evidence from being used
20 against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence for which the penalty can be imprisonment up to five years. That's a very serious offence, it's similar to a form of perjury. The second exception is if you are a New South Wales public official, evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official of the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

30 Now, I can make a declaration that all the answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you don't have to object with respect to each answer or the production of each item, it's like a global. So do you wish me to make such a declaration?---I do.

40 Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN

GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Ms Wright.

10 MS WRIGHT: Thank you, Commissioner. Sir, could you please state your full name?---Paul Patrick Hayes.

Were you employed by the Roads and Maritime Services until late 2017?---I was.

Do you recall the date that you left that employ?---I actually left, I believe on the 1st of the 11th, 2017.

How long were you employed by RMS?---In total 26 years.

20 What was your last role at the agency?---My last role was as Principal Manager Compliance Monitoring so - - -

How long were you in that role?---The role was formally under that name for about two to three years but I was in previous similar roles with different names for at least 10 years, 12 years.

Are you currently working as a consultant in the area of heavy vehicles? ---I am.

30 And as Senior or Principal Manager of Compliance Monitoring, did the Heavy Vehicles Programs Unit fall under your responsibility?---It did, yes.

Was that one of seven subunits within your responsibility?---It was.

Was there a manager for each of the seven subunits?---There was a manager for each unit, yes. They had all separate responsibilities.

As Manager of the Heavy Vehicles Programs Unit was Mr Soliman reporting to you until you left RMS?---He was.

40 How many staff did you manage overall?---With all of the units at the peak, 77.

Did you attend the Commission on 25 January this year to answer some questions in relation to this investigation?---I did.

Have you familiarised yourself with the transcript of that examination very recently?---Yes, I reviewed the transcript last night.

Commissioner, if I could ask if a copy of the transcript, a hard copy, could be given to Mr Hayes. I understand that there may be a copy available. And I tender the transcript. I'm not asking that it be brought up on screen yet, Commissioner, but we will come to that at some point.

THE COMMISSIONER: Yes. Could you just wait for a minute, please. What I propose to do first is to vary the section 112 order.

10 MS WRIGHT: I'm sorry, Commissioner, that occurred yesterday, did it not? I sought a variation.

THE COMMISSIONER: Did it?

MS WRIGHT: Yes.

THE COMMISSIONER: On Mr Hayes's - - -

MS WRIGHT: Yes, so that it could be made available to parties.

20

THE COMMISSIONER: Of course it did. It went up on the website.

MS WRIGHT: Yes.

THE COMMISSIONER: I'm sorry. I'll wake up in a sec. All right. So you're tendering this?

MS WRIGHT: Yes.

30 THE COMMISSIONER: All right. The transcript of the compulsory examination of Paul Hayes conducted on 25 January, 2019, will be Exhibit 46.

**#EXH-046 – TRANSCRIPT OF THE CE OF PAUL HAYES
CONDUCTED ON 25 JANUARY 2019**

40 MS WRIGHT: Mr Hayes, you were taken through in your examination a number of matters in respect of how Mr Soliman reported to you and your interaction or oversight of his work. I don't propose to take you through those matters again today. One of the areas of work done within the Heavy Vehicle Programs Unit which is of interest to this investigation relates to the conduct of trials and scoping studies. Now, you were asked some questions about that during your examination in January. At page 376 of the transcript, which I think you now have in front of you, you'll see the page numbers, bottom right-hand corner.---Oh, thank you. Yes, I've found that page.

Yes. You were asked towards the top of the page, you'll see some line numbers at the side. You see 10, 20, 30, 40 on the left-hand side of the page?---I do.

You were asked, just above line 10, "Did you also have the benefit of a budget for innovation or new projects or continuous improvement?"---Yes, I do see that.

10 Yes. And you said in your answer, "Very little but I drove that." Now, did that answer encompass work that we understand to include trials and scoping studies?---That would be the nature of the testing that I was encouraging, yes.

And you said that, this is over at page 377, at about line 35, you see where it says "Ms Hook"?---Yes.

20 You said that, you were asked about the innovative program. "Was that something you needed to seek separate funding for?" and you said, "Absolutely. The purpose of this very modest and small investigative process was to create a paper that you would put forward to seek funding." ---That's correct, yes.

And then you also said at page 380 that there was no budget for it. That was at - - -?---No, there was, there was no formal budgetary allocation for any innovative work.

30 So there was no formal budgetary allocation. The evidence before the Commission suggests that 14 trials and scoping studies were awarded to AZH Consulting over a 15-month period and that six trials were awarded to Novation Engineering over about six months from late 2015, and the total value of contracts awarded to AZH was \$1.3 million.---That's my current understanding, yes.

And the total value of contracts awarded to Novation of this kind – that is trials and scoping studies – was in the order of, say, \$300,000.---Again, based on my, my, the information I have understood from the Commission itself.

40 So you're already aware of that from the Commission proceedings?---Yes. Proceedings to date, yes.

Now, by the time you had left RMS on 1 November, 2017, AZH had earned and been paid for 10 of the 14 contracts. I'm just asking you to take that on board and assume that. That's what the evidence before the Commission shows, that by the time you'd left - - -?---I accept that that, that would be, that would be correct, obviously.

And by that time AZH for those 10 contracts had earned approximately \$450,000 of the total 1.3 million. Now - - -?---Sorry, if I could just respond to that. You're making me aware of a figure and a number of incidents that at that time I had no awareness of, but I am aware of it now.

Well, that's what I'm coming to. You see, in your evidence in your compulsory examination you said that you, you were asked whether you had heard of AZH. That's at page 393.---Sorry, 393?

- 10 Yes. "Do you have any knowledge of the contractor AZH Consulting?"
---Yes, I remember the question.

And you said you were not aware of AZH or its director, Mr Hamidi, nor were you aware of Novation Engineering. Is that the case, that you hadn't heard of those two companies as at the date of your compulsory examination?---No. At that particular point in time, I was not aware of them or at least they didn't sort of, they, they, they were not conscious in my mind in any way. I had not, I had not any, I had not interacted with anybody from those organisations. I was not even familiar with the names.

20

Is the effect of the evidence you've given to the Commission that whilst you were managing Mr Soliman in 2017 until you left RMS, you simply had no idea that he was awarding contracts to AZH?---I, I was not aware that he was awarding any contract to AZH. I was also not aware that contracts to that sort of value were being awarded at all.

- 30 Either to Novation or to AZH to the value that I've suggested the evidence shows?---Absolutely. In the context that I wasn't aware there was \$350,000, the number you've mentioned, available to actually even, sorry, to allocate to, to that type of work.

- 40 Now, so should the Commission conclude from that, Mr Hayes, that Mr Soliman had a fairly unfettered discretion to award contracts within his delegation, if you as manager were not aware either of the companies or of the value of the scoping study and trial contracts which he awarded?---There would be no reason to, for him to assume that he had just authority to, A, engage a singular company to provide that many reports, particularly in terms of, of inquiries, studies, et cetera, without any consultation with myself or more senior management. Particularly in the context of the amount of money you now are making me aware was spent on it.

So he should have made you aware of the contracts which he was awarding?---Look, on a normal oversight, absolutely. That's a substantive amount of money. It's a substantive amount of, sorry, inquiries or inspections or whatever we want to call them to allocate to one company. So without, you know, judging any other aspect of it, that's a lot of work. That wouldn't, it would not be appropriate to get involved in either

allocating that amount of work or money without much more serious consultation with more senior management.

10 Assuming that consultation with senior management didn't take place, isn't it the case that he, within his delegation, was exercising an unfettered discretion to award contracts?---It would be fair to say, based on his delegation, while he had the delegated authority to do so, you know, on paper, he didn't have the moral authority to do so, I don't know whether that's the right term, but it would be, without any consultation, particularly as far as the size and number of contracts and no discussion on the subject, that wouldn't seem to be correct. Not only not seem to be correct, it simply wouldn't have been correct. It wouldn't be the correct thing to do.

20 The evidence suggests that the expenditure that he authorised – and I'm still talking about the trials and scoping studies here – was approved appropriately, if I could put it that way, from a systems point of view, by which I mean that purchase orders were raised, supporting documentation, including quotes were submitted to Finance to raise purchase orders, there was the approval of invoices and so in that sense ostensible authority to spend the money, but as you have given evidence, there was no specific budget allocation for innovation-style work. What would you say about the likely source of the funds which Mr Soliman was using to authorise payments for these scoping study and trial contracts, if there was no specific budgetary allocation for this innovation-style work?---Well, at that particular point in time, my understanding of the approximate budget of that unit was very modest, somewhere in the region of \$1.2 million, to maintain all of the systems that are out there from a heavy vehicle point of view. That included inspection station facilities, Safe-T-Cam, scales, all of those particular systems that were out there, and it was purely a maintenance budget and a very strained maintenance budget. If you had, if I was aware that 350,000 of that was going on testing, unessential testing, I would obviously have to say that was inappropriate because you can't take one-third of your quarterly overall budget to do unessential works because we were strained to try and find the money for the, the essential works, if you understand me. And again, most of the representation in that area was coming from the inspection, the inspectors' management in regard to particular areas where they felt there was essential work needed to be done or equipment needed to be bought or equipment needed to be repaired, and it wasn't in this area. This was, this was how could we do things better. It wasn't about how can we just keep things going (not transcribable)

You've referred to a maintenance budget. Was that available to be spent in a discretionary way by the Manager of the Heavy Vehicles Programs Unit? ---No.

Well, I've asked what was the likely source of the funds he used to authorise payments for trials and scoping studies, and you referred to a maintenance budget of 1.2. Is that the likely source of the funds which - - -?---I, I would

not know of any other source unless he made individual sort of appeals or otherwise to our, sorry, our budgetary area, you know, and saying I needed some money to do certain things which I was not aware of. But there was not a lot of spare funds floating around at that particular time so I would, as I was, most of my time at that stage was seeking formally to get more funding for the area. I can't, and I was getting knocked back. I can't see how even if he'd made those type of appeals for testing that he would be, you know, approved by any other, through any other source. So I assume, the only assumption I can make is that maintenance-related funds were
10 diverted, but again I would have to look at the, the WBS numbers that they came from to be able to get any idea about that, and I'm obviously not, that's not available to me or it hasn't been for a while.

And the WBS numbers indicate the source of the budgetary allocation?
---Yeah. To explain, if you have \$1.2 million of a budget per year there will be breakdowns of that under different categories. It might be repairs to scales, it might be, you know, repairs to technical systems within the inspection stations. There's a whole list there. There might be, there could be 100 separate sub-items in that again, making up that total amount, but, so
20 again, I would assume somewhere money out of those buckets were diverted. That's all I can suggest because that would be within his, that would be money that was again allocated for that area to use.

And if money was diverted, was there any process or system for checking that contracts being actually paid for were appropriately funded against the funding allocation so that someone in the organisation could pick up that, for instance, if someone was authorising over \$1 million on scoping studies against a funding allocation that wasn't appropriate?---It probably should have flagged somewhere but if in, in our we would have a monthly review of budgets but the focus on that related to how are we going, say for
30 example there's \$1.2 million over a year so if you, if you distribute it over the 12, 12 months, you know, 100,000 should have been spent by now on that general area. It wasn't, it didn't get down to the granular as to where it was going. Now, the other thing that regularly would happen is that it would be quiet for a number of months, and then in one month 300,000 was spent. I don't recall getting into the, what was that spent on, that's just in the, we're talking about the general manager and the senior management team would not go down into that level of details generally, unless there was something to flag us to start looking into – for example if it went over
40 budget all of a sudden you'd start looking at, well, why are we going over budget, where are we spending money there, is it where it should be spent, but I don't recall any flags in that respect.

You referred in your examination earlier this year to an annual budgetary review. In your answer just now you've also referred to monthly reviews. Was there a monthly checking of the spending of money?---We had a, the general manager chaired a meeting on a monthly basis with all of the senior managers and within that Paul Christison, who is the financial controller,

would present the budget as it was at that particular point in time, but it was looked at a fairly high level as to how is the branch going, not rather than how is an individual area within that branch is going. Now, if you take it in context, the Heavy Vehicle area was very modestly funded though it had a lot of work to do, as I think I gave in other evidence, on the whole, my whole areas, all seven of them, might have had a budget of 40 million, so that was a small part of that 40 million, and the focus was on what was the current program that there was very active reporting about and we concentrated to a great degree on that, and to a degree that's kept, for that reason it kept, although it's substantial amounts of money, these numbers under the radar. Okay.

Now, the Commission has received evidence that there was a perception or a belief in the Heavy Vehicles Programs Unit that with respect to these scoping studies or trials there was a requirement for an external or independent body to be present and/or to carry out the actual testing during trials. Now, can you assist the Commission with what that requirement was and what it meant?---If I could give the background of the type of -- there's two things here, there's trials and there's testing. If I could just maybe differentiate between one and the other. We as an organisation obviously have programs that enforce New South Wales law in regard to speed, in regard to vehicle dimension et cetera. In order to do that we must recommend products and have them gazetted by, under legislation. In order to do that we must have, look at the product that has been recommended, we must obviously critically look at the level of accuracy of those devices and in order to do so we need to engage, we need to conduct the trials ourself or supervise the trials, but we need to engage independent test houses to create the report for that. So, and the reason for that really is in regard to court environment where somebody could say, "Your systems aren't accurate." There was incredible value, and even from a national measurements point of view, you needed an organisation with proper accreditation to do that type of testing critically. They're independent, they're not on anybody's side, they create a report which you can really put in with your recommendation for that product, for example, whether it be a heavy vehicle measurement product or a speed measurement product, whatever it may be. And that would go in with the recommendations. Now - - -

THE COMMISSIONER: Can I just stop you there.---Sorry. Yeah.

That sounds as if it's, can I say a proper test where the third party independent organisation would come in and actually test the proposed equipment, so it's not just a matter of in a sense supervising a trial, it's actually testing the piece of equipment, working out whether it does work, as you said, whether it can be, critically looking at it, whether it will meet your requirements and also, as you said, if there's a requirement for it to ultimately be gazetted, whether it could go through that formal legal process I assume.---Exactly. Now, there's, there's, they, while the Heavy Vehicle, and it generally was the Heavy Vehicle area, where that work was required

the internal unit would oversee the process or facilitate it. So, for example, it was that, if it had to be done at an inspection session, they would liaise with the, the inspectors or whoever else they might need to there, but the independent organisation would do the testing, would actually first of all put a recommendation as to what testing they were going to do, so if this, this is the parameters we're going to test and they would put a proposal forward in that format and they would then conduct the tests under that. We would sign off and say, yes, that seems to cover all our needs, they would then do, conduct those tests and they would then produce a report. Okay, so that was
10 the process. But that again, I re-emphasise, was in relation to measurement devices. Okay. The other type of scoping trials, not to be confused with this, were – and this is where we talked about innovation before – was new products on new systems that we need to have a look at to determine whether they would add value to the heavy vehicle inspection process. Now, some, the ones that come to mind, for example, are thermal brake testing systems, as one of the biggest problems with heavy vehicles relate to brakes. If there's an efficient way, an efficient technology, it's a good idea to introduce that. So there were a number of, I would have encouraged a number of tests or evaluations to have a look at that product. So you ask the
20 manufacturer, come in and put your stuff in here, let's see if it's of value, let's consult with our inspectors to see if it adds value for them and that starts the process (not transcribable) they go, yeah, that's really helpful or they go, no, that's not going to fly. At that point, the first stage of this would be conducted, on my understanding and the way I, I would normally expect things to be done, internally by our own personnel. Now, should it go forward if it's seen to be of value by the inspectors or otherwise, then a more formal request for external reporting or, you know, scoping of, of how valuable it is add to a business case might be required but not in the first place. It wasn't just because you're going to do an investigation of a
30 particular product you suddenly get an external consultant. That would not be the expectation. Now, in fairness though, it could have been misinterpreted that that would was an expectation.

So you're saying that there's really, in a sense, the first step was a vetting by the people who were ultimately going to use the product if you were going to buy it?---Yep.

In these circumstances, the inspector?---Yep.

40 But how could the confusion arise that you've just referred to, that somehow you're supposed to get, without an inspector even looking at it and making a comment about whether it's going to be useful or not, you're bringing in third parties at cost to do something?---Well, I would have personally thought it was within the expertise of, of the team, do you understand what I mean? That they had, they were technically competent enough, they were aware of the nature of the product and what it was trying to achieve. At that point, it wouldn't, in my opinion if it was put to me, I wouldn't have recommended engaging any external consultants at that point because there

was nothing to test, it was to evaluate a product. There's a complete difference between one and the other. One is about looking at specifications, the other one is about is this product of value to the organisation, does it provide efficiencies, does it improve the way we might do things.

MS WRIGHT: And looking at specifications, that relates, you've said, to looking at particular measurement devices which are relevant ultimately for the purposes of enforcement under the legislation?---Ah hmm.

10

So that in a court of law the measurement device is accepted as accurate? ---Absolutely.

And whereas evaluating a product is looking at whether it could be a product of interest for use by the organisation.---Correct, and whether the claims of the organisation that are putting this product forward are, are, sorry, confirmed on the road, if you want to put it that way. That's part of the, let's find out whether this product is, the claims being made are right, is it for example, I'll just give you the feedback, the thermal camera system on a verbal feedback, not on a report, I was told that it was 65 per cent of all of the thermal images that indicated there was a problem were confirmed, so it did seem to be a very good value, you know, a product that we should consider going forward with, but that was stage 1, that was just, let's look at it, let's see if it's of value, let's run a test for a day or two and then come back and go, because there's a, there's a number, quite a considerable number of layers within an organisation before you get a budgetary allocation to actually deploy this type of stuff, you've got to make an argument, you've got to put a business case forward, you've got to request funding. It's not a case of just sort of saying, well, this sounds like a great idea, I'm just going spend money on it.

20

30

Was the requirement to use an external or independent consultant when looking at or testing a measurement device reduced to writing, to your knowledge, was there a direction given or was it in a policy?---No, there was, there was no written policy on the subject, no.

It was an understanding?---It was an understanding. The only variation, if I might put it, where there was probably a little bit again of a confusion as far as policy was concerned was that when, and I use the example of gantries, you know, the very complicated overhead steel gantries were put in, reports, technical and complex technical reports or, would be required in regard to the footings, in regard to the structural steel and what was suitable to go over a three-lane motorway. That was intermixed in this area because they were also responsible for point-to-point and Safe-T-Cam and the replacement of those gantries. Now, in that case you're talking about, you know, Work Health and Safety, whether these systems were safe or not, and undoubtedly engineering reports were required, not consultants' reports, but

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critical engineering reports were and maybe somewhere in the middle it got confused about what was required and what wasn't.

That seems to be a different thing. But just coming back to the requirement in relation to measurement devices, was there a time when that was actually introduced or was it in existence for a long period of time or can you assist us with - - -?---From the time the first camera was ever actually approved, speed camera, critical testing was required for that recommendation, to recommend the device to the, to the, in fact even before that, anything that, that the governor had to recommend as part of legislation had to have critical testing done on it and the standard practice from very early in the piece was to get a critical external test house to do that testing.

Were there dedicated test houses that would be engaged to do that sort of testing?---Yes.

Were there many?---There weren't a lot. There were, there were sort of two or three across the state, sorry, across the country that focussed on that area of, you know, engineering testing, for want of a better word.

To your knowledge were they used by the Heavy Vehicles Programs Unit or were they used by other units in RMS?---They were used by other units.

Do you have any recollection of a time when a particular testing house was used by the Heavy Vehicles Programs Unit?---Not, not the critical testing, device testing we're talking about, no.

THE COMMISSIONER: The example you gave of the thermal camera that would identify if there was a problem with the brakes, was it your anticipation that the way it would have proceeded is that you would have had that initial internal testing by somebody from heavy vehicle enforcement go out to one of the inspection sites with the vendor and inspectors and just give it a go, see if it's got promise, it's kind of a little bit like, I think I described it as a kind of a vetting process.---Yep.

And then if it did have promise then was it a matter of trying to formulate, we'll have to put a business case forward to get financing for this, is that it would - - -?---My expectation is that preliminary evaluation of the technology would be done, it would be done and my understanding it was being done by the Heavy Vehicle team. My expectation out of that would be, and it wouldn't necessarily need to be more complicated than a long email detailing this is what we did, this is how long the test went for, this was the result of the test, we think this a really promising technology we might want to consider introducing, it cost XYZ, et cetera, and from that I would take that recommendation and then try and put a, a business case or even I might say, look, okay, let's put a more substantive business case here for next year's budget to consider, you know, allocating some funds towards, you know, pursuing that idea. That would be the normal process.

You would anticipate that that long email would be addressed to you?---I would be, it should be part of the conversation without doubt, yeah, because I was not only the, I was the obviously manager of the team but I was also the kind of technical subject matter expert for want of a better word. So if somebody was to pitch for it they would probably, maybe would work with the manager of the unit but we would collectively go here's a really good idea. Here's how it would be value. Here's how it would improve road safety. Consider that in your budget. And that would be then considered further up the, the, the management team to put in, consider in the budget following.

And if the long email said terrific piece of equipment and you looked at it and thought this is something we should pursue, as part of developing that substantial business case was there a role for external advisers to come in and just do things like verify that the data had been collected on a test, was not being changed or affected in any way?---Not that that stage, no. This was not a, you could put a business case forward based on, you know, the internal research on it and you might get a feedback and saying the case here is not strong enough, the material is not strong enough, the documentation is not substantive enough - - -

MS WRIGHT: I'm not sure where that - - -

THE WITNESS: It sounds like a (not transcribable)

THE COMMISSIONER: It's stopped. We'll keep on going and hopefully it won't reoccur.---If, for example, the first feedback in terms of trying to put that business case forward was, well, that's all very interesting but I haven't got enough really substantive material here to actually, to, to put it forward – that might be from the general manager, for example – he would then come back and say, well, I need a bit more meat in there, so I need a bit more, and then at that point there might be some consideration of including or, or engaging an external agency or otherwise or consultancy to, you know, flush that out for want of a better word. But it would only be done then in that circumstance where the general manager said, fine, engage a consultant to come in and, you know, beef this up, for want of a better word. And again, that was, that was an appropriate process. They judged that your case isn't good enough yet but it has promise but let's move forward. Let's get some independent view on this apart from our own. We think it's great. Let's have another report. Because you have a lot of, you know, large organisations will, will work in this area as well like, the ARRB for example. They do research on technology.

Who are ARRB?---Australian Road Research Bureau I think is their name. But, and that's a national one so, and sometimes they would actually, although we didn't engage them, it wouldn't be unusual for an organisation of that size to, to look into this and can you, and that (not transcribable)

point you'll be asked, well, is there a report from other organisations that support your view here. All an appropriate government, you know, oversight before they start spending money on an idea.

MS WRIGHT: Mr Hayes, I'm just going to move off trials and scoping studies now and ask you some questions about portable weigh scales.
---Sure.

10 Now, you were asked some questions on this topic in your compulsory examination. You recall you gave some evidence that you attended a inter traffic conference in Amsterdam.--- Yes.

That was in early April 2016.---Correct.

And did you, you attended with Mr Soliman?---I did with Mr Soliman.
Correct.

20 You met up with him at the conference?---Yes, I did meet him. We travelled separately but we did meet up there.

And you attended at the IRD, International Road Dynamics, stand?---We did because we had a particular issue to discuss with them,

30 Yes. And what was the particular issue?---That related to the, the we were getting feedback from the heavy vehicle inspectors and their management that the maintenance of these scales and the certification of these scales, the whole support structure was falling apart. It was really critically important that they had operational and useful scales and that those scales were current and certified because they couldn't use them. You could not measure something unless it was a certified device and it was operating correctly. For quite a period before we had gone to the conference, there had been a lot of negative feedback from the inspectors and their managers in regard to how long it was taking to get things done and how unreliable the equipment was becoming et cetera and how unresponsive the local agent was.

40 Could I just stop you there. In terms of that negative feedback, was that conveyed to you primarily by Mr Soliman or did you have other sources of information?---No, no. It was coming from Brett Patterson, who was an equivalent manager to me and responsible for all of the inspectors and their managers, and he was just trying to, to advocate for me to step in and try and get something done in that space. Now, as a result, two things were happening, obviously I was, I was - - -

THE COMMISSIONER: Mr Hayes. Sorry, I'm going to stop you. I think we might just listen to the questions of Counsel Assisting.---Oh, sorry, okay, my apologies, sorry.

And answer those.

MS WRIGHT: Yes. I think at this stage I was just trying to ascertain that you did speak to IRD and you received, for a particular purpose, and you had that discussion.---Sure.

10 You gave evidence at page 398 of your transcript that you told Mr Malhotra, who was the vice-president of IRD, that he needs to find a reliable local support. Was that the case at that time?---We were emphasising the fact that his current local support was not up to scratch and that he either needed to sort that issue out with the local support agency or find another one.

And did Mr Soliman, at that time, so at that conference or around that time, make any suggestion to you about who IRD could use locally?---No.

Did he make any suggestion to you at any later time as to who IRD could use locally instead of the current provider?---No. No, the only feedback I did receive was that the, the local agency had changed, not nominating a name, and that the response was improving.

20 So you heard at some point that the local provider had changed, that had ceased - - -?---The report, the, the support personnel or support agency had changed and that the repairs were, the, the, the time frame to get things repaired and certified was now improving.

Were you told who it had changed to?---No, and I never asked.

30 Were you aware that the local support was previously, up until that change, ELWC?---Yes, I was aware of that name. That was the company that was the subject of, you know, our - - -

Of complaint?---We weren't happy with their, their performance.

And ELWC, the evidence suggests, had done work for RMS for about 20 years or more up to that point?---That wouldn't surprise me because that's how long the scales had been, the period of time over which the scales had been purchased so they would have been the service agent, I assume.

40 Were you aware of that long-standing business relationship at the time, this is in 2016?---I was aware that they had been involved in the area of scale maintenance and provision for quite a considerable period, as in IRD and their, their product had been used for a long time.

THE COMMISSIONER: Can I just ask you, when you said that you had been told that the local agency had changed and that the repair response time was improving, were you told that by – who told you that?---It was Samer actually.

Mr Soliman?---He was advising me in the context of I was - - -

No, that's okay, it was Mr Soliman.---Sorry, sure, it was, sorry, yeah.

MS WRIGHT: Just coming back to the long-standing business relationship that ELWC had with RMS. Longevity of course doesn't necessarily mean that one has to continue with the status quo, but would you have expected that the bringing to an end of that business relationship would be brought to your attention, given how long ELWC had been doing business with RMS?
---I was, I was aware that, again, that the ELWC were part of this
10 maintenance – sorry, it was being reported to me they were part of the, they were the problem.

Yes.---I was, again, wouldn't have been surprised, the company themselves, IRD, allocating at least some of that work to another agency if we weren't happy with the one he had. But in the first place there was only, they were the agency for that company, they were the service, they were the supply agent and they were the service agent, so it was, it was not uncomplicated to ask them to change that relationship, if you understand what I mean, and
20 do something about this. It is for you to decide how you change that arrangement, but we need better service. That was the nature of the conversation.

It was not a matter for RMS to tell IRD how to do its business in New South Wales, is that your attitude?---Absolutely not. There was no, on the two occasions I had met him, I met him once here as well, that wasn't part of the conversation. The only nature of the conversation I had was about, well, have you sorted your agency problem out and our, our response time problem? And he said, yes, we're, we're really working on that. Yes, we're
30 going to, we're going to sort it out for you, be assured, and that was the level of the conversation.

I'm just going to show you, Mr Hayes, a short series of emails which I don't believe you're a party to. If volume 5 at page 29 could be placed on the screen. Mr Hayes, this is an email from Mr Soliman to Glen of ELWC, and it's dated 15 August, 2016, so that's three or four months after you attended the Amsterdam conference.---Okay, yes.

And I'll just give you a moment to look at that, but Mr Soliman states in the
40 second paragraph, which starts with "As with all our other enforcement programs such as red-light speed cameras, which has three vendors supporting it, we must operate on a multi-vendor environment where more than one vendor provides services for any single program. All enforcement programs will slowly be migrated to this model. First off, obviously, is the Heavy Vehicle mass management programs, WIM scales."---Ah hmm. Okay.

So was, we'll just - - -?---I note that, I note what's, what's put there.

Was there a proposal, to your knowledge, to migrate enforcement programs to a multi-vendor model at this time?---I, I would see this as a bit of a distortion of the requirements, and if I could try and explain that. It was normal practice in camera procurement to not buy from one individual company. So we'll just give a name of the camera companies, Redflex or (not transcribable) Optic are just the names. Don't worry about the detail. In order to maximise competition, we would procure product from multiple vendors, so you weren't held hostage to any particular pricing structure.

10 And in this particular case, as far as scales were concerned, it would not be unreasonable for when you're purchasing new equipment to say, well, we only, we won't only buy one product, we'll put the tender out there to multiple scales providers. That did not extend to the service arrangements because say, for example, not ELWC but IRD had their service agent, we wouldn't say get yourself three service agents. It would be not the, that was not the requirement. It was more about there was a requirement for multi-vendors but only in the context of being able to provide services or products. But not, so, for example, if there was any given company – in this case it's IRD – saying to them you need to get three service agents, they

20 might, they might have three service agents, they might have one in Victoria, they might have one in Queensland, but in New South Wales that wasn't a demand that would have been made, nor requested to be made.

Was there a requirement introduced at this time?---No, nothing formal. Not by me anyway, in terms of, you know, this was not some sort of a new mandate.

Now, if I could then show you – so the effect of what you've just said, just before I do that, was that as you understood it the multi-vendor approach

30 didn't relate to procurement of products?---It did to do procurement but not support a product.

It didn't relate to - - -?---So procurement is about buying new products. We wouldn't just universally go back to who we started off with the, whether it was an IRD device, we would go, there's three devices, there's four people selling into this marketplace, we would put tenders out for all four, unless there was something fundamentally wrong with one of the products, and it would be a competitive market. But when it came to the service of that, we understood they are, we bought that equipment off that company and they

40 have a service arrangement, they have a service agency. Assuming we were getting reasonably good support from that, that's fine, we would have no reason to revisit it.

Then page - - -?---I'm sorry, it would just be, it would not be the role of RMS to say how you are going to support your products, we would, we would, as part of a tender process say, explain to us who's going to do this maintenance work and how, you know, effective it's going to be and how quick it's going to be, but not beyond that.

Volume 5, page 36, please. Now, this is about three weeks after the email I've just taken you to where Mr Soliman writes again to Glen of ELWC referring to a teleconference which has taken place and forwarding an email from him to ELWC and Mr Malhotra where he says, "Gents, agreements needed for the multi-vendor approach for IRD portable weigh scales. I need to be clear in saying that we need to come to an agreement in this meeting, it has been dragged far too long. Recommended option, vendor A, procure approximately 50 per cent of all new procurement, service entire fleet, calibrate entire fleet, vendor B, procure 50 per cent of all new procurement." And then he says, "I'm happy to commit to ELWC being assigned vendor A above, that is sole service and calibration vendor for portable scales." And he says, "I would like to again reiterate the point of the government multi-vendor practice, it enables competition best value-based services, drives innovation and ensures RMS business continuity. Although this is a change to ELWC it's necessary change to ensure we're aligned with best government practice." So ELWC – having had 100 per cent of, it seems of services, that is support as well as procurement as necessary to provide maintenance and support to portable weigh scales – appears now to have been told that it would receive a vendor A arrangement where it procures 50 per cent and services the fleet.---Yeah, I see.

So it seems to introduce an opportunity for a new vendor to procure 50 per cent of any new product.---Again it doesn't mention the vendors here, it just mentions vendor A or vendor B, but the whole, the email doesn't make any sense at all.

In what respect?---Well, if you just go back to what I was talking about, the issues with regard to this area of the business was about service and maintenance, and vendor A - - -

THE COMMISSIONER: And it's actually saying there as, "ELWC currently have a good performance with service and calibration."---Well, that's contradictory, number one. Number two, ELWC, what we needed to change was the service and calibration arrangements to be more efficient and this says, well, we've just introduced a new provider to sell the product or it would give us a new product, but not really it's changed the problem that we had because this doesn't fix anything, and in, in a strange kind of a way it makes no sense whatsoever. So a particular manufacturer of a product now has two agencies to, to quote to us. So what's going to happen? Is he going to undercut himself? It makes no sense whatsoever. This, this has no logic.

Sorry, so your construction of this is where it grants to vendor A and B 50 per cent of all new procurement, that's actually buying you scales?---That's, that's the way I interpreted it, yes.

And then ELWC, who apparently had been providing really poor service, gets to continue servicing the entire fleet and calibrating the entire fleet because they've had good performance with service and calibration which is, you said, seems to be contrary to the comments made at the Amsterdam conference.---To everything I was hearing. So, again, it's important to note that it says the IRD scales. So there's one product and we're suggesting that we will buy them from two agencies but a singular one of those agencies will provide the service for everything that's purchased. Now, if I was that agent, I would be pretty annoyed about that because, well, why are you
10 buying them from them and then I have to service them. It makes no sense.

You had no idea this email was being sent out or there was any - - -?---It was nothing like the nature of the conversations I originally had with IRD at any time.

No, no. Or with Mr Soliman. It's a Mr Soliman email, isn't it?---Or with Mr Soliman, no. It didn't achieve anything.

No, no, no, no. What I'm asking you is around September 2016 did you
20 have any knowledge that Mr Soliman is corresponding with an IRD representative and also an ELWC representative along these lines?---Not along these lines.

MS WRIGHT: Did Mr Soliman say anything to you about introducing a multi-vendor approach in the ELWC relationship with RMS?---Not in regard to that particular product, no. Again, there was, there was conversations purely about when working on trying to get this maintenance related issue resolved but not about a detail (not transcribable) about, well, this is the way I'm going to approach it (not transcribable) said this is how
30 I'm going to approach this, well, I would have said, well, where does that get us, that doesn't improve the situation.

Just one final email on that topic at page 45 of Volume 5. Again, this is not an email which on its face was sent to you, Mr Hayes, but if I could ask you to have a look at it. It's an email chain from Glen Doherty of ELWC and the email at the bottom of the page is sent by him to Mr Soliman and copied to Mr Malhotra of IRD and he says that, "As discussed on numerous occasions, RMS are not happy with the services ELWC has provided. Whether this is justified or not, I cannot continue providing services or
40 ongoing support to RMS. This is proving very unproductive for all. It would appear, regardless of ELWC instructions or proposals submitted to remedy the situation, RMS is not agreeable. I therefore have no alternative then to advice ELWC ceases its business relation from RMS effective immediately." He's spoken to Rish of IRD and then he refers to the multi-vendor model, "Whilst we continue to support RMS, you are now insisting as part of the required 'multi-vendor best government practices' that at least two companies supply goods and not services? I and others were of the

opinion that multi-vendor requirements were for services only as most, if not all, equipment vendors are exclusive agencies exactly like ELWC.”
---Sorry, I’m just not seeing that second page.

I’m sorry. Page 46. It goes over.---Yes. Thank you.

THE COMMISSIONER: Up the top?---Yes, that’s fine. Sorry.

10 MS WRIGHT: “RMS have directed IRD to comply with this request for any upcoming sales. Only a maximum of 50 per cent can be provided to ELWC. With all the unjustified complaints, it would seem IRD are now being forced to comply with this request. We’ve had a sole distributorship with IRD, formerly PAT Germany, for over 30 years.”---Yeah.

And it goes on.---Ah hmm.

20 Do Mr Doherty’s complaints there appear to be justified to you?---Yes. Inasmuch as it aligns with what I, the comments I made on the previous document, which is if you were going to change your arrangement, if you’re not satisfied with my service, you know, performance, this doesn’t change anything or, you know, it just makes the whole sort of, what would you call it, agency arrangements very confused and complicated and doesn’t really address the issue that was originally raised, which was about how effectively we maintain and we certify the devices. I think that’s what he’s trying to say.

30 If you procure the same product, precisely the same product from multiple vendors, there’s not necessarily a competitive advantage in terms of the value to RMS, is there?---I can’t see how that would represent any form of competitive advantage. IRD are going to provide their products to the two agencies that you’ve nominated at a profitable figure for them, and one or other might, you know, might have a mark-up on their part to handle them or otherwise, but it wouldn’t have a, you know, a really competitive outcome.

40 Now, the evidence before the Commission indicates that two prequalification panels were established in about October 2017. One was a Professional Services Contractors Panel and one was a Heavy Vehicle Maintenance Panel.---Yes.

Did Mr Soliman discuss with you the proposed establishment of those two panels?---Not in a formal, sorry, not in a formal conversation in any way, but was the establishment of panels in that, in that respect an appropriate approach? There was a change in the procurement - - -

THE COMMISSIONER: No, no, you were just asked whether you had discussed it with Mr Soliman.---Sorry. Sorry. No, I did not.

No.---Okay. Sorry. Not directly.

MS WRIGHT: He didn't ever submit to you that there would be cost efficiencies in implementing these two panels? Did he ever make representations to you that these two panels should be implemented?---No, I don't remember a direct representation but I would have said, yes, that would represent a competitive table of people available. But it was more general. It wasn't, it wasn't the subject of a conversation that I can recall.

10 Do you ever recall a conversation where he said that it would increase competitiveness in niche markets?---Not that I can recall.

If we could have volume 7, page 176. If we could just go back to 175, sorry. This is the start of an email chain from Mr Soliman to you, Mr Hayes, on 8 October, 2017. It follows an apparent media inquiry about calibration and maintenance services for weighing systems. And if we could go to page 177 just to show you the initial email from Mr Graham to you, and then you've responded – starting at page 176 – on 6 October, 2017, and this is to do with the portable weigh scales. And then going over the
20 page to 177.---Okay, yes, sorry, I now get the context of the email.

And do you recall that email?---I, yes, I - - -

Okay.---Yes, I acknowledge that I have written it and, yes, the reason I've written it.

You've referred to the cost of replacement of the existing equipment as being estimated to be \$8.5 million over a number of years. Where did you get that figure?---Look, off the top of my head I, I, I don't remember, but on
30 the other hand I think earlier in the email I do nominate the amount of scales out there at about 600 and I assume that I would have come to that figure based on dividing 8.5 million by the 600 and working a scale cost out on that. I don't think I would have picked it out of the air, nor, you know, sort of done on it on the basis of saying, oh, well, roughly that's the amount we need. I would have got it from somewhere, I can't remember where.

Was Mr Soliman in charge of any proposed replacement program for the portable weigh scales?---Was he in charge of it?

40 Yes. In a sense of managing it.---He would have been nominated, the, the, the, the, the role to start, you know, procuring replacement should a budget have been found to, to do so.

Did he to your knowledge have involvement in coming up with the figures for the cost of replacement?---It's highly likely I asked him what is the price of the scales, what figure do I put down here. Highly likely. Again I, you know, as I didn't personally procure scales I would have asked for advice as

to what does a scale, what does an individual scale cost and multiplied it by 600 to get that figure.

And was Mr Soliman the person that you would have asked for that?---It is highly likely that that's the case, yeah. Sorry, just, sorry, could I just refer to the previous page, I'm just looking at the date. So it's October 2017, 5 October, 2017. There's a context in that in regard to I had, yes, I had at that point in time on 30 August actually handed in my resignation.

10 THE COMMISSIONER: Okay.---And this was really, you know, bidding to get that word in with regard to the essential nature of the, that this needed to be in the budget, it needed to be considered, it needed to be, you know, moved forward.

Can I ask, on page 177 the third dot point you've got some additional costs. ---Yeah.

Every year costs have to be, sorry, the scales have to be certified and that costs 200,000.---Yep.

20

Then also there's a cost for spare parts for remedial repairs, including fabrication for old equipment, amounting to 450,000 not formerly budgeted. ---Yep.

30 The 450,000, does that include both spare parts for remedial repairs including the fabrication?---Yeah, it would have. My understanding at that stage was the service provision and the availability of 20-year-old parts was at its end, so we were, there was a need, and I don't quite know who did this, but my understanding was that there was a need to actually fabricate some of those parts locally because they were no longer manufactured, that product was no longer there. That came, again, the 200,000 in terms of the certification - - -

No, I'm not interested in that.---Sorry, yeah.

I'm interested in that figure of 450,000. What did it cover?---It was again to, to fix all of the ones we had there because they were breaking down so regularly and to procure parts for them.

40 So both spare parts from the manufacturer plus if spare parts weren't available from the manufacturer, for them to be fabricated.---They were probably all, my, my, my thought would be they would be all procured through the agent, EL, sorry - - -

ELWC.---WC. But he might have been getting parts manufactured for them and still getting some parts from the original provider. That's, that's where it was being channelled through. The, the emphasis here - - -

And so the cost is 450,000?---The emphasis here was about - - -

No, no, no. Answer my question.---Yeah, sorry.

Is the cost 450,000?---Yes. Yes.

And what does it mean “not formally budgeted”?---There was 200,000 in the budget - - -

10 No, no, no, yes.---Yeah.

Those last words “not formally budgeted”.---No, nobody was considering this extra cost that the old equipment was now (not transcribable)

I see.---If you note after that, “Currently extracted from the limited \$1.2 million heavy vehicle maintenance budget.” This was now costing us a fortune.

20 All right.---All right? Out of the overall limited budget we had. That’s what it was trying to say there.

Okay. Sorry, I now get it. Sorry, Ms Wright.

30 MS WRIGHT: So that 450,000, which is potentially going to the one vendor, you said if it was going to ELWC as the maintainer both for maintenance and cost of spare parts, if there was going to be a change to who was providing that service and so who was getting the 450,000, would you expect to see a tender process involved in that if there were to be a new vendor or supplier of those maintenance services?---No, the, no, this was for the maintenance of a particular product. It wasn’t for, you know, all of it (not transcribable) scale. We had, it was for a specific product. And the, the, one would imagine there would be no sense in putting out a tender. There was only sense in putting out a tender for replacement.

40 Spare parts are equipment, and if the cost of spare parts exceeds a large threshold – take, for example, \$250,000, which is a magic number in the procurement manual – would you expect to see a tender process for that, for the provision of spare parts?---No, not for the provision of spare parts because, again, that was very prescriptive to the products we had. There was, there was no option here. But I think what I was trying really to say here is I’m paying \$450 to keep, 450,000 to keep these things just on the road. Makes more sense to buy new ones which are not going to be breaking down every day.

Yes, I understand that’s what you were saying, I just wanted to ask you whether - - -?---Yeah. No, no, but there would be no opportunity for tender here. Not as long as we continued to service the old equipment, which was now some of them up to 20 years old.

Now, the Heavy Vehicle Maintenance Panel was established, as you would be aware.---Yes.

And the Tender Evaluation Committee report was in fact addressed to you. Do you recall that?---That's correct.

And you signed that report.---Yes.

10 You were the most senior person who signed it. I can show it to you if you -
- -?---Yes, I'm aware and I, I familiarised myself with that.

And why did you sign it as opposed to Mr Soliman?---Because my name was on it, number one, but the, I, I was the, the senior manager and it wasn't inappropriate for me to sign that in terms of, what do you call it, validating the list of providers. It was really a panel for two functions. One had to do with maintenance of equipment out onsite, et cetera, and the other one was - sorry, I'd have to read, have the document in front of me, but it had two separate functions.

20

The functions are actually set out in the request for tender. The Tender Evaluation Committee report is at volume 11, at 284. You see there was category A for civil works and then category B for weigh-in-motion systems, portable weigh scales and brake-testing equipment and weight bridges?---I do. That's helpful to recall.

Does that assist you? It says under Background, "The works in this contract involves maintenance of Heavy Vehicle Branch assets."---Yep.

30 So do you recall it as being a tender about maintenance as opposed to procurement?---It was primarily about maintenance services. It's not, this to my mind, was about procurement of new product.

THE COMMISSIONER: Well, could we get page 247 up, please.

40 MS WRIGHT: Yes, thank you, Commissioner. This is their request for tender document, Mr Hayes, and it sets out here the description of the work, and for category B it does refer to procurement and maintenance and you'll see the second dot point, "Procurement and maintenance of PAT brand and HAENNI brand portable weighing scales and serviceable spare parts"?---I see that, yes.

And then there's a note, "Important note for category B only in relation to procurement of new category B systems, Roads and Maritime may consider brands not specified above if the tenderer can demonstrate equal or superior performance, life expectancy and serviceability." Do you think anyone, any potential tenderer reading that would, and if they were interested in the portable weigh scale side of things, seeing the brands named there, PAT

brand and HAENNI brand, would have considered that to be a tender in relation to the supply of any brand of scales? Or do you think they would have considered this to be more limited in seeking tenders for the procurement and maintenance of those particular brands, notwithstanding the notes that's included there?---It would seem to suggest that it's actually somewhat restricted in terms of what we were interested in purchasing. In fact, now looking at this particular clause in here, it seems to extend from what the front page of the document, which was what I signed on, limits it to. Because in the front page, as it suggests, it relates only to services. In this part of the document, it suggests it's service, maintenance services, and procurement which extends the, the range of, you know, services now being asked for, and I do not recall and I'm not even sure that I received a copy of this detail when I actually signed the, the page document which was received from the consultant company that was the independent.

And in relation to procurement, this request for tender, in your view, insofar as procurement is concerned, it seems to be limited to the particular brands, PAT brand and HAENNI brand?---Yes, it does in looking at the document here. Would it make sense to limit it to that? No. As in, you know, there are lots of scales over a period of time, there were lots of other manufacturers in the space. All, all those coming to the table should be considered and, and the important note underneath, I think, I interpret that, we could choose to look at other brands if we wanted to but it's unusual to actually be prescriptive.

It's hardly encouraging, is it, for potential tenderers.---It doesn't suggest an even playing field.

Now, you in fact advised Novation, Mr Hayes, if we could have volume 7 at page 12. At least your name is included on a letter to Novation advising, at page 13 if that could be shown.---Ah hmm.

This is a letter from you to Novation advising Novation of its successful tender for the panel for maintenance of heavy vehicle enforcement programs, and you departed from RMS only about 10 days after this letter. ---That's correct. This is likely to be one of a, for every tenderer in there, all 13, I, a formal copy of the event, "Congratulations, you've been included on the panel."

Did you have any other substantive involvement in the panel tender process?---No, not on this particular one, although I, for everything else I, you know, for every other area that I was involved in I was pretty well – when the, the, the, when the contractors of any substantive value, I was usually part of the tender evaluation team, but not in this case.

I have no further questions.

THE COMMISSIONER: Thank you. Ms Hogan-Doran?

MS HOGAN-DORAN: (not transcribable)

THE COMMISSIONER: Mr O'Brien?

MR O'BRIEN: No, thank you.

THE COMMISSIONER: Mr Lonergan?

10 MR LONERGAN: Yes, Commissioner, I have a few questions.

THE COMMISSIONER: I'm sorry, before Mr Lonergan, I apologise. Mr Sukkar, I passed by you.

MR SUKKAR: That's okay. I'm happy for Mr Lonergan to (not transcribable)

THE COMMISSIONER: No, have you got any questions?

20 MR SUKKAR: I may have - - -

THE COMMISSIONER: Well, ask them now.

MR SUKKAR: Commissioner, I'd prefer if Mr Lonergan - - -

THE COMMISSIONER: No, ask them now.

MR SUKKAR: Mr Hayes, there's contract registers that get escalated to senior management each month, is that correct?---Sorry, could you - - -

30 Are there contract - when you were - - -

MS HOGAN-DORAN: Could Mr Sukkar identify for the witness who he appears for?

THE COMMISSIONER: Yes, thank you.

MR SUKKAR: Sorry.

40 THE COMMISSIONER: I forgot that. Sorry, Mr Hayes, Mr Sukkar represents Mr Soliman.

MR SUKKAR: Okay. Thank you. Just with respect to the contract registers, did they get escalated each month to senior management? ---Contract registers? Sorry, could you clarify what you understand in that respect?

So in terms of the contracts that were tendered out for procurement, were they escalated to senior management for - - -?---No, there wasn't a formal, so, for example, I think what you're asking me – and correct me if I'm wrong here – every contract that went out on a given month, was there some review of that? No, there wasn't by senior management.

10 So there was no process whereby contracts were escalated to senior management. Is that what you're saying?---Again, above a certain value, generally speaking the individual officer or manager was not authorised to sign them off independently. They would be escalated, but there was no defined, specific figure in that. If it was a (not transcribable) I'd probably conclude with saying that. There was no defined figure on what you would put. You would (not transcribable) cc'd in on something if there was a substantive contract just been handed out.

But the normal process would be for it to go to senior management?---If it was, if - - -

20 THE COMMISSIONER: Sorry, what kind of contract? Is it a contract to buy equipment? Is that what we're talking about?

MR SUKKAR: A contract for procurement or any contract for that matter, like procurement or for service.---No, the, the - - -

MS HOGAN-DORAN: I object. In my submission that question is not helping or of assistance to you, Commissioner.

30 THE COMMISSIONER: Is your question any contract had to go up to senior management, is that your question?

MR SUKKAR: That's the question. Wasn't there a process whereby a contract that was to go out would go to senior management first? Wouldn't it go through a process whereby senior management would approve a contract before it would go out?---If it was substantive, yes, but if it was sort of business-as-usual maintenance or otherwise, no, it wouldn't.

40 THE COMMISSIONER: And when you say substantive, are you talking about it in value?---Pretty well in value, yes. We would, you know, senior management would want to know that substantive contracts would be given to any company, but again, look, was there, was there some sort of an internal business rule that everything above X was to go to senior management for final sign-off, if that were the case it would be under delegations, so the delegations set those rules.

MR SUKKAR: That's fine.---If you're a delegation 4 you had the authority to sign off on contracts up to 150 or whatever the number was.

THE COMMISSIONER: Okay.---But beyond that point it had to escalate further up.

MR SUKKAR: Okay. So once a contract went out there was a contracts register and the documents for that contract would then be, would go to senior management, so that - - -

10 THE COMMISSIONER: Hold on, hold on. Was there a thing called a contract register?---There, in the Equip or whatever it was, I think there was a contract register they had to be put in, yes.

MR SUKKAR: So after a contract was given, that would get sent to senior management. Is that correct?---No, it would be put on the contract register.

20 Oh, the contract register. But for it to go on the contract register what was the process? Wasn't it sent to senior management and then they put it on the register?---No, they didn't put it on, the person who had issued that contract had the responsibility then of registered it within the Equip system and saying, and it was really a bit of a transparency to the public, as far as I remember.

THE COMMISSIONER: So you've answered the question. Next question?

MR SUKKAR: So was the, just so I can clarify, so it's the individual manager that's approved the contract that has control of that contract, puts it on the register, there's no department that it goes to, to be put on the document register or the contract register, sorry?---No, no, with the change in, in organisational arrangement it was you put the information on Equip.

30 THE COMMISSIONER: But who would do that?---The manager who had issued the contract.

The contract, right.

40 MR SUKKAR: It wasn't put to the Finance team who then put that on the, so the manager wouldn't give that to the Finance team who'd then put it on the contract register? Isn't that the normal process, Mr Hayes?---One time it was, but at this particular point in time the Finance team didn't exist, it was consolidated RMS Finance for want of a better word.

Would Mr Soliman mention to you if a trial was being considered for some of the services that we've already been talking about? I can be more specific if you like.

THE COMMISSIONER: Are you talking about scoping studies?

MR SUKKAR: Yes, scoping studies.---He would discuss in general or I would, say at our monthly meetings he would say, "We're going to run a

trial on the brake systems,” or whatever they may be, to evaluate whether they’re, whether they, whether they work in accordance with what’s been advertised.

And that might have been thermal camera trials?---Could have been a thermal camera trial, there was a number of them which were generally discussed at a very high level.

10 And you don’t recall telling him not to do - - -?---No, I encouraged him to do the test, no question, or to have the tests conducted.

THE COMMISSIONER: But did you know that a third party was being paid supposed - - -?---No, because I - - -

Sorry, a third party was being paid supposedly to attend these tests?---I had no awareness of anybody else being involved, nor would I in those conversations suggest other people should be involved.

20 MR SUKKAR: And just with respect to camera approvals, was there an independent contractor that was engaged to perform these camera approvals, these camera-type approvals?---They were specific test houses, they were not a consultant, they were a company whose role, or companies whose role it was to technically test equipment. It’s a different - - -

And when they’d technically test the equipment, would they provide a report on those tests?---A detailed report. They would even before they started the testing discuss with us the nature of those tests.

30 No further questions.

THE COMMISSIONER: Mr Lonergan. Now, Mr Lonergan represents Mr Thammiah who is associated with Novation Engineering.

MR LONERGAN: I can’t see that far. I just want to go to, following on from my friend’s points in relation to these tests. You mentioned he asked you about thermal cameras and you said that there were amongst others. Can you recall what other tests that were conducted or discussed about being conducted - - -

40 THE COMMISSIONER: At these monthly meetings?

MR LONERGAN: And the monthly meetings, yes.---Out of the, sorry, the, the Intertraffic conference, a number of ideas came - - -

THE COMMISSIONER: No, no, no, no, no. Come on, Mr Hayes, listen to the question. At the monthly meetings, you could recall a thermal camera test was raised. What else can you recall?---There were bluetooth tests.

Bluetooth?---Yes. There were tag testing, there were dimensional testing discussed. That's the ones that immediately come to mind. There may have been others but those are the ones that immediately come to mind.

MR LONERGAN: And your recollection is that these discussions of tests occurred after you went to this conference in Amsterdam, is that right, where you met with IRD?---That's, that's, that's correct. I mean, it was just one of those things that prompted new ideas, yes.

10

Yes. And so you've gone to this conference - - -

THE COMMISSIONER: And when did you go to the conference?---April, if I remember, roughly around April/May.

Of which year?---Of 2016.

MR LONERGAN: And from this conference, you've seen new technologies and you and Mr Soliman went there and saw these new technologies, came back, and is it my understanding that there was a level of discussion around testing of these potential technologies for RMS?---Yes.

20

And you distinguished between, I'm just looking at your words, trials and testing. Now, trials, you refer to as being in relation to heavy vehicle maintenance – sorry, I withdraw that. In relation to gazetted and regulated activities of RMS, where there's a high level of accuracy that is needed for legal purposes, that's correct is it?---Sorry, could you just repeat your two terms there if you don't mind.

30 Yes. So, trialling and testing and, I just explained trialling and you agreed with me, I believe, in terms of what I asked.---I think you've got them reversed there.

Well, sorry, testing, is that what you're saying, where there is gazetted instruments and therefore a high level of requirement or a high level or accuracy required in order for legal enforcement of the product?---Yep.

40 And the result of the product. And the trialling is where there is new technologies and, you know, in the first instance, you might internally trial the product and then if it's encouraging, as I think you said at least one was, that then you might go to a further process, is that right?---That's correct, you've got that right.

Now, and your evidence, correct me if I'm wrong, was that internally, this independent requirement or requirement for independent evaluation was, you say, necessary in relation to the trialling but may have been misinterpreted internally as being something that your employees thought was necessary for the testing?

THE COMMISSIONER: Hold on. I think you're confused things and there's a number of propositions there. Testing, can I just establish, testing is the formal process where it's a measurement measuring piece of equipment that's fundamental or essential for your enforcement procedures?---Correct.

And that requires the independent testing?---That is absolutely correct.

10 So that's testing. With your trials, you said that step number one was the internal, using your inspectors and the expertise of your heavy vehicle enforcement team?---Correct.

Correct. Then if that was positive and then there's discussion about developing a business case, is that when you and others may turn your mind to do we need an independent party involved?---Yes, that's correct.

MR LONERGAN: And so within there, there was a necessity or not of an independent party to do the trialling?---Not for trials.
20

But your evidence before, please correct me if I'm wrong, was that you thought that employees may have misinterpreted that necessity.---That is possible.

And the misinterpretation of that necessity being possible was because there was the requirement of independence for the testing.---Yes, that, that, again it was two different activities.

Yes, I understand. Now, you said before that you were a subject matter expert in relation to the products that were in your areas, the seven respective areas, and one of those products was the IRD scales.---That was one of the products, yes.
30

Yes. So you were very familiar with the IRD scales.---In general terms, yes.

And you were aware that they'd been in existence within RMS for over 20 years.---I'm aware that they have been used by RMS for that period of time.

Now, and you're also aware that these scales were coming to the end of their life and the maintenance budget was high because of the problems - - -
40

THE COMMISSIONER: Well, hold on. Again, a number of propositions. You've already given evidence that they were coming to the end of their life?---Yes.

All right. Next proposition?

MR LONERGAN: And the maintenance budget on them was high because of the constant need - - -

THE COMMISSIONER: Well, do you agree that the maintenance budget was high?---The, yes.

MR LONERGAN: \$450,000 maintenance budget for the IRD scales.
---That's what I understood, yes.

10 Yes. And that's quite high, right?---In, in the overall budget, absolutely.

Yes, because the overall budget was 1.2 million.---That was my understanding.

Now, you mentioned that there were – sorry, just withdraw that. Of the \$450,000, to your understanding was that cost mainly around the procurement of parts for, to be replaced in the IRD scales or was it labour costs in relation to it?---I couldn't give you that breakdown. I, I couldn't, I obviously sought advice with regard to how much money we were currently
20 spending on maintenance costs per year for old equipment.

THE COMMISSIONER: And so that figure would include procurement of parts and fabrication of parts.---Procurement, yes, sorry, Commissioner.

And the cost of the maintainer actually fixing things.---Pulling them apart, fitting them. Not recalibrating, that was the only thing that was not included in that. Any works to get the equipment back and running again was included in that figure.

30 450.---That would be the way I understood it, yes.

MR LONERGAN: And you also mentioned, and it was in, that there was a need to actually fabricate some of the parts for the scales.---I, it was my understanding that parts needed to be fabricated because they were no longer available. I couldn't tell you what parts they were.

Yes. Is it the case that parts, in order for certification to occur in relation to particular scales that the parts that go into them need to be genuine parts from the manufacturer?---In as far as possible, but if I could just explain
40 certification for, as an example.

Please.---Which might be helpful. Once all those parts are put together a dead weight is put on the device and that should reflect the weight of that dead weight. And assuming that the, the, the device works exactly as it's supposed to, it is then calibrated as working correctly.

So it matters not whether non-genuine parts or genuine parts of the manufacturer are put into the product?---Not as long as at the end of the exercise it can be calibrated and works correctly.

Moving on to a separate topic now, in relation to, if we bring up volume 5, page 36.---Yes.

10 Now, you recall seeing this email and I think your conclusion was along the lines of it didn't make a lot of sense. Is that right?---Yes, I think that's how I expressed it.

And just one aspect of your evidence was that having two quoters didn't make sense in relation to the supply of the IRD scales. Do you recall giving that evidence?---It didn't represent any competitive benefit and it didn't address the service-related issues we were trying to address.

20 So, but just looking at the competitive benefit, so is it not the case that IRD would provide the scales to the relevant distributor and then that distributor would put on a margin? That's correct, isn't it?---That would be my assumption, yes.

And to your understanding, the margin that any particular distributor put on was at their discretion?---That would be correct, yes (not transcribable)

So if there are two distributors then there is competitive tension between those distributors as to what margin they put on the cost base of the product provided by IRD?---There would be I suppose a possibility of a degree of competitiveness between them, yep.

30 So a degree of competitiveness between two suppliers is beneficial to RMS, is it not?---The basic principle is correct but when you have to go back to a singular provider to have those devices maintained it's just not, doesn't sit correctly. If they both were providing equivalent levels of cost and they could support the systems from end to end it would, yes, make some sense, because you would take the best deal, because that would also extend not only from the cost, the cost of service. That doesn't, that isn't what's being, what do you call it, proposed here.

40 So just following on from that logic, Mr Hayes, does it make sense that a competitor, a provider of a competitor weigh scale would have the maintenance contract for – sorry, I withdraw that. Let me rephrase it this way. AccuWeigh was the provider of the LP600 and 788 weigh scales. You're aware of that?---Yes, they were provider of an alternative scale which was acceptable to the inspectors.

And is it acceptable that they, being the exclusive distributor of that product in Australia would have the maintenance contract in relation to the competitor weigh scales, being the IRD scales?---It would be highly

unusual, it would be highly unusual because that would be the, you know, it would seem to cross that intellectual property side of business, if you understand what I mean.

THE COMMISSIONER: Did you know that's what eventually happened?
---No.

That was after you'd left?---I would find that very surprising, to be honest with you, but - - -

10

That occurred after you'd left, had it?---Look, I would assume so. I don't remember any discussions on the subject.

MR LONERGAN: So you said, I didn't quite get you, why you were - - -

THE COMMISSIONER: Mr Lonergan, can I just ask, what's the relevance of this?

20

MR LONERGAN: Well, it goes to the whole process around the tender and the maintenance of the scales.

THE COMMISSIONER: But I really, I'm struggling to see the relevance overall and in particular the relevance for your client.

MR LONERGAN: Commissioner, I only raised that because it came up through the, through the questioning, but I'm happy to move on and - - -

THE COMMISSIONER: All right.

30

MR LONERGAN: Yes, so just moving on to ELWC. So ELWC were the servicer of the IRD scales, you recall that?---That's correct. They had been for a considerable number of years.

And were you aware that there was a change in the personnel within ELWC who were maintaining those scales?---I was advised of that, yes.

40

And what were you advised of?---I was advised that since the original owner had relinquished, you know, involvement in the company that it had been taken over by his son, and that since that time the service provision by the company or its management had, was no longer effective.

And there were delays, I believe, in your evidence in relation to the timeliness of servicing of the scales, is that right?---That's my understanding, and the reliability of those servicing.

So was that in part to your understanding in relation to the delivery of product in order to repair and service the scales?---It was the time frame from the time they were put in for repair to the time they could go back on

the road and were re-certified and suitable for use. That was, it was that overall cycle of how long it took to get things done.

Yes. Which would include the procurement of parts from IRD and delivery of them.---I would assume so, yes.

But you're not aware specifically of that.---I didn't go into that level of familiarity about the issue.

10 Now, just moving on to my last topic. Volume 11, page 247, if that could be brought up. Now, you were shown this just a short time ago, and you'll see there under category B there's procure and maintenance of the, as part of the request for quote, and your evidence was that you weren't aware of the procurement aspect of this, which was in the memo.---I, I don't, I don't recall having a focus on the procurement aspect of it, no.

So this document was dated - - -

20 THE COMMISSIONER: The request for tender?

MR LONERGAN: Sorry, it was, did I say request for quote? Request for tender. So if we go back to the previous page just so we're -- keep going back.

THE COMMISSIONER: The first page is at 240.

MR LONERGAN: 240. Request for tenders.---Ah hmm.

30 So did you read this document?---No, I didn't. I have no reason to.

So your memo, the memo to you, which we can bring up, is volume 11, page 284. So in reading the memo, that's the extent of your understanding of what this request for tender was about?---Yeah, this was the document A I read and I signed. If I just bring your attention to 2, Background, and the second paragraph or the second, the details of the second paragraph.

If you just speak a little bit more into the microphone, Mr Hayes.---“The works are in, the works in this contract involves maintenance of heavy” - - -

40 Sorry just -- Mr Hayes.

THE COMMISSIONER: Hold on. Mr Hayes, maybe if you can speak up a little bit louder.---Sure. I'm sorry about that. The second line in that, not quite the second line, “The works in this contract involved maintenance of Heavy Vehicle Branch assets.”

MR LONERGAN: Yes. You want to bring that to our attention?---And that was the bit that was focused in my head and my understanding about what the, the whole tender evaluation process was about. Maintenance.

And maintenance, you would accept, involves the cycle of a scale going in because it's in need of repair, the procurement of parts in order to do the repair, and then the conducting of the repair with the procured parts?---Yes, it would be to restrict it to those activities.

10

And procurement then would involve going to the supplier, to the supplier of the product and purchasing them?---Correct. But this, this page here - - -

THE COMMISSIONER: Purchasing the spare parts?---Yes. This page here doesn't mention procurement.

20

MR LONERGAN: No but you'd accept that it's implicit in there that there is a requirement of procurement of parts?---No, not in the, not in what I have read here. It says it's about the maintenance of heavy vehicle assets, not the procurement of products.

No, Mr Hayes, what I meant by procurement, and I was clear, in procurement being of the spare parts required to do the maintenance.---That would just fall under the maintenance aspect but in my head, okay.

Just a second, Commissioner. No further questions.

30

THE COMMISSIONER: Thank you. Could we just go to volume 1, page 95. I just want to ask you a question about some of the, I'll get the terminology correct, the trials. This document is a memo. You can see the issue is Heavy Vehicle Programs Unit continuous innovation and improvements and under Background there's a reference to a continuous improvement initiative. Do you see that?---Yes.

Then you can see this is referring to an under-vehicle inspection camera, under Comment.---Comment, okay. Yes.

Then if we could go to page 96, we've got a photo of it.---Yes.

40

Then on page 97, we have a recommendation which is that the General Manager, Compliance Operations Branch, who at that stage was Mr Endycott?---That's correct, yes.

Note the benefits of using the under-vehicle camera for heavy vehicle inspection. You're also referred there but there's no signature or ticking of approved or not approved. Do you recall seeing this?---Could I go back to the previous page, if you wouldn't mind?

The first page?---Yes, please.

Yes.---Thank you. Okay, sorry, could you go back to the final page again?

Yes.---Sorry about this but I just want to - - -

Page 97.---Okay, sorry. I've just absorbed it now.

10 Do you recall seeing this?---No.

All right.---Because one doesn't make sense without the other. In other words, I am saying we're going to conduct these tests, I wouldn't then say, "Please note the benefits," when nothing is mentioned here about benefits not at this particular point in time is there any – because my understanding, my only understanding about that whole trial was, I did see those cameras, I'd seen three or four of them around the, their, their work area. I think it was highlighted to me what they were and I understood the logic of considering them and possibly it was something that was seen but not by me
20 when we were in one of the, the conferences. But the only outcome that I remember about that was a verbal one and it was that the IVR's didn't find value in them because they didn't give them enough information or they weren't clear enough or whatever.

So the reference to an IVR, that's a reference to the inspectors?---That's correct.

So the inspectors didn't find them - - -?---Had a look at them, put them under the things, they, they didn't give them the level of detail or otherwise
30 that would allow them to be using an alternative to crawling under the truck. It just didn't give, you know, or look at oil, I assume that was the case and I remember mentally even thinking that the display unit was pretty ordinary for what they needed to do, that was all.

And is that an example of where you said, look, if somebody came up with an idea, the first step was to go out, get it to the inspectors with somebody from Heavy Vehicle Enforcement team and let the inspectors have a try of it?---Yep.

40 See if they think there's any benefits to it?---Concept is good in this case, good concept, stop people crawling under dangerously heavy trucks but the product doesn't, doesn't, doesn't overcome that. So again it was, the whole thing at the beginning of this was let's buy one or two, let's find out if they're of value, put them out there, let's see what comes out of that, and then move from there about recommendations. This (not transcribable) memo in regard to saying, "Be aware we're doing this." Great, general manager probably just like myself was interested in innovation, but the

recommendation doesn't make sense here. I would have only said, "Note the fact we're running some trials."

Ms Wright.

MS WRIGHT: Mr Hayes, you were asked a question by Mr Lonergan about the conference in Amsterdam.---Yeah.

10 And he asked you whether you agreed that you saw new technologies with Mr Soliman and then came back and essentially agreed that there would be testing done. You remember he asked you that question?---Yes.

I might not have put it exactly how he did, but you recall he asked you that question. Was there a specific discussion following the Amsterdam conference in 2016 to come back and do trials or testing with Mr Soliman? ---No, I think at the conference we had discussions about what was interesting and what seemed, that might be of value. There wasn't a specific, what would they call it, and, and those items would have been included in that discussion, but there was no, you know, innovation or
20 testing agenda because, if that were the case, this memo which we've just looked at would have included we're going to do some innovative system testing and here's a list of them, just note.

So your attendance at that conference didn't lead to a decision to do more scoping studies or a discussion with Mr Soliman to that effect?---Nothing other than just investigating as to, A, who are the local agents, would they put something out there for us. You know, that was the nature of the generalised discussion but not specific. Didn't say get, go, go out there, get somebody (not transcribable). That was an initiative on his part.

30 Thank you.

THE COMMISSIONER: All right. Now, can Mr Hayes be excused?

MS WRIGHT: Yes.

THE COMMISSIONER: Mr Hayes, thank you for coming to give evidence. You're excused.

40

THE WITNESS EXCUSED

[11.37am]

THE COMMISSIONER: We will have the morning tea adjournment and resume at about 5 to 12.00.

SHORT ADJOURNMENT

[11.37am]

THE COMMISSIONER: Ms Wright.

MS WRIGHT: Commissioner, I call Claire Lemarechal.

THE COMMISSIONER: Thank you.

MS HOGAN-DORAN: Commissioner, I seek leave for Ms Lemarechal.

10

THE COMMISSIONER: Right. You're authorised to appear for her. First thing, do you take an oath or an affirmation?

MS LEMARECHAL: An affirmation, please.

THE COMMISSIONER: Is there any request for a declaration under section 38?

MS HOGAN-DORAN: Yes, there is.

THE COMMISSIONER: All right. And you've explained it?

10

MS HOGAN-DORAN: It's been explained to her.

THE COMMISSIONER: Right. I'll make a declaration under section 38. What I say to every witness is that it does not protect you in two areas, and the first one is very, very important, it doesn't prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence. It's like a form of perjury, it's a very serious offence, it brings with it a maximum penalty of imprisonment of up to five years, so it's very important that you are

20 truthful and not provide false or misleading evidence. The second exception is for New South Wales public officials and evidence given by a New South Wales public official may be used in disciplinary proceedings against that public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

20

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced

30 on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN

40 **GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

THE COMMISSIONER: Now, before Ms Wright starts asking you some questions, I did notice that you came, when you went into the witness box you had, is it a laptop or a - - -?---Yeah.

Have you got some material that you've been referring to in preparation?
---No, it's just in case I need to look at something.

All right.---I've got paper copy as well.

All right. Can I ask you just to keep – no, no, no, if you can put that to one side.---Sure.

- 10 Ms Wright and the other counsel will ask you questions and you will be taken to documents I anticipate. If at any stage you think I would like to refer to the documents I've brought with me, can you raise it and we can then determine whether that's necessary.---Right, I will do.

Ms Wright.

MS WRIGHT: Thank you. Ms Lemarechal, could you please state your full name.---My name is Claire Marie Lemarechal.

- 20 Are you employed by the Roads and Maritime Service?---I'm employed as a contractor.

And what is your job title?---The official one is technical tester but I've been being a test lead since I joined RMS, test manager or test lead on projects.

How long have you been in the position of test lead?---Since I started, so
- - -

- 30 Which was when?---2005, August 2005.

Have you provided a statement to the Commission dated 6 March, 2019?
---Yes, I did.

Is there a small correction you wish to make to that statement?---Yes. So in the statement I said that Mr Singh contacted me to, for the second tender on 12 February, but I received an invite in January to make sure I can make the meeting and travel to Parramatta for that tender.

- 40 That's at paragraph 9 of your statement?---That's right.

So it should read, "Sometime before," - - -?---Yes.

- - - you've said in January, so did you - - -?---When the invite was sent, yeah, I think it's in the document.

Okay. But sometime before 12 February, 2018 you were asked by Mr Singh to attend on 12 February, 2018?---That's right, yes.

And you referred to a second panel?---There was a panel before that in October.

Was that the Professional Services Contractors Panel?---That's right, that's correct, yeah, that's the one.

10 And in your statement at paragraph 9 you have said that you had previous experience as a panel member for a separate RMS tender.---That's the one.

You're referring to the PSC Panel there?---That's right, that's correct.

And your statement deals with your participation as a panel member for the portable weigh scales tender for the procurement of 125 portable weigh scales. Is that correct?---It is correct.

Now, you've said that you, at paragraph 7 that you have known Mr Soliman since you started at RMS.

20 THE COMMISSIONER: I think since he started.---He started.

MS WRIGHT: I'm sorry, since he started at RMS. Does your position fall within the Heavy Vehicles Programs Unit or outside?---It's outside. I'm part of the IT Division, but what we do is, we provide services to the business to assist when they have an IT project by providing project manager, BA and testers.

You don't report to Mr Soliman as such?---No, I don't, no.

30 MS HOGAN-DORAN: Commissioner, I apologise for interrupting. Is it possible to have the witness's microphone or the sound turned up?

THE COMMISSIONER: You're having difficulties hearing her?

MS HOGAN-DORAN: We're having difficulties, yes.

THE WITNESS: Sorry, do I need to go closer or - - -

40 MS HOGAN-DORAN: Thank you, Commissioner.

MS WRIGHT: In relation to the PSC Panel, you haven't addressed that panel in your statement. Do you agree with that?---I agree. I was not asked about that panel, yeah.

You were a member of the Tender Evaluation Committee?---That's correct.

Could volume 8 at page 148 be shown on the screen. This is the tender evaluation report for that PCS Panel. At page 153 there's signatures of

committee members. Your signature is not there. Did you sign this report to your recollection?---Yes, I did.

The panel recommended that four tenderers be appointed to the PSC Panel. Do you recall what the purpose of this panel was?---Yeah, it was for providing services and trial and, yeah.

What sort of services?---Evaluation of hardware for Heavy Vehicle Branch.

10 How did you come to be included on the committee?---It was last minute so I got a call, I don't recall if it's from Theepan or Mr Soliman, on the day to ask me if I was available because (not transcribable) I think they were missing some members.

If you could try and keep your voice up, please, Ms Lemarechal.---Sorry.

When you say on the day, do you mean on the day of the evaluation?
---That's right.

20 You received a call from either Mr Thevasathan - - -?---Soliman or - - -

- - - or Mr Soliman - - -?---Yes.

- - - asking you if you were available to - - -?---That's right.

- - - be an evaluator of the tenders?---That's right.

30 And you were available?---I was. I didn't have anything too urgent and because I, you know, I considered them like my customers so I thought if they need my help - - -

Who did you consider your customers?---Like Heavy Vehicle Branch because that's really for who I'm working mainly.

What else did the person tell you about the process that you would be involved in?---No, they just said it's a tender and I received a few email from Samer with the invite and the room that it was going to take place.

40 And do you recall having any discussion with Mr Soliman?---About the different company or about - - -

About what you were about to do.---No. Just said it was a tender and please can you help.

Did you attend a meeting room?---Yes, I did.

And who else was there?---So there was Mr Soliman, Mr Singh and Mr Barry Everson.

At that stage were the tender documents present in the room?---Yes.
Probably in an envelope.

Did you proceed to open or did someone proceed to open the envelopes?
---Yes, someone proceed to open them.

You looked at each submission?---Correct.

10 Was there a discussion between you about each submission?---No.

THE COMMISSIONER: There was no discussion about the submissions?
---No. Usually the way the tender works you just get the documents.
You've got a list of criteria to evaluate and every, you pass the, the set of
document for each tender to each member of the panel and everybody reads
and evaluate and then afterwards you collect the score on each (not
transcribable) tender.

20 MS WRIGHT: Was that the process that was followed on this day?---Yes, I
believe so.

So you made your own scores according to the evaluation criteria?---Yes, I
did.

30 Did Mr Soliman speak through the evaluation process?---He was just
explaining the process to us. He didn't speak about any of the company or
any of the tender. He was more about now we do this, now we do that. We
need to sign this, you know, the confidential declaration there's no conflict
of interest and things like that.

THE COMMISSIONER: So it was really he was just speaking about the
procedural aspects - - -?---That's right.

- - - of the tender itself?---That's correct, yeah.

MS WRIGHT: Was this your first experience as a member of a tender
evaluation committee?---Yes, it was.

40 Were you familiar with the RMS Procurement Manual at that stage?---No, I
wasn't.

Were you told or were you aware of any policies around tender
evaluations?---No, I wasn't.

Did anyone advise you that there were policies around tender evaluations?
---No.

Were you aware that there was a requirement for the members of the committee, that solely the members of the committee should be privy to the tender submission, that is no one else outside the committee should be privy to the tender submissions when they're evaluated?---Yeah. I did know that but what I thought, I thought Samer, you know, sorry, Mr Soliman, was part of the evaluation group because I thought he was the one running the tender and at the same time explaining to Mr Singh how it works. So I didn't realise that he was outside of the panel.

10 You thought was a member of the Evaluation Committee?---That's right. Yeah. I thought he was just, like, coordinating it. As I said, I didn't know that there was only, like, when we did the second panel, Mr Singh was coordinating it and then it was Mr David Jones, Barry Everson and myself doing the evaluation. So I thought it was, you know, didn't seem strange.

So just to clarify, did you think Mr Soliman was a member of the committee or did you think he was just there to coordinate?---I thought he was there to coordinate. He didn't do any evaluation. He didn't provide a score or anything.

20

You recall one of the tenderers was a company called AZH Consulting?---I do now because of - - -

Had you ever heard of that company prior to this day?---No, no.

Did anyone say anything to you about the company during the evaluation process?---No.

30

No discussion at all about AZH?---No, there wasn't any that I recall.

Could the witness please be shown Exhibit 38. I just thought it we had a hard copy as well, Commissioner.

THE COMMISSIONER: Yes.

MS WRIGHT: Ms Lemarechal, this document, if you turn to page 2, it's from AZH Consulting, and then on page 3 is a cover letter and behind it is the tender submission. Do you recognise the cover letter, first?---Yeah. There is my initial on it as well.

40

THE COMMISSIONER: And why did you initial it?---We all did.

But why?---Maybe to show which one we've read and we pass around us, I don't remember.

MS WRIGHT: Is your initial on page 3?---Yeah, the top one, CL.

Next to JS?---Yeah.

Did you read the tender submission by AZH?---Yes. I will have done, yeah.

You didn't just skim it, you actually read it?---Yeah. Yeah, because my, you can see the scoring as well.

On page 8, there's some handwriting. You're referring to that- - -?---Yes, that's right.

10 - - - as your scoring?---Yep.

THE COMMISSIONER: Whose handwriting is "Technical methodology, past experience, Jai, Barry and Claire"?---That's mine.

That's yours?---Ah hmm.

And then the 6, 6, 8 under your name, are they your scores?---That's right.

20 What about the other scores?---They will there, so like, as we pass the document so maybe I was the first one having this document so I made that table and then maybe someone, I don't remember, but someone else having the tender for some, for the other company will have made the same table and then we can each score.

MS WRIGHT: So you saw, at least some of you saw the other's scores as the table was made?---By the look of it, yes.

Were you influenced at all by seeing the other scores, do you think?---No.

30 Now, the tender submission by AZH is quite long, but if you could turn to page 9, you see there's information about the personnel in the company, Ali Hamidi and Zoe Hamidi?---Ah hmm.

And about halfway down the page it says, "As the technical lead Ali Hamidi draws on a 10-year career in the technology industry including the ITS industry."---Ah hmm.

40 And there's other information. Did you have any way of knowing whether the information in this document was true and correct?---No.

And so you assumed or you took it that it was - - -?---Yes.

- - - truthful information?---Yes.

And there was no discussion, was there, between you and Mr Singh about the content of AZH's submission?---Not that I recall, no.

Did you see Mr Singh read the AZH submission?---I believe so, yeah. I mean we were all busy reading our own one and passing it around so, you know, I was probably busy reading the document or reading another document while Mr Singh was reading another document. I was not checking what the others were doing.

There was only one copy of each submission in the room?---Yes, we were passing them around, yeah, so - - -

10 How long did the meeting go for?---I don't, I don't, I wouldn't recall.

How many submissions were there?---I wouldn't recall either.

But it was at least a couple of hours?---I would say so, yes.

And to your observation each of the committee members was reading each of the submissions - - -?---That's correct.

- - - properly.---Yeah, that's correct.

20

It wasn't just a flicking through?---No, no, no, we, we all spent time looking at them.

THE COMMISSIONER: You spent time looking at them?---Yes, we did.

MS WRIGHT: Could I take you to page 14. You see Schedule B6, References?---Sorry, schedule, oh, yes, yes, yes, sorry, yes.

30 You see at page 14 it's a tender numbering I assume being called Schedule B6 and it provides a reference. Did you understand that was to be an external reference in support of the tender submission?---Yes.

Do you see how it names Roads and Maritime Services and Mr Singh as the name of the person to contact?---Yes, I do.

He was actually your fellow Tender Evaluation Committee colleague?
---Yes.

40 Wasn't that inappropriate that he be named as a referee?---Maybe I thought that that was the person to contact within the Roads and Maritime Services.

But he is the person working for the organisation going to allocate the work and he's also a member of the panel determining whether the company should be awarded the tender. That didn't - - -?---No, that didn't click.

- - - stand out to you as an issue?---No, I'm sorry, it didn't.

I have just taken that to you now. Did you immediately see that that was an issue or a concern?---Yeah, yeah, I can see it.

Why do you think you didn't notice that on the day of the evaluations?
---Maybe I thought they already done some work and that's why Jai was the contact because it says they provided other services, so - - -

10 So it suggests a relationship between the company and Mr Singh?---For me it suggests that they've done some work for RMS before and their contact at the time for the work was Mr Singh because that's what - - -

Did you have any - - -?---Yeah, sorry.

20 Did you have any concerns at all about Mr Singh's impartiality on this Evaluation Committee?---No, because for me that's, that's what it's saying, is they've done, they've provided some services which are listed in section C and the scale of operation they've done and I guess I assumed Jai was the one that coordinate the, those services, so that's why they provided Mr Singh as the reference.

Wasn't it supposed to be an external reference, someone external to the organisation?---I don't know if that's, I wouldn't recall if that was a requirement or not.

Or at least external to the Tender Evaluation Committee?---I wouldn't have known.

30 But you hadn't been given any training about tender procurement processes?---No.

Who is it that got you involved in this PSC Panel Committee?---Either Samer or Theepan, either Mr Soliman or Mr Thevasathan.

MR O'BRIEN: Sorry, I missed that answer.---Either Mr Soliman or Mr Thevasathan.

Thank you.

40 THE WITNESS: I think they were short of members and I, I also assumed because I was a different division that maybe they needed someone from a different division, I don't know.

MS WRIGHT: Why did you think they were short of members?---Because that's, that, that was the urgency when they call me saying we need someone now, basically, when can you walk, I had to walk between two buildings as soon as possible.

THE COMMISSIONER: So you got a call a couple of minutes before you attended the room to start the evaluation process?---That's right. And I was in a, we had a different office in Parramatta, so I was in my normal office on Argyle Street. I got a call saying, "Are you available for tender," and I said, "When?" And he said, "Now." And I said, "Okay, I'll walk across."

MS WRIGHT: And you don't recall, or do you recall whether Mr Thevasathan said, I was on it, I can't do it, can you take my place?---I don't recall.

10

You don't recall any conversation to that effect?---No, no.

Now, in your statement, you referred to another tender panel you were on for the procurement of portable weigh scales in 2018.---Yes, I do.

And you say at paragraph 11, that you attended a tender evaluation meeting chaired by Mr Singh on 12 February, 2018.---Correct.

20 And you've said, "I was provided with a list of requirements as part of the request for tender." Who gave you requirements?---Mr Singh.

Could we have volume 10, page 166, please. This is a calendar organiser from Mr Singh to you and Mr Jones and Mr Everson and he says, "Hi all. So the scope of the RFQ scale dimension is now not considered a mandatory requirement. As a result we should re-examine the AccuWeigh submission based on this new scope and provide a new score." Do you recall receiving this message?---Yes, I did, I do.

30 What occurred after you got this?---So we got the, we had the meeting, yeah, discussed that and then the report was amended and then sent to all of us for signing.

But was the scale dimension requirement removed to your knowledge?
---No.

Do you recall what you discussed after you got this message and you said you met with them?---I recall from reading my, the emails and everything that it would be for future weight, for yes, for scales, sorry, for future - - -

40 What would be for future scales?---We didn't redo the whole RFQ. It was just for future one, for future scales there would be, you know, more dimension and you open tender to other vendors.

So your recollection is the size requirement was maintained for this tender?
---Yes. Because we still located the tender to the, the company. We didn't change, we still were purchasing the scale from the same company. The recommendation was for future and - - -

Yes. And did you have an understanding that the scale size requirement for the scales was restricting the options that could be selected for this tender?
---They were, but I've seen the, where the scales are stored, and it's really fixed to the car, so it seems normal to me that you didn't want to refurbish all your car because just, you know, there would be a, the cost of doing it but also the management of the, so, but we didn't discuss that during the tender, it's more thinking afterwards. It seems obvious to me at the time that you didn't want to refurbish all the cars because it is, they are really, everything in those, in the boots of those inspectors' cars are, is fixed, you,
10 and because you have to scale then on top of that, you've got cradles for the computers, then you've got a little shelf with the printer, so everything has been made such that. So to refurbish that it would be quite a, a complex task.

You've said in your statement - - -

THE COMMISSIONER: Did you actually look into that or is that your assumption?---We didn't even, at the beginning we just, just there was a requirement of the size and that's what we took account into it. That's all.
20

So for this particular panel, one of the requirements was to, certain dimensions.---Yes.

And hence you applied that when assessing it.---There was also a concern for me regarding the weight of those, the other tenders, because they were more heavy, and I know often those inspectors take, take the scale in and out. And, but that level, so you will have to lift them all the time and you don't want them to stop weighing vehicle because they don't want to move around those scales.
30

So for this particular evaluation you were required to take into account the dimensions?---And the weight.

And also the weight.---And also there was I think a requirement to prove that they, they have a lifespan of 10 years, you know, prove that they've been used for such a long time as well.

MS WRIGHT: Was any consideration given to the price of the scales?
---We, we, you know, there was no, we knew they were the most expensive,
40 but because of the size, what's the point of buying scales that are cheaper that you can't use? That's, that's, that's what I had in my mind, you know.

You've said in your statement at 13 that the dimension requirements were based on the existing set-up of the inspectors' cars.---That's right.

"Changing the scale dimensions will involve refurbishing all current inspectors' cars." Was there a discussion around that?---Not really, no.

Well, you've included it in your statement. So wasn't it discussed by someone during the process that the scales had to fit into the existing set-up of the inspectors' cars?---Yes. That's where the dimension came from, yes.

Yes. And who discussed that with you?---Maybe ask why those dimensions, and someone said, oh, it's because it's the current, that's where they fit in the rack and I said okay, you know.

10 You don't know who? You don't recall who?---No (not transcribable).
Might be David, I don't know. I don't recall (not transcribable)

Mr Jones provided feedback after the evaluation meeting.---Yes.

Yes. And you've referred to that at paragraph 24. Did Mr Jones raise any issue in relation to the tender specifications during the evaluation meeting?
---I don't recall. He might have said something but I don't recall.

20 And he sent an email raising his concern and saying he wouldn't sign.
---Yes, that's correct.

And you saw that email.---Yes, I did.

Did you give consideration to the issue he raised, that the dimension requirements were too restrictive?---For me there was still the weight as well. For me weight was - - -

30 THE COMMISSIONER: No, but did you consider what Mr Jones raised?
---I can see what he says but then you have to think too, I don't know how many cars they have, a hundred, two hundred? Then you have to do it in certain – you know, you will have to someone to coordinate or changing those racks, so you'll have to have a manager for that. You'll have to make it sure that you still have cars for all your inspectors, then you have the problem that you might have some cars that have a certain size and some cars have a different size. You know, it's a complex issue to just say, oh, we'll refurbish all the cars.

40 MS WRIGHT: But you didn't know anything about how much it would cost to change the racks?---We discussed that at the meeting but not in this letter. I don't think he's got that in his letter. I don't remember.

You discussed it at the evaluation meeting, how much it would cost?---The second one, the second one. The one on 22 February.

There was a second evaluation meeting?---No, you know the meeting you show me the invite for that we, we call?

THE COMMISSIONER: It was page 166.---The one where we call each other and we, yeah.

MS WRIGHT: Yes.---That's the one.

I see. So that meeting with Mr Singh and the other committee members, you discussed that - - -?---To change the recommendation and - - -

- - - there could be an option of changing the racks.---That's right. Yeah.

10 And was there a discussion about the cost of that?---I've seen it, I've seen it somewhere in an email so we must have discussed it somewhere. There's an email about the cost, 1,800.

Did you think that was a low cost?---I, I think it is but I don't know if I mention it to the other members.

20 Didn't you think that the scale dimension requirements were too restrictive like Mr Jones?---No, because for me it was not really, it's a lot of work and I don't know how long it will take for these scales to, you know, for all those racks to be replaced. So, I mean, I, I just follow, you know, if, if he was so worried, we should have cancelled the tender and just restarted the process from zero. That's what should have been done if you really don't want dimension (not transcribable) but it was part of the, the requirement of the tender, so unless you reissue a new tender and start the process again, that, that's what, for me that's what you should do if you don't, if you don't want that requirement again. So we should have cancelled the, the evaluation from, from the start if, if it was such an issue for Mr Jones.

I have no further questions, Commissioner.

30 THE COMMISSIONER: You've still got Exhibit 38, which was the AZH - - -?---Oh, yes, I do, yes.

And would you go to page 8.---Yeah.

The procedure, was it, that, as you said, you were called at the last minute to be part of this panel.---Yes.

40 You arrived, somebody opened an envelope which had all the various tenders, and then the three of you sat in the room and passed the various tenders round.---That's correct.

And your recollection is whoever had read a tender for the first time, they would draw up the assessment grid that you did on page 8?---Maybe. Maybe not. I did it that way because I think that's the more logical way to record it, but maybe they did a different way. I don't remember.

But the idea was you would read the document and then you would turn to, well, in this case you were going to give them a rating of 6 for technical.
---Ah hmm.

So you would sit there, read it, turn your mind to here are the criteria and I'm noting my assessment, and once you were finished, you'd hand that on to the next person.---That's right.

10 They would do the same thing, then the third person would do it.---That's correct.

So when that was all completed, you've kind of got the raw data. What happened next?---Then someone collect the score, someone does an average, then you get the score for each company.

And is that done while you're sitting in the room?---Yes, yes. And then the report is based on that, the final report.

20 It seems a very solitary exercise, that is you're just sitting there reading and marking your own score and then at the end of it there's a mathematical exercise of the average et cetera. Was there any discussion amongst the three of you, you know, I've got a problem with this particular company on past experience or were questions or asked or any discussion along those lines?---Maybe a bit, but I don't recall. It wouldn't be as such to influence each other, it might be questions but we still try to be all independent.

30 So you can't recall any discussion?---No, so yeah, nobody will have said, oh, I put 6, why are you putting 2, please change it, or no, nothing like that.

Oh, no, no, not suggesting you change it, but if there was a discrepancy I was just wondering, not a discrepancy, a difference - - -?---Yeah, difference, we might have talked a bit about it but I don't recall.

Now, Mr Sukkar.

MR SUKKAR: I'm the solicitor for Mr Soliman. I'm going to ask you some questions. So Mr Soliman wasn't your boss at the RMS?---No.

40 No. During that meeting did anyone ask, or just in your words, you said that he was coordinating the meeting?---That's correct.

Did anyone ask, once he'd finished coordinating the meeting did anyone ask him to leave the room?---No, but as I said, I thought he was part of the process, I didn't think it was inappropriate that he was still in the room.

THE COMMISSIONER: So he was there for the whole of the exercise?

---Yeah, I think he, yes. He might have gone out to get lunch but I don't think so.

MR SUKKAR: Did Mr Soliman leave early once the meeting was coordinated?---Not that I can recall. No, he was there, oh, not that I recall.

THE COMMISSIONER: Your recollection he was there, he might have popped out to get everybody lunch or something like that.---That's right, that's right.

10

MR SUKKAR: So it's not your understanding that Mr Soliman left the meeting early?

MS WRIGHT: It's been asked.

MR SUKKAR: Sorry.

THE COMMISSIONER: She said no.

20

MR SUKKAR: I know she doesn't recall, sorry, I apologise, I withdraw it. So nobody else in the room asked Mr Soliman to leave either?---No.

No further questions.

THE COMMISSIONER: Thank you. Mr O'Brien.

MR O'BRIEN: Very briefly if I may, Commissioner.

30

THE COMMISSIONER: And you can identify who you're acting for.

MR O'BRIEN: Yes, I'll do that. My name is O'Brien and I represent Mr Singh. Madam, as you sit here today in that witness box and you cast your mind back to the PSC evaluation tender meeting day, do you have a clear recollection of what happened, is it clear to you?---Yes.

Obviously it was your first involvement in a panel, a tender panel committee. Correct?---That's correct.

40

And was it your understanding from what you saw that Mr Singh was guided by Mr Soliman as to how the process was to take place?---Yes, but in terms of like we, now we open all the envelope, now we do this, now we sign this paper of, yeah, but nothing to do with what was in the tender, more like this is how - - -

THE COMMISSIONER: So your example of this is where we open the envelope, this is where you sign this, that was coming from Mr Soliman, was it?---Yeah.

MR O'BRIEN: So you and Mr Singh were obviously guided by Mr Soliman as to how the process would occur. Is that correct?

THE COMMISSIONER: Was your impression that Mr Singh was being - -
-?---That's correct, yeah.

10 MR O'BRIEN: And you were obviously guided by Mr Soliman as to what was happening. Is that, is that correct?---That's correct.

Again in terms of the process. Is that so?---That's, that's correct, in terms of the process.

And what about Barry? Did he appear to be guided by Mr Soliman as well?
---I can't talk for Barry, he will be - - -

I'm just asking of your observations, what you saw. Was he also guided by Mr Soliman in relation to the process?

20 THE COMMISSIONER: So that's Mr Everson?---Yeah, I, I guess so. We were just all, you know, being told what to do, so, yes.

MR O'BRIEN: Were you aware whether Mr Everson had been involved in a Tender Evaluation Committee before?---I was not aware, I don't know.

Did it appear that he was any wiser in relation to this process that you or Mr Singh?---He was, no, I don't recall.

30 You don't recall whether he was any more experienced in that regard?---I don't think he was but - - -

That was your impression?---That was my impression, yeah.

Now, you said that you were not aware that there was a procurement manual in existence at that time, is that so?---Yeah, that's correct.

And I take it from your answer there that Mr Soliman never made you aware of that, the existence of that manual?---Yeah, that's correct.

40 And obviously there was no lead time in your coming to this committee, you were called in at the last minute, that's so?---That's correct.

Had you ever done any training in relation to the probity and ethics associated with procurement?---No, no.

Were you ever made aware that that was necessary to do that type of training on order to be on a procurement panel such as this?---No.

The portable weigh scales tender panel, can I ask you some questions about that, please.---Sure.

You understood that the dimensions of the racks in the motor vehicles was an important part of the initial tender process, correct?---It was in the requirement, so when you reply to the tender it was part of the requirement is the scale should be that dimension et cetera. There was a few requirement under tender.

10 And, as I understand your evidence, there was some discussion about that requirement within the tender process as well, is that correct?---Probably just where did it come from, why this dimension, where is this requirement coming from?

THE COMMISSIONER: I thought there was also, you said there was a discussion about the cost of refurbishing?---Not at that tender, it was afterwards (not transcribable), yeah.

It was subsequently, okay.

20

MR O'BRIEN: You started that answer to my question with the word probably. Do I take it from that you're not entirely sure as to whether there was that sort of discussion or whether you can recall it?---No, I don't, sorry, can you, where did I say probably, sorry?

You said there was probably some discussion about it.---No, I've asked, someone asked why this dimension and then the reason was provided, it's because we have fixed rack and they have to fit in the rack and that's the dimension of the rack.

30

THE COMMISSIONER: And you can recall that discussion occurring at one of the panel meetings?---Yeah, the first one, I probably will have a, or wonder why there was just such fixed dimension.

But you can recall that discussion at that first meeting?---Yes.

MR O'BRIEN: When you had your second meeting, do you know what I'm talking about, the second meeting?---Yes.

40 When you had your second meeting, obviously there was more discussion about the dimensions in the scope of works, correct?---It was more that we shouldn't have dimension anymore because we might consider to refurbish the car.

THE COMMISSIONER: So that was at the second meeting?---That was the second meeting, yeah.

MR O'BRIEN: And that gave rise to the consideration of another tender that had been isolated because of the dimension problem, correct?---My recollection is, is provide a recommendation that for further tender for scales, we should not take in to account the, the dimension and open to more vendors.

10 Can we have a look at volume 10, page 166, please, Mr Operator. I just want to show you that email that Counsel Assisting showed you a moment ago. So you see this is an email from Mr Singh to yourself, Mr Jones and Mr Everson.---Ah hmm.

And it's dated 22 February, 2018. You see that?---Yes.

And you can see that this suggests that the RFQ, scale dimension is not being considered as a mandatory requirement?---Yes.

20 And this triggered the second meeting, didn't it?---But that's just the agenda of the meeting. That doesn't mean that's what we talk about at the meeting. That's not the – doesn't talk about the result of the meeting.

No, of course. But this, as I suggested, triggered the second meeting. This was the email sent around so that you could attend a second meeting, correct?---Yeah, yeah.

And you see that Mr Singh has said, "As a result, we should re-examine the AccuWeigh submission based on this new scope." You see that?---Yes.

30 And I take it that that's what you did? You re-evaluated the AccuWeigh submission at the second meeting, is that right?---I don't recall that.

You don't recall that. Do you recall receiving this email at all?---I do and I do remember the meetings. I've got all the email when, when Mr Singh send us the, the new report to be signed, and that describe better what the result of this meeting was.

40 And you said in your evidence earlier on, when Counsel Assisting was asking you questions, that you formed a view that – sorry, I withdraw that question. You said that your view was that you should have simply done the tender process from the start.---No, that will have been if at the first meeting it was raised by David Jones the dimension, the dimension requirement isn't acceptable, then we should have not start the process at all. But that was never discussed. But that's my personal opinion, if you want to change a main requirement of your tender, then just start a new tender and get more, you know, you have to restart and get, offer other company to, to reply to the new tender.

Well, I say with respect to you that sounds eminently sensible, but that wasn't something that was discussed.---But it wasn't, you know, David

Jones really said he didn't sign and everything, but that was after the meeting and after the first report was drawn. It was not so strongly discussed during the evaluation. And I, as I said, people talk about the dimension, the dimension, dimension, the weight is also very important on those scales, and also they have to be 10 years, you have to prove that they are, they've been used for 10 years or they will last for 10 years. That's also an important requirement.

10 And did you have any idea where those – I withdraw that question. In fact, that's all the questions I have. Thank you.

THE COMMISSIONER: Mr Lonergan?

MR LONERGAN: I have a few questions.

THE COMMISSIONER: Are you going to identify who you're acting for?

MR LONERGAN: Yes, Commissioner. I act for Novation and Mr
20 Thammiah. You've just given some evidence in relation to weight. Do you have your statement there?---Yeah.

I just want to take you to, sorry, paragraph 15 of your statement dated 6 March, 2019. You've read that?---Yeah.

So to your understanding, Novation was the only scale that met the weight requirements? Is that what you're saying there?---Yes, as well, yeah. As well as the dimension, yes.

30 So Novation met the weight requirement and the dimensions but none of the other scales met both criteria? Is that your evidence?---That's right. That's right.

And if I understand your evidence it was that weight was an important aspect of your assessment of the preferred scale?---Yeah, but the dimension too because, you know, for me it was not an option at the time to refurbish all the cars.

40 We'll come back to weight in a minute, but just on dimension, you did give evidence earlier that it wasn't just the replacement of the storage, what's the word, storage units within the trucks or the vehicles, it was the restacking that would also need to occur. Was that your evidence?---I mean it's just if you want to start a project like that it's more complex than just getting each car in a garage and being refurbished, but that's all my own opinion and that's what I've been thinking since this inquiry, it's nothing I discussed with anybody before.

But did you actually go and see the vehicles to form this opinion?---I knew before, I saw the vehicle before because I did a rollout in all the states and

I've seen those vehicle and I've tried to lift one of those scales before and - -
-

Sorry, you did a rollout of what?---Sorry, we did a rollout for deploying a new software, new hardware on all the sites of heavy vehicle and I was part of that project.

THE COMMISSIONER: You've just said that you've been thinking about the question of refurbishment.---Yeah, but that's just what - - -

10

No, no, no, no, let me finish.---Sorry, sorry.

You've been thinking about the question of refurbishment in the lead-up to this inquiry.---While I was listening to this inquiry, while it has been going on.

All right. What I'm interested in is the issues that you have raised about refurbishment, did you turn your mind to those at the time of the panel?
---No.

20

So this is something you've thought about subsequently?---Yes.

MR LONERGAN: Now, in paragraph 15 you refer to the AccuCorp and NEPEAN tender scales being eight kilos heavier than the portable weigh scales used by RMS at the time.---Ah hmm.

And that was the Novation scales.---No. Yeah, because they are, yeah, we already using them, yeah.

30 THE COMMISSIONER: The IRD scales.

MR LONERGAN: Sorry, the IRD scales. You refer to them as Novation scales, but what you mean was IRD scales?---The existing on the field, yeah.

Now, if I take you to volume 10, page 47N for November, and this was the tender that Novation Engineering submitted.

40 MS WRIGHT: Well, it's a pamphlet attached to it.

THE COMMISSIONER: Sorry?

MR LONERGAN: It was part of the tender that was submitted by Novation Engineering. So if you just see there, which scale in this do you recall assessing for the tender?---The 15.6 kilo.

Yes.

THE COMMISSIONER: Hold on.

MR LONERGAN: So that was the weight of the scale that was being assessed by yourself as part of the tender?---Yeah, just by the number, yeah.

THE COMMISSIONER: So that's the SAW 10A Series III aluminium.
---Yeah.

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

10

MR LONERGAN: And if we go to volume 10, page 61, and this was part of the tender by AccuWeigh. Do you recall this document?---Yeah.

And the scales that you were assessing there by AccuWeigh were the LP600 and the LP788?---Yeah, but I don't know, it would be the 23 kilos, I don't remember why the LP788 were not.

Yes, so the 23 kilo being the LP600 that was being assessed.---That's right, yeah.

20

And is it your understanding that the LP788s were not being considered? ---Just by looking at the weight I'd assume so. I don't remember why, I don't remember, don't, I don't recall it.

THE COMMISSIONER: So you just have a recollection that - - -?---The numbers, I'm good with numbers.

- - - that the other scales were, I think as you said in your statement - - -?
---About eight kilos, seven/eight kilos.

30

- - - eight kilos heavier.---That's how I know it's LP600, but I guess if you look at the whole tender maybe there's, I don't know which on they were offering or why we were more looking at that one and not the other one. I don't remember.

Mr Lonergan, is this cross-examination to establish that the AccuWeigh scale was heavier?

MR LONERGAN: No, there's another point and I'll go to it right now. So, if we go to volume 10, page 169. Now, this is a document that you were - I'm just looking at the email there from David Jones cc'd to yourself. ---That's right.

40

You see that, where it - - -?---Yeah, yeah, I see, yep.

And it's the LP788 feedback.---Yeah, I can see now why these 788 are not, because they're uncertified, that's why we, they were not considered.

And the second line of that paragraph, I just want to take you to, “The best at 17 kilos.” Now, your understanding is that is incorrect?---It will still, you know, the others are 15.6 or 17, it’s not such a huger difference compared to 15 to 23.

Bust the best weight is the 15.6 kilo IRD scales?

MS WRIGHT: Well, I object. She can’t answer that question.

10 THE COMMISSIONER: How about we ask Mr Jones when Mr Jones comes to give evidence.

MR LONERGAN: Sure, Commissioner, but the point is that to your understanding the best weight scales - - -

THE COMMISSIONER: Well, it’s her view.

MR LONERGAN: Yes, to her understanding. To your understanding, the best weight scales were the IRD scales?---For me it was more like between
20 23 and 15.6 is a really big difference and that’s maybe not acceptable for the inspectors. If you have a difference between 15.6 and 17, you know, and you have other benefit to this scales, then it could be the panel to decide.

And you said not acceptable to the inspectors, the 23 kilo scales, being the LP600s?---Sorry.

The 23 kilo LP600s?---Yes, yes.

30 And they’re not acceptable to the inspectors, was your evidence?---It’s my opinion because I know how much they have to weight [sic] them and, you know, you can break your back and they very small, so you can’t really carry it together. It’s, maybe the inspectors are happy to carry it but I know that I tried to lift one and it’s very heavy.

And was this a factor in your assessment of the appropriate scales to recommend as part of the panel?---The weight was but it was also, you know, it was part of the requirement of the tender. There was the dimension, that it didn’t weigh more than what existing and then the, the lifespan of the scales.

40 So you’re saying that part of the tender was that there was a requirement that the new scales did not weigh more than the existing scales?---Yeah, or similar, or yes, yes. Or it was some, yeah, there was something about the weight. I don’t know if there was a percentage or – it was a year ago, over.

No further questions.

THE COMMISSIONER: Thank you.

MR LONERGAN: Oh, sorry, excuse me, Commissioner. I jump too quickly as my instructing solicitor jumps at me. So if we go to volume 10, page 45. So, you'll see there they were the tender sizes that were required? ---Yes.

And they were 670, 520 and 42 being the relative dimensions?---Ah hmm.

10 And if we go over to 10, 47N and you'll see that the dimensions are larger than that set out in the tender i.e. the 737's larger.---Sorry, unless you put the two numbers next to each other or I write it down, I can't compare.

THE COMMISSIONER: Can I read them out from page 45? 670 by 520 by 42.

MR LONERGAN: And you'll see there the 737s are larger than the 670 requirement.---Sorry, you lost me. Sorry, what, what's larger, what's - - -

20 The 737 dimension is larger than the 670 requirement in the tender.---So you're saying the scale don't fit the rack?

Well, that's the question I'm asking you.---I remember them being - - -

And let me just take you then to 10 – so if you want to write those down, you're more than welcome to.---(not transcribable)

THE COMMISSIONER: What, the 737?

30 MR LONERGAN: All the dimensions. I don't expect this to be a memory exercise.

THE COMMISSIONER: We'll give you a pen. Please come back. We've got a pen here. Please come back. There's a pen there. You've got a piece of paper.---Thank you, Commissioner.

So are the first relevant measurements from the scope of works, Mr Lonergan, page 45?

40 MR LONERGAN: Yes.

THE COMMISSIONER: That's 670 by 520 by 42. Right? Then you've got 47N up on the screen and you're referring to 737 by 518 by 41?

MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: Now what's your question?

MR LONERGAN: And then if we go over to 1047D, and you'll see there under Dimension, 518, 470 and 42.---So - - -

My question is, which of the sizes were you evaluating when you were considering the tender proposal by Novation?

THE COMMISSIONER: See, it seems like Novation's provided two lots of dimensions. Do you see that?---So it must have been the second one, then.

10

When you say the second one, is that the one up on - - -?---Because this one it says. "The maximum required (not transcribable) meets all the size requirement. This new (not transcribable) will have a dimension of 518, 470 and 42."

MR LONERGAN: Yes. So you considered those dimensions?

THE COMMISSIONER: Can you recall?---I don't recall.

20 MR LONERGAN: Sorry, I didn't understand your answer there.

THE COMMISSIONER: I think she's still thinking.---I guess so. I don't know.

Can you recall?---I don't recall. I'm sure we did make sure they fit the dimension, but which one we selected - - -

MR LONERGAN: No further questions, Commissioner.

30 THE COMMISSIONER: Thanks. Now, Ms Fryer, I've got to apologise, I've neglected you. Have you got any questions?

MS FRYER: No questions, Commissioner.

THE COMMISSIONER: Right. Ms Hogan-Doran?

MS HOGAN-DORAN: Nothing from me.

THE COMMISSIONER: Ms Wright?

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MS WRIGHT: Yes, I do. Two short matters.

THE COMMISSIONER: Terrific.

MS WRIGHT: I'll deal with them now. Ms Lemarechal, you gave evidence in accordance with your statement that one of the considerations was that the AccuCorp and NEPEAN scales were heavier - - -?---That's right.

- - - than the IRD scales proposed by Novation.---Yes.

Could I take you to volume 10, page 45. These are the requirements for the tender for the 125 portable weigh scale procurement, do you agree with that?---Yeah.

There is no weight criteria, or criterion, being specified there.---Maybe that's something we discussed because we know (not transcribable)

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THE COMMISSIONER: I'm sorry, I didn't hear that.---Sorry, maybe something we discussed because how often the inspectors are moving those scales, but I agree they're not in this requirement. There's no requirement on the next page?

No.---No.

MS WRIGHT: I'll show you page 26.---(not transcribable) yeah, sorry, I thought - - -

20

THE COMMISSIONER: Now, can I just ask, it's important that we hear evidence of what you can recall. You've seen that weight isn't a requirement.---That's right.

Can you recall discussing weight at either of the meetings?---I will, yeah, I will say there was a weight discussion at the first meeting, yes.

You can recall that?---Because in the report - - -

30

No, no, no, no. Answer my question.---Yes.

Can you recall that?---I can recall that and the weight it also mentioned in the report from Mr Singh. Maybe that's why I thought it was a requirement.

All right.

MS WRIGHT: The tender evaluation report, is that what you're referring to?---Yes, because that was one of the changes requested.

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That's at page 175.

THE COMMISSIONER: Of volume 10?

MS WRIGHT: Volume 10. And you're correct, it does refer to AccuCorp scale being almost 50 per cent heavier - - -?---That's right.

- - - than the scales currently being used by RMS, and the same note is made in respect of NEPEAN and in respect of Novation it says, "The nominated

scale weighs the same as the scale currently being used by RMS.”---That’s right. So that’s probably why, because they mention in here, maybe that’s why I thought it were a requirement of the tender.

But would you accept that what you were supposed to do is to apply the requirement in the actual - - -?---Yes.

- - - request for tender document?---Yes, but you also have to think of the people using those scales, I think, yeah.

10

You gave some evidence that Mr Singh sent you an email after the second meeting.---Yes, to sign, yeah.

Was there, was it just to sign or - - -?---I have to look (not transcribable)

And you said there was a second report attached to that email.---There was a report that we signed that was attached to that email on 8 March.

20

Well, I’ve taken you to the tender evaluation report, but was there another report?---Was that the, is this the one signed on 8 March?

Yes.---Yes, well, no, that would be the report.

That’s all the email dealt with, the signing of the report?---Yeah. Yes. So I have to check again.

I have nothing further, Commissioner.

30

THE COMMISSIONER: All right. Can Ms Lemarechal be excused?

MS WRIGHT: Yes.

THE COMMISSIONER: Thank you for coming to give evidence. You’re excused.

THE WITNESS EXCUSED

[1.08pm]

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THE COMMISSIONER: All right. Thank you everybody for sitting on. We’ll now adjourn for lunch and resume at 5 past 2.00.

LUNCHEON ADJOURNMENT

[1.08pm]