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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC  
COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 29 OCTOBER, 2019

AT 9.30AM

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

MS WRIGHT: Morning, Commissioner.

THE COMMISSIONER: Good morning, Ms Wright. Any administrative matters?

MS WRIGHT: No. There will be some material to tender today but I propose to do that perhaps after Mr Thammiah's completed his evidence.

THE COMMISSIONER: All right then.

10

MS WRIGHT: And he's here.

THE COMMISSIONER: Mr Thammiah.

THE COMMISSIONER: Thank you.

MS WRIGHT: Mr Thammiah, I have further questions for you about the tender for 125 scales that Novation won. Do you agree that Mr Soliman told you how much RMS had approved for the purchased of those scales?  
---Yes.

10

How much was it?---I'm not too sure.

How much was it, Mr Thammiah?---The total approved by the budget, like, their budgets?

How much did he tell you was approved for the purchase of those scales?  
---No, I'm not too sure of the, like exact figure but he definitely, he told me.

20

Do you remember the approximate figure?---It would have to be around 2.25.

Could we have Exhibit 63, page 336. See the second blue message on the page?---Yes.

And he's given you, sent you a message saying, "Because we'll need to see how many scales can be bought for 2 million this financial year".---Yes.

30

You understood that was the budget for the purchase of scales, didn't you?  
---Yes.

And at page 345, if we could have that. In the second message on the page, on 3 January, 2018, where he said to you, "It's a big tender, \$2 million," you also understood that to be the RMS funding that was available to purchase the sales for this tender, didn't you?---Yes.

And did you prepare Novation's quote to match that budget which Mr Soliman had told you?---Yes. It was in line with the total.

40

It was in line with the total but I am asking you, did you prepare Novation's quote in order to match that budget which Mr Soliman had told you?---Yes. it was in order to get under, to make sure it was under that approximation, yes.

And you had asked him what price you should use for each scale, do you agree?---I don't think I would have asked him but we definitely would have had that discussion.

Page 392 of Exhibit 63.

THE COMMISSIONER: Sorry, which page again?

MS WRIGHT: 392, Commissioner.

THE COMMISSIONER: Thank you.

MS WRIGHT: On 29 January, 2018, where you say, "And price point?"  
---Sorry, I thought that - - -

10

At the bottom of the page.---Yeah, sorry, when you said price point, oh,  
sorry, when you mentioned price, I thought this was in relation to 125, this -  
- -

For the 125, I'm asking whether you asked Mr Soliman what the unit price  
for a scale should be in that tender.---Yep, okay.

Do you agree that you asked him?---No, not for the 125, I think this is  
definitely for the 425.

20

All right, this is 29 January, 2018.---Yes.

Do you agree that this is just prior to Novation submitting a quote for the  
125 tender for scales - - -?---Sorry, the - - -

- - - January, 2018, Mr Thammiah?---Yeah, the tender for the 125 occurred  
in the end of 2017.

30

Your submission was made on 9 February, 2018, for the 125.---For the 125.

I'll just give you a moment to think about that.---Yeah, sorry, I did think it  
was (not transcribable). Yes, that's correct. Yep. Sorry, yes.

So you asked here, if we could have page 392 again - - -

THE COMMISSIONER: We might just pause for a minute.

MS WRIGHT: Yes, Commissioner.

40

MR JAMES: My apologies, Commissioner.

THE COMMISSIONER: That's okay, Mr James. You look as if you've  
been through the wars.

MR JAMES: In a manner of speaking, yes. Apologies that I was a little  
later than I anticipated.

THE COMMISSIONER: No, that's fine, just take your time and get settled. Thank you, Constable. Ready?

MR JAMES: My apologies.

THE COMMISSIONER: Excellent. Thanks, Ms Wright.

10 MS WRIGHT: Thanks, Commissioner. You see you've sent a message, "And price point?" And then if we go over the page, within a minute, Mr Soliman has responded to you, "By the way, I'm creating the contract for parts today. We won the tender." You agree that's the separate tender for the spare parts?---Yes.

And the second message is, "Price point 15K per scale." You see?---Yes.

20 And there's another short message from him, "That's what I've based this funding request off," and you answer, "Sweet," and then say, "Will David see the prices?" Do you agree that you had asked him what price to charge, and he had informed you that it should be \$15,000 per scale, for this tender for 125 scales?---Yes.

And just while we're on that, on page 422, you see a message where he refers to the scales' cost, and you reply, "At 15K each?"---Yes.

And he says, "I'll be in the tender review board also." You see that?---Yes.

And then you refer to, "Chargers are at 1,400."---Yes.

30 Is that the price you were proposing to charge for chargers for the scales at this time?---Yes.

And he says, "Yeah, that's good." You see?---Yep.

And when you asked him on that day, 5 February, "At 15K each?", you were confirming with him the price to be charged by, to be quoted by Novation for this tender.---Yes, a rough price point, yes.

40 Right. Now, I'll come back to the chargers in a moment. Did Mr Soliman help you to create the quote that you ultimately submitted for the tender for 125 scales on behalf of Novation?---No, I think he volunteered, but he didn't end up helping with that one. He just didn't have the time.

Could I take you to page 395 of Exhibit 63. On 29 January, 2018, I can take you to the prior context if it would assist, but do you see here the second blue message asks, "Any issues let me know so we can finalise the submission together?"---Yes.

And you answered, "Okay, no problem." Was that one of the offers for help in preparing Novation's quote that you were referring to in your answer a moment ago?---Yes.

And then at page 419 a sequence of messages on 4 February starts with, "Thanks for partying with us, bro," from Mr Soliman. Was that a reference to his wedding which had occurred the previous evening?---Yes, it was.

10 And then if we just turn over the page, I'll just give you a chance to have a look at those. If we could just go back, sorry, 419. "Gotta get quote out to Jai. Catch you soon." "See you, bro." Then over at 420, "Let me know if you need help with the quote." "I'm only here at work this week to make sure this tender goes through." Do you see that?---(No Audible Reply)

On 5 February?---(No Audible Reply)

Mr Thammiah?---Sorry, I'm a little bit confused by these dates. Oh, okay. Right. So - - -

20 Mr Soliman had had his wedding in early February.---Yeah. Ah hmm.

And at this time you had not yet submitted a quote or tender submission for the 125 scale tender. You had not yet made that submission. Do you agree? ---Sorry, 125?

Yes, the 125, sir. I'll take you to the quote at volume 10, page 47A and that might jog your memory a bit better.---Perhaps I'm getting these dates a little confused because the submission for tender happened at the end of '17 and then the quote happened. Is that - - -

30 I'll just take you to your submission and that might refresh your memory. Do you see here an email from you to Mr Singh on 9 February, 2018? "Hi, Jai, schedule 2 response form attached for your review," et cetera.---Yes.

And that's in response to an email from him in which there is another chain of emails, starting at the bottom of the page on 17 January, 2018, attaching a request for quote for the procurement of portable weigh scales. Do you see? ---Yeah, okay, yeah.

40 And I suggest that on 17 January, 2018, the RFQ for the tender for 125 scales was issued by RMS through Mr Singh, rather than at the end of 2017 as you've suggested. Do you accept that?---Yeah, what I'm suggesting is there was the, the formal submission of the tender started at the end of 2017 and the I guess it obviously got rolled into 2018, that's why it's still - - -

All right. I'll take you to your – when you say the formal submission, are you referring to Novation's submission?---Yeah, the hard copy that was, had to be put into a physical PO Box.

All right. I'll take you to that. If we could just bring that document back up and then go over to page 47C, please. You see this is the schedule 2 form. Is that your signature?---Yes.

And that is dated 25 January, 2018?---Yes.

And you would have signed that on that day?---No, didn't sign it. I just, it's a digital image but, yeah. It would have had, yeah, yeah - - -

10

All right. You would have applied your signature on that day. And then on 47D is the Novation quotation for scales in response to the tender for 125 scales. Do you agree this is the Novation submission for that tender?---Yep. Okay. Yep.

And it is dated on 9 February, 2018. Do you see in the box at the top of the page?---Yes.

20

So you might have your dates slightly wrong in that the submission, I suggest, was made in February 2018, as indicated on this quote and email. ---Well, this is further to the initial tender, when it started. So this was, you know, they kept changing the dates and prolonging it.

The date, the original RFQ was issued on 17 January.---Yeah, but that's the RFQ not the request for tender. Is that why I'm getting these - - -

30

Well, the RFQ is the request for tender, Mr Thammiah, but perhaps we'll just put the dates aside. Coming back to the preparation of the quote which was what I was asking you about, if we could go back to Exhibit 63 at this point, at page 420. Now, I've just shown you your quote which was 9 February and these messages which I took you to are on 5 February, 2018, where Mr Soliman says to you, "Let me know if you need help with the quote. I'm only here at work this week to make sure this tender goes through." Now, do you agree you hadn't yet put in Novation's submission for the tender?---No, I definitely submitted some paperwork and there was just these schedule 2 sort of - - -

40

At the time of these messages, being 5 February, 2018, you hadn't yet submitted Novation's tender submission, which I just took you to and is dated 9 February, 2018. Do you agree with that? Sorry, not trying to trick you, Mr Thammiah, I'm just trying to get the sequence clear for you. ---Yeah. For me personally, I, I feel like it started back here in 2017 and then just kept going on and on and that's why there's all these forms.

You might feel like that. I've just taken you to your email where you submitted your quote and you agree the email was dated 9 February, 2018. ---Yes.

All right. And these WhatsApp messages are four days before you made the submission. Do you agree with that?---Yes. Before I submitted that part of through submission, yep.

And so you're here receiving messages from Mr Soliman asking you whether you need help with the quote.---Yes.

10 And you understood that to be the Novation tender submission for the 125 scales tender, didn't you?---The RFQ, yes.

So this was another offer to help you to prepare your submission from Mr Soliman?---Yes.

Now, if we go over to page 427. On 7 February, 2018, do you see here some messages, and I'll come back to these later, but do you see on the 8<sup>th</sup>, at the bottom of the page, you say to Mr Soliman, "Hey, I'll come see you tonight if that's cool." Do you see?---Yes.

20 And that's the day before you ultimately submitted Novation's quote for the tender. Do you agree?---Yes.

And that's at 7.55 you sent that message. And then at page 428 you say, "We can look at the submission." And you were referring to Novation's submission - - -?---Yes.

- - - for the tender for the 125 scales.---Yeah, more than likely, yeah.

30 And he says, "Yeah, done." That's at one minute after you've suggested, "We can look at the submission." Do you see that?---Yes.

You met together on the night of 8 February, 2018, to look at the Novation submission together, didn't you?---I mean, yeah, yes, according to this we, it was obviously something planned to do, to do that. The intent was there, yes.

40 I'm not asking you if it was planned, we can see from the messages it was planned, I'm asking you to confirm that you met together that evening, 8 February, 2018, to look at Novation's tender submission together.---I don't know if that happened but I can see the intent was there.

THE COMMISSIONER: And when you say you don't know if that happened, you can't remember that now?---Yeah, because when I think of the 125 I don't really have a recollection of him looking at any of my documentation. The 425 I do, but that's why I mean obviously I'm saying here he can look at the documents.

MS WRIGHT: This is not too long ago, this is about 18 months ago.---Yes.

Are you really saying that you do not remember meeting with Mr Soliman to go through the Novation tender submission together?---It's, it's not so much remembering, it's about breaking down sort of a false reality and finding what actually happened.

And these messages make it clear, don't they, that you would have met together and gone through the submission together?---Yes, it's definitely possible.

10 Now, in respect of the chargers, Mr Soliman had initially told you not to include a price for the chargers. Do you recall that?---Yes.

And then he informed you that you could include a price for the chargers. ---Yes.

Do you recall there was a change?---Yes.

And I took you to the message in which you informed him of the price of \$1,400 for a charger?---Yes.

20

Was that to be your price, that is Novation's price?---Yes.

Were you checking with him whether that would be an acceptable price to RMS for the chargers?---Yes.

You ended up charging a higher amount per unit of charger. Do you agree with that?---Yeah, yeah, I think I did, yes.

30

How much was that?---I think it might have been fourteen four or fourteen five.

All right. You've told him the price would be 14.---Yeah.

And you've agreed with me you ended up charging more than 1,400.---Yes.

And so your answer was you think it might have ended up being 14, so 14 wouldn't be higher, so what was the higher price?---No, I said, sorry, fourteen four, 14,400 or 14,500.

40

I'm talking about chargers here, not scales.---Oh, sorry, 1,400, you're right, sorry.

THE COMMISSIONER: My note was you said 1,400 for a charger.

MS WRIGHT: Yes. I took you to a message in which you - - -

THE COMMISSIONER: And then you said - - -

THE WITNESS: Yeah, sorry, I got those confused.

THE COMMISSIONER: You agreed that you ended up charging more and you said, my note again was, 1,440 or 1,450.

MS WRIGHT: Yes.

10 THE COMMISSIONER: Is that right?---No. I think I was getting the scales confused. Yeah, if it was higher, I think it would have been around 1,500 or 1,600.

MS WRIGHT: Okay. I'll take you back to the quote at volume 10, and if we could go to page 47F. Do you see this is the last page of your quote which I took you to a moment ago?---Mmm.

Do you agree with that?---Yes.

20 And you've included the \$1,500 unit, \$15,000 unit price for each 10A Series III scale.---Yes.

Coming to \$1,875,000, missing a zero there. And then for the chargers, your unit price is 2,400.---Yes.

How did that increase from 1,400 to 2,400 come about?---It was more than likely to fit the total budget that could have been expended.

30 I see, so you determined that there would have been money left over in the budget if you'd adopted a \$1,400 price and thus increased the price of the chargers by \$1,000?---Yes, with, with his help, yes.

Did you discuss that with Mr Soliman?---Yes.

Are you able to tell the Commission what the discussion was? I'm not asking for precise words, but generally how it went, or the effect of those words between you and Mr Soliman.---Yeah, generally speaking, it just needed to be below, like a 10 per cent over tolerance, I guess, as well.

I'm asking - - -

40 THE COMMISSIONER: Sorry, say that again?---So, generally speaking, if the budget was 2 million, it was 2 million without GST.

Yes - - -

MS WRIGHT: Is that something that you've said or he said?---He said.

And what did you say about a 10 per cent tolerance?---As in, 10 per cent of that could go over that 2 million.

THE COMMISSIONER: Because of GST.---Yep.

MS WRIGHT: Okay, that was suggested to you by Mr Soliman, is that your evidence?---Yes.

All right. Now, in terms of the particular issue of increasing the cost of the chargers to fit within the budget, what you're suggesting is that, so that the budget could be effectively exhausted - - -?---Yes.

10

- - - you would increase the charge. Was that something that was your idea or – I withdraw that. Was that increase in the price in order to fit the budget your idea, referring to the chargers?---No, it was his. He knew the tolerances.

And what did he say to you?---Well, just to the effect of, this is the budget, this is how much you can utilise and make it fit within those boundaries, that's it. Yeah.

20

Did he say anything specifically about the chargers?---Not that I'm aware of. Obviously there were some issues with the chargers, like using the old chargers, that's why they needed the replacements, they couldn't use the old ones. But I can't remember too much else.

All right. Now, IRD didn't end up charging you for chargers at all in respect of this order, did it?---Yes.

And they gave you six additional scales as well at no cost to Novation. Do you agree with that?---Yes.

30

And Mr Fernando of IRD told you the importance of keeping the end price competitive as the market was very sensitive to price. Do you agree that Mr Fernando had a discussion with you in which he said words to that effect? ---I can't recall him saying, no, I can't recall Fernando saying that.

You can't recall Mr Fernando ever saying that the market was very sensitive to price?---No, I'm sure he's said words to that effect about price, because there was such a, you know, tug of war, I guess, going on between, well, myself and Rish, but – yeah, I'm sure he did.

40

All right. Now, Novation won this tender, didn't it?---Yes.

And do you agree that the only reason Novation won this tender was because of your friendship with Mr Soliman?---Yes.

Now, do you agree that he told you the criteria, or at least some of the criteria, that would be used by the Selection Committee in determining who should win the tender?---Sorry, what was that?

Sorry, it was a long question. Do you agree that Mr Soliman told you the criteria that would be used by the Tender Committee in selecting the winner?---Yes.

He told you that there was a scales dimension or size requirement prior to you making your submission?---Yes.

10 And he told you about the 10 year use criteria. Do you understand which requirement I'm referring to?---Yes.

Now, when you gave evidence on – I'm sorry, just before that. You understood that Mr Soliman was setting the criteria so that Novation would satisfy them and win the tender?---Yes.

20 When you gave evidence on 1 August, I asked you – and I wonder if we could have it on the screen so there's no confusion, at page 1780. I asked you at about line 13, "You were aware that Mr Soliman would be setting the tender requirements to ensure that Novation would win the tender?" Now, I was referring to the 425 tender and you asked for clarification and you confirmed for the 425. Do you see?---Yes, yes.

And then I asked you, "And is it your evidence that you were not aware for the 125 that he would be setting the tender requirements?" Do you see that?---Yes.

30 And your answer was, "No." Now your answer might be a bit ambiguous but you now accept that Mr Soliman would be setting the tender requirements for the 125. Do you agree with that?---Yes.

And by your answer on 1 August, were you suggesting that you were not aware that he was setting the tender requirements?---Yes, I was.

And is it the fact that you want to change that evidence?---Yes, I do.

And when you gave that evidence on 1 August, 2019, you didn't know that the Commission would obtain the evidence on the WhatsApp from January and February 2018, did you?---No, that wasn't a factor.

40 Well, did you give untruthful evidence when you suggested in your answer that you were not aware for the 125 tender that Mr Soliman was setting the criteria?---No. At the time I, I still have a false construct that I'm sort of breaking down and that's why I feel like I'm better able to answer your questions now because, well I've had - - -

The false construct, which I'm going to be clear with you, Mr Thammiah, it's unclear exactly what you mean by that, but the false construct was a reason why you gave an untruthful answer, wasn't it?---Well, yes, because

I'm, because I'm actively, well, back then I was actively lying to myself about what was happening in order to fulfil - - -

And you were lying to Commission, weren't you?---No. I've recently had better discussions with my psych and I'm on quite strong antidepressants and it's helped me to kind of break down the false reality and see that this is actually the way it happened.

10 I understand that you are now today giving answers to the best of your ability. What I am asking you about is on 1 August, when you denied knowing that Mr Soliman was setting the tender requirements for the 125 procurement, you were being dishonest with the Commission.---No, I hadn't even began my medication on 1 August. It was, you were still talking to very much a patient. Well, you still are, a recovering patient.

Now, you knew that Mr Soliman was working against a competitive tender process in this tender for 125 scales, didn't you, at the time?---Yes, I knew it was meant to be competitive but, yep, I knew it was meant to be competitive.

20 You knew it was meant to be competitive and you knew he was actively working against it being a fair and competitive tender process, didn't you? ---Yes.

And you encouraged that in his at the time, didn't you?---I don't think I encouraged it but I let it, I let it happen. I was complicit in my ignorance and inaction.

30 All right. Well, I'll take you to come messages in that regard. If we could go to 360 of Exhibit 63. On 17 January at the bottom of the page he refers to the RFQ and he says, "Essentially if Rish fucks you and doesn't give the licence, then I'll fuck him and I'm not buying his scales." Do you see? ---Yes.

And the way RMS would buy IRD's scales would be through the tender process, wouldn't it?---Yes.

40 And then at 361, he says he knows that though and you understood he was referring to Rish? This is immediately following the message I have just taken you to.---Oh, yes, yes.

"Essentially if Rish fucks you and doesn't give the licence, I'll fuck him and I'm not buying his scales. He knows that though".---Yes.

And then he says further down that page, where you say something disparaging, "You never know, play it safe." Do you see that?---(No Audible Reply)

So you were endorsing or agreeing with Mr Soliman, weren't you, for telling him to play it safe?---Yeah, I didn't like his relationship with Rish at all.

And by, "Play it safe," you were asking him not to be too risky in how he dealt with IRD because it might affect your interests or Novation's interests?---No, I just, in general, he, he muddied that line. There was no, I couldn't stop them from even talking to each other so - - -

10 What did you mean by, "Play it safe"?---As in I guess just stay at arm's length from him, you know? Like, yeah. Judging from, those comments are quite, you know - - -

Mr Soliman's suggesting something quite aggressive with regard to Rish, isn't he? "I'll fuck him and I'm not buying his scales." And you're saying, "Play it safe," because you know that your licence is at jeopardy with IRD, isn't it, or could be at jeopardy if Mr Soliman is too combative with Mr Malhotra?---Yeah. Look, in, in that situation it was never about me. It was always about him, so in that context it was always about his safety, sort of, perspective.

20 This is about your licence, isn't it, ensuring that you continue to be IRD's distributor?---Yeah, the context is there, yes.

Because Mr Soliman says to you, "Exactly, which is why I won't contact him again. He knows where I stand now. I told him to issue you a three-year licence after this tender to secure his business for three years minimum, he's good now." And then over the page you respond to Mr Soliman by saying, "Maybe, but I'll speak with him too." So you were suggesting that you would speak to Mr Malhotra as well.---Yes.

30 And so you were working together with Mr Soliman to ensure that IRD continued to use Novation as its distributor, weren't you?---Yeah. Look, as much as the emotion of it feels like it wasn't the case, I can see that that was the case, yes.

And at 367 you say to Mr Soliman, you refer to Accuweigh and then you say that, "None of them should be able to respond if I have the licence." See that?---Yes.

40 So you knew that the only reason you were in a position or Novation was in a position to be a supplier to RMS was because of your friendship with Mr Soliman, didn't you?---Yes.

And now you were aware also that Mr Soliman was working internally at RMS to favour Novation.---Yes.

He was telling you about the tender requirements?---Yes.

And when the tender would be coming up?---Yes.

And your friendship with him to your knowledge at the time was not known by his colleagues at RMS, and I'm not including Mr Singh in that, Mr Thammiah.---I don't know.

10 You say you don't know. Now, he told you that he hadn't invited his colleagues to his wedding, didn't he, because someone might recognise your name?---Yes.

You recall those messages?---Yes.

And so you knew full well that he did not want his colleagues to realise that you and he had personal friendship.---Yes.

20 And so you knew, contrary to the answer you gave a moment ago, that your friendship was a hidden matter, apart from it being known to Mr Singh. Do you agree with that?---Yes, I do.

Now, all right. Now, I'm just going to ask you a few messages about the 425 scale tender process. Now, do you agree that this was also a scheme between you and Mr Soliman that you were both working towards to have Novation win this tender?---This is the, I, yes, it doesn't matter which tender.

30 And you had an agreement with each other that he would work towards manipulating that tender process, being the 425 scale process, so that Novation would win. You agree with that?---No, I, I thought he was doing it from a very emotional perspective, like out of a friendship sort of perspective. But I knew what he was doing.

THE COMMISSIONER: I don't think Ms Wright was asking you about - -  
-?---Motivation?

His, yes, thank you, his motivation. It was rather the process which was undertaken, which as she put to you, a manipulation of the process so Novation would win.---Yep. Yeah.

40 Do you agree with that?---Yes.

MS WRIGHT: And do you agree that there had been a plan, from as early as the middle of 2016, that he would work towards lining Novation up to ultimately win the big portable weigh scales contracts?---I don't know about lining it up in that sense, because, yeah, the contract, yeah, I can't agree with that one.

And you take issue with it being from 2016, is that what you're taking issue with?---Yeah, just the way the licence opportunity even came up, just seems, yeah, for me it seemed natural. It seemed like it was a normal sort of thing happening.

Now, for the 425 scale tender, Mr Soliman also gave you the tender criteria for that tender, do you agree with that?---Yes.

10 And he had a hand in drafting Novation's submission for that tender?---I don't think he had a hand drafting, but he definitely reviewed it, yeah.

And you had a plan with Mr Soliman that he would seek to ensure RMS didn't choose Accuweigh as a supplier of scales for that tender?---So that, that was his intent, yes.

And you encouraged that process, didn't you?---I don't think I encouraged the process. But, yeah, I'm not too sure.

20 Well, again, you knew that this was not a fair process, didn't you?---Yes.

And you knew that Mr Soliman was working to manipulate the process so that Novation would win.---Yes.

And you went along with that?---Yes.

And you agreed with him at the time that he would do that, that he would manipulate the process in Novation's favour, didn't you?---I, I definitely let it happen, and I validated it in different ways, but I let that happen.

30 You didn't just sit back and let it happen, but you, as you say, validated it along the way, didn't you?---Yes, I had to, yes.

And when you say you had to, you could have exercised a different choice, couldn't you?---At the time, I don't think so, because I was quite desperate, but yes, now.

And throughout this time, for the 425 tender, you were giving cash to Mr Soliman?---Yes.

40 And he was collecting money from you, wasn't he?---Yeah, he was, yeah.

And you were withdrawing that from Novation's accounts and giving him cash?---Sorry, are you saying the 425?

The 425.---I believe he had the card for quite a long time and I didn't really given him any physical – like, I wasn't, I don't think I was collecting.

Could we have Exhibit 53, page 271, but I'll just have to – message 43. See some messages here which I suggest are 9 August, 2018, and Mr Soliman's messages are the ones on white on the left of the page.---Yep.

And he says, "I'll collect every fortnight? 8k a fortnight." And you say, "Sweet, np," sweet, no problem?---Yes.

So the proposal was that he would collect money from you?---Yes.

10 And then if we, just while we're here, if we go, you say, "Give me a buzz when you can." This is the next day and he says, "He's not in. I'll be seeing him at midday," and you say, "All good." And then over at the next message, message 44 he says, "I'll bring it up casually over lunch with him." What were you referring to there?---Sorry - - -

Sorry, what was he referring to? He says, "I'll bring it up casually over lunch," and you say, "But who is Guido? He CCd".---Yes, yep.

20 And he says, "Nothing to worry about though. Guido works for me. Also he's poor manager." And you responded, "Just saying both had a question." And Mr Soliman says, "I am Guido's manager".---Yep.

Now, what were you referring to when, in this discussion with him, where he says, "I'll bring it up casually over lunch"?---I think I got a missed call or maybe an email from Guido and I brought it up with Samer first to find out if there was anything going on, like, that I should know about and that's what, yeah.

30 And when you say anything going on, it's anything that might reveal your personal connection with Mr Soliman?---Yeah. At the time I thought it was innocent enough to ask the question but I also definitely thought that there was some sort of risk involved, yes.

40 Now, if we just go down to message 50, and in fact I have got my message numbers wrong, it's 49 because the numbers start before the messages. So back at 49 he says, "Bro, the louvres will be installed in the week you're away. Can you go into the branch and pull out around 20K today. Need some funds, son." And you answer, "20K, LOL, you crazy." And then over the page you say, "Who pulls out that much except dodgy C's?" And he says, "How much can you pull out?" And you answer, "Banks are reporting everything now to," and you refer to "Royal Commish." You were referring to the Banking Royal Commission that was in play at that time?---Yes.

And he says, he suggests, "How about you pull it out slowly every day before you leave next Monday?" And you say weekly limit was six. Soliman, "Limit?" You answer, "Banks trigger a flag at 10 apparently, right." Okay. So firstly, you were pulling out cash for him at this stage, weren't you?---Yeah, yeah.

Because I think you said earlier he had a card and he was doing it, but in fact you were giving him money when he requested it?---Yeah, I think it was both and that's why I've sort of answered that way, but yes, I can see at this point, yes.

10 And these payments were in return for his work favouring Novation in connection with RMS business?---No. I knew he favoured Novation but I thought he favoured Novation from the point of view of a friendship and, yeah, but the money, he, I was well convinced that it was even legal to have this loan sort of agreement with Samer.

20 You're suggesting here that you need to be careful that his withdrawal of money and thus the fact you are giving him money, be revealed to the world.---Yeah, because obviously I'm, I think that something is wrong but I think that it's such a small sort of, like the consequences are insignificant and I guess I was actually more or less thinking about him, it was never about me, but yes, I can see that even though I've deflated the issue here, that it was wrong.

And this was his cut of the moneys being paid by RMS to Novation, wasn't it?---Yes, he definitely convinced that, convinced me that he was, that he had a partnership, if anything.

And the partnership was in Novation.---Yes, I thought it was my friendship but it was definitely Novation.

30 And the money he was getting was part of the profit from Novation to your understanding.---Yes, I'd have to say it was profit from Novation as well as myself, as well as my own savings, yeah.

And you did not do bank transfers to him personally in order not to be traced, not to have those payments traced.---No, I probably would have done a bank transaction if he asked me to, but essentially he didn't ask me to.

40 The money you were providing to him either through him having your card or you withdrawing cash and handing him cash was not a loan, was it?---For me it had the pretext of the loan but it was all false.

THE COMMISSIONER: Sorry, what do you mean it had the pretext of a loan?---Like I can agree to the loan sort of in that space and understand that, you know, for some reason there was a possibility that it was real, but objectively I could also see that it wasn't real, I could see that I was being used in part of something.

MS WRIGHT: And your Novation account which you gave some evidence about on the last occasion, that was an account you opened in your capacity as a director of Novation, wasn't it?---Yes.

And when Mr Soliman received funds from that account, you understood those were Novation funds, didn't you?---No, I – yeah, look, a lot of emotion sort of, I want to answer the question really emotionally and that's sort of wrong, I realise that, so I think, I think yes, it was Novation's money, yes.

10

And when you gave some answers on the last occasion suggesting that even though it was called Novation's account, this was really just your personal money, you weren't being fully frank about the position as you understood it, were you?---I was at the time.

Well, what I'm suggesting is, you know full well that that account from which he was receiving funds, being an account in Novation's name - - -? ---Yes.

20

- - - was Novation's money.---Well, yes, at the time, I had two perspectives, and that was definitely one perspective, yes.

You had no expectation that he would ever be paying you back any of this cash that he was receiving from Novation's profit, did you?---Look, again, there's a very emotional part of me that says, yes, I wanted that to happen, I wanted the friendship to be real, but I also acknowledge that there was never any repayments, and as far as I could tell, there wasn't going to be as well.

30

And your evidence to the Commission that it was a loan is not the true position. It was never a loan, was it, Mr Thammiah?---No, I think the loan was a, just a fake construct in order to facilitate something. It wasn't a loan.

And you agree that your evidence today is significantly different to answers you've given in the past on this issue, where you've put a position to the Commission that you believed that this was a genuine loan that you were providing.---Yeah, I agree at the time there was, like I said, there was two perspectives that I sort of ran with, and I always stuck with the one that I believed in that, despite knowing that there was a very real risk that it was all fake.

40

Now, for the tender for the 425 scales, Mr Soliman kept you up to date about when the tender would go live?---Yes.

And he told you when it did?---Yeah.

Mr Soliman reviewed your draft submission and completed it?---I, he definitely reviewed it, but I can't remember him changing anything or adding anything.

Do you agree that it was a joint piece of work between the two of you?  
---No, I think it was just, yeah, I, I really had all the information, so was, it's not like it was, the questions weren't very hard.

If we could go to message 61 of Exhibit 53. 61. "Can you get a draft ready for me to review within next week?", is a message he sends you.---Yep.

10 And you say, "Yeah, easy," and he says, "Legend," and you say, "Smash it out." So you were referring to preparing the draft tender?---Yep.

Over the page, message 62, he says, "Good teamwork again, bro. We're almost there." Do you see?---Yes.

So good teamwork again means, because we've already done this for the 125 tender?---I think it would relate to most pieces of work, yes.

20 And you say, "Yeah one more hurdle. We got this." Do you see that?  
---Yes.

And then over the page at 64 he forwarded you a message from Mr Malhotra.---Yes.

And that informed you that a CIC had contacted Mr Malhotra and Mr Malhotra was confused about that. Do you see that?---Yes.

And he tells you to give Mr Malhotra a ring and that was to ensure that Mr Malhotra continued to supply to Novation?---Yes.

30 And you did ring Mr Malhotra?---Yeah. I think I tried, yeah.

And when you – you spoke to Mr Malhotra?---No, I don't think so.

And when you tried to speak to him it was to ensure that he was not thinking about using any other supplier, wasn't it?---Yeah, just, yeah, in the same context, to confirm that Novation was the only supplier, yes.

40 And then going down to 65, Mr Soliman tells you to call him and tell him you're on your way. "He'll call me later I'm sure and I'll tell him it's Novation or nothing." Do you see that?---Yes.

And you did fly to Canada to meet with Mr Malhotra?---Yes.

And the purpose was to ensure Novation was fully locked in with IRD as its distributor, wasn't it?---Yeah, it was definitely about building a relationship with IRD.

You were already IRD's distributor but you wanted to ensure that IRD didn't, that that position wasn't jeopardised in some way?---Yes. It was about securing that relationship, yes.

Because you knew that there were other potential competitors that could take over Novation's position as IRD's distributor, didn't you?---Well, yes, there was competitors, yeah.

10 Now, going back to Exhibit 53, message 65. Mr Soliman forwarded you his response to Mr Malhotra for some feedback, "Novation done an excellent job to manage the last procurement. I'm more than happy," and if we go over to message 66, "with their performance and ability to deliver and especially deal with the end customer." Do you see that?---Yes.

And he says, if you go down, "Lock thing in because every vendor on the panel will be calling them now." Do you see that?---Yes.

20 And you were both concerned about the possibility IRD would give its distributorship to one of the other panel members?---Well, I don't think I was as concerned as him.

Keep going down, "They can't touch me. I'm going to Canada." Do you see?---Yep.

Then if we go down to 69, Mr Soliman suggests you should call Fernando and you say you're going to try and do some training in Canada too but the training was really of secondary importance in your trip, wasn't it?---Yeah, it was definitely about the relationship, yes.

30 And you say you will set up for maintenance then.---Yes.

And so by that you thought you might have a future ability to receive contracts from RMS to maintain the scales?---Yes.

40 And then if we go over to 72, Mr Soliman's again asking you to pull out some cash, "Get 1,000 before Monday please, bro." And you say you might leave the cards with him. And he says, "Is that smart? Transactions while you're gone looks bad." And you've responded, "I can say I've got a girlfriend." Do you agree that what you meant by "GF"?---Yes.

"And that would not look," you say, "Not unusual," and what you meant was it wouldn't look irregular for there to be withdrawals on your account while you were outside the country if you said it was a girlfriend making the withdrawals.---Yes.

And you suggest you'll give him your personal card, and you did do that, you gave him your personal card before you left.---Yeah, I think so, yes.

And then going down to 73 he tells you he'll withdraw 4,000 a week and you say you'd rather not do the big ones anymore. And that was because it might attract attention. Do you agree?---Yes.

And you're trying to avoid detection of what you knew to be an unlawful situation going on between you.---Yeah, I knew something was wrong. Like I said, I did think of it as being a small issue, but regardless I knew something was wrong and I acted with that intent.

10 And you knew it to be seriously wrong, not just a matter of him possibly losing his job, but you knew it to be seriously wrong, didn't you?---No. Well - - -

A matter where you could get into serious trouble, not just him losing his job, but you also getting into serious trouble. You knew that, didn't you, Mr Thammiah?---At the time, yes, I knew there could be consequences for myself but I was happy, well, not happy but I was, I could disregard those consequences at that point in time, yes.

20 Now, he, coming down, asks whether you can transfer some business funds to buy BTC. Was that Bitcoin?---Yes.

And did you still have a plan here to raise a lot of money for a hemp or marijuana-growing medical business?---Oh, look, that was a sort of pie-in-the-sky sort of mentality that kept me going more than anything. It wasn't real.

All right. Were the profits to be derived from your business with RMS intended to be put to any particular use?---Look, that was a goal but in  
30 reality it was just there for him, yeah.

Do you agree that the Novation business was one in which both you and Mr Soliman had an equal interest financially?---I'd say his was greater than mine, but yeah, the interest was definitely there.

And the messages I took you to on a previous occasion where you refer to, where in the emails there's a reference to "my half," and you tell him that you've worked out a figure after tax, was the position that he was to derive half of Novation's profits after tax?---I don't think it was, I don't think it  
40 was after tax, I think he just put the perception that he should be entitled to half and I agreed in many respects, yes.

Now, just in relation to the half, was that the arrangement or agreement between you from the outset of you doing work for RMS?---No, I think it, it came in mid-2016, when the loans really started, when the loan, when the loan actually, well, the loan sort of started, I guess.

Now, I thought we'd established that there was no real loan, Mr Thammiah.  
---Yeah.

When you say, "the loan really started," are you referring to the payments from RMS becoming more frequent, in that Novation was making, starting to make more money in mid-2016?

10 MR LONERGAN: So, Commissioner, my objection is that the premise that it was established that there was no loan, the evidence Mr Thammiah has given is that he accepts objectively there was no loan, however, he said that there was a pretext of loan being in place. Right? So if I understand that to be that there was at least a representation of it being a loan - - -

MS WRIGHT: Well, I'm just - - -

THE COMMISSIONER: I have no idea what he means by the evidence he's given about the loan. Sorry.

20 MR LONERGAN: No, no.

THE COMMISSIONER: So, your objection is to Ms Wright saying that his evidence today was that there was no loan.

MR LONERGAN: Yes.

THE COMMISSIONER: All right, Ms Wright?

30 MS WRIGHT: I thought I'd taken him through the loan, and he'd agreed that the loan was really just a pretext. There was no expectation of repayment, and that it was Novation's money that he was providing, and he accepts that he was effectively giving to Mr Soliman without any expectation of repayment.

MR LONERGAN: Well - - -

THE COMMISSIONER: Because you just answered, you said, you did the old inverted commas loan, didn't you, when you just answered then?  
---Previously, yes.

40 Yes. Which I thought was supportive of Ms Wright's suggestion that the loan just didn't exist, that it was a pretext.

MR LONERGAN: Well, I differ in the interpretation of that, and in aid of Commission, maybe if we establish what he actually meant, because - - -

MS WRIGHT: Well, and it might be that it needs to be dealt with in the absence of the witness.

MR LONERGAN: (not transcribable)

THE COMMISSIONER: All right, do you want to – you maintain your objection, and you want to - - -

MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: All right. Mr Thammiah, if you'd go outside, please. And cut it. So, Ms Wright, can I just confirm - - -

10

MS WRIGHT: Oh, sorry, Commissioner.

THE COMMISSIONER: My note of your question was, you put to Mr Thammiah something along the lines of, "We've established that there was no loan"?

20

MS WRIGHT: Yes, because he said – has that been cut? Sorry. Okay. He has said that the arrangement for there to be half to Mr Soliman came in around mid-2016. He agreed that that was when he was starting to earn more money from Novation's business, and - - -

THE COMMISSIONER: And I think his answer was that was when the "loan" started.

MS WRIGHT: Yes, the loan started, and I took issue with his use of the word "loan", and I put to him that – and it wasn't a very good question, but I thought we'd established there was no legitimate loan. So - - -

30

THE COMMISSIONER: All right. And sorry, can I just confirm, your objection, Mr Lonergan is when Ms Wright put to him, I thought it was established there was no legitimate loan?

40

MR LONERGAN: Yes, well, I mean, I think perhaps taking out the word "legitimate no loan" because the evidence, as I understand earlier, was that, you know, he'd said that there was a pretext of a loan but he accepted that that was false, i.e. objectively he could see that it was not a loan. However, then he said the cash that Samer was receiving from Novation, he wanted the friendship to be real, never was any repayment but he says that the loan was a fake construct to facilitate and then he goes on to talk about, "Two perspectives that I ran with despite a real risk that it was fake." I mean, that's his evidence in parts, but the import of it is that he, at the time was told, or believed there was a loan but accepted that objectively at least that there was no loan.

THE COMMISSIONER: I don't think he's given evidence that he was told there was a loan.

MR YOUNG: Well, could I - - -

MR LONERGAN: I said understood or - - -

THE COMMISSIONER: You just said to me told there was a loan.

MR LONERGAN: Understood or was told there was a loan.

10 THE COMMISSIONER: My note is that he knew there was never going to be any, that there was never any repayment and that there was never going to be any repayment and then we had it was a false construct to facilitate the loan, which I have no idea what that means.

MR LONERGAN: But then after that there was the comment regarding, "Two perspectives that I ran with despite a real risk that it was fake." So, I'm not quibbling - - -

20 THE COMMISSIONER: All right. So your objection, Mr Lonergan, is to Ms Wright putting to Mr Thammyiah that it's been established that here was no legitimate loan?

MR LONERGAN: Well, that he understood there to be no legitimate loan at the time.

THE COMMISSIONER: I'm sorry, Ms Wright.

30 MS WRIGHT: Commissioner, if there's some doubt about it I will go back to the loan and my friend's point is that in his state of mind at the time of these events, he believed or may have believed that here was a loan arrangement between him and Mr Soliman. Now, I thought I had established that, or I thought that he'd ultimately agreed that there was no loan and that he did not believe that there was a loan, and that any time he's provided answers to the Commission to that effect, he was operating under what he says was a false construct and he's being more candid with the Commission about the arrangement today but that those answers were not the full truth. But I will go back to the topic of the loan in order to clarify.

MR YOUNG: Can - - -

40 THE COMMISSIONER: Sorry, Mr Young, just before I hear from you, Mr Lonergan, I think that deals with your issue?

MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: Okay, Mr Young.

MR YOUNG: Yes, Commissioner, it's certainly true that Mr Thammyiah seems to want to agree to propositions more today than he has previously, but the propositions that are being put, in broad generality such as there was

an arrangement for, for example one of the questions that was put was an arrangement for 50/50 in 2016. Now, the problem with that is that he's never given evidence of such an arrangement and there's no particularity as to how did this arise. I mean, was there a conversation, was there an email, what's – we're entitled, if this is a whole new suggestion that seems to be that's going to be hoped comes out of Mr Thammiah, we're at least entitled to know what he basis of this supposed arrangement is. An arrangement is a conclusion as to something else. It's like an agreement. If there is an agreement, how did it arise?

10

THE COMMISSIONER: Well, I think – sorry, Ms Wright.

MS WRIGHT: Well, I agree entirely with Mr Young, Commissioner. The questions as to the, the general question about there being arrangement are permissible but there needs to be some further questioning about how these arrangements arose.

THE COMMISSIONER: Are you going to take this on board?

20 MS WRIGHT: Yes.

THE COMMISSIONER: All right. Mr Young, Ms Wright's going to take it on board so let's see what happens.

MR YOUNG: All right.

THE COMMISSIONER: All right. Now, so Ms Wright, you're going to revisit the loan?

30 MS WRIGHT: I'm revisiting the loan, yes.

THE COMMISSIONER: Thank you. Could we have – oh, thank you very much. And we've pressed the magic button. Thank you. Thanks, Mr Thammiah.

MS WRIGHT: Mr Thammiah, you've said that there was a conversation in around mid-2016 about money with Mr Soliman. Is that the case?---Yes.

40 And what was the conversation that you had about money at around that time?---Just in general it was regarding the validation of the loan being legal from his perspective.

THE COMMISSIONER: Now, what you're doing at the moment is you're summarising. I don't want summarise. What I would like, and I know it's difficult and it's artificial, the best you can in words to the effect he said to me X, I said to him. You know, for example if you're discussing the weather, I said to him, "Isn't today a beautiful day, the sun is shining?" He

said to me words to the effect, "I always hate the sun because I get sunburnt." So you're talking, okay.---Yeah.

And Mr Young's on his feet. Yes?

MR YOUNG: Yes. There's a, there's a question that's even, there are questions that are even preliminary to that. Where was it, how was it done, was it telephone, was it - - -

10 THE COMMISSIONER: Ms Wright. So you understand what we're after, what, sorry, what I would like – sorry, I'll start again. You understand the type of evidence that would be very helpful to me?---Yes.

So words to the effect.---Yeah.

MS WRIGHT: All right. The context of this, Mr Thammiah, is I referred you to some messages which you've already been taken to on previous occasions in these hearings, where Mr Soliman is referring to "My half." And you remember those messages?---Yes.

20

And you talk about Tan, Novation's tax accountant, with each other?---Yes.

And you talk about finding out what Novation's tax position is from Tan. Do you agree with that?---Yes.

And you agree you were both waiting to find out what the tax position was so that Mr Soliman could get his half.---I, I don't think that was actually the case, but, but the context is there.

30 And then you referred to the fact that it was in about 2016 in the middle of the year where you first had a discussion about money with Mr Soliman? ---Yes, yes.

And by that stage you had already done some scoping studies for RMS? ---Yes.

And you were doing many more scoping studies in the first half of 2016. Correct?---Yes.

40 And you'd been paid some substantial funds by RMS by mid-2016?---Yes.

All right. So did you have a specific conversation with Mr Soliman about how the money was to be divided between the two of you?---Yes, and it tied into the loan.

How did the conversation go, using the approach that the Commissioner has indicated you should use to explain it.---Yeah. Basically that he was, first he asked about getting a loan and I asked - - -

THE COMMISSIONER: So he said to you, I need a loan, or something like that?---To the effect of I want to build a house, I, you know, I've, you know, I want to, yeah, yeah, I think it was basically around the house because that was very much a focal point back in - - -

All right. So he said words to the effect, I want to build a house but I need money.---Yeah, I want to pay these contractors in cash, I would save money that way, I think I'm entitled to at least half the, the - - -

10

MS WRIGHT: And how did you respond to that?---I, I went along with everything.

Where - - -

THE COMMISSIONER: So you – oh, sorry, Ms Wright.

MS WRIGHT: Sorry, I'm sorry, Commissioner.

20 THE COMMISSIONER: No, you go.

MS WRIGHT: Where were you when you had this conversation?---In his room at his parents' place in Stanhope, sorry, Stanhope - - -

THE COMMISSIONER: So in his bedroom at his parents' place?---Yeah, he was still living at home at the time.

30 MS WRIGHT: All right. And prior to this, had he ever said anything about being entitled to half?---No, was more about making me feel like I was – no, before that, not really, no. It was more about me.

You had already given him money prior to the middle of 2016, hadn't you?  
---Yes. Yep.

All right, well, we'll come - - -?---But that was, yeah.

We'll come back to that. But just staying with this conversation, where he said, "I'm entitled to half."

40 MR YOUNG: Well, that's not what the evidence - - -

MS WRIGHT: I'm sorry, did I misquote it?

MR YOUNG: That's not what he - - -

THE COMMISSIONER: Sorry, my note is that Mr Soliman said, "I am entitled to at least half."

MR YOUNG: Correct, correct.

THE COMMISSIONER: Okay.

MS WRIGHT: "At least." Well, "I'm entitled to at least half." When he said, "I'm entitled to at least half," how did you respond?---I must have, I agreed, I must have agreed, yes.

10 And what else was said in that conversation?---I was worried about the money somehow, I guess, influencing him. I was worried about it being wrong, in the sense that I was getting work from him, so I asked the question about the validity of a loan.

THE COMMISSIONER: So what did you say?---To words to the effect of, how valid is this, is this legal, yep.

MS WRIGHT: What did he say?---Words to the effect of, yes, it's completely legal, because I haven't breached probity, and won't, I won't, yeah.

20

Did you question him or respond in some way?---No, I agreed with his, I guess, summation and sort of validation that it was legal, because I disregarded consequences and just trusted in the friendship.

So when he said, "I'm entitled to at least half," he was referring to half of what Novation was getting from RMS.---Yes.

30 And subsequently, you were providing him with money, cash, or he was getting it from the account, in order to put into effect what you agreed in that conversation.---Yes.

All right. And you didn't have any discussion, did you, about him ever paying any of that money back?---No, was not about paying it back, was about him working for Novation, and sort of recouping those costs. That's a bad way to sort of explain it.

THE COMMISSIONER: Well, what did he say? You - - -?---There was an agreement that there would be a loan.

40 Well, hold on.---Oh, sorry.

So you agreed that there was no discussion about him paying the money back, and then you said something about him working for Novation to allow recouping of these costs.---Yeah, so - - -

What I, again – and I'm not being critical of you, because it's the way people normally speak – that's a summation or a conclusion by you of what was going on. What I would be assisted by is the conversations, the

discussions you had, or any documents that you wrote or emails which allow you to come to that conclusion. Do you understand?---Mmm. Yep.

All right. So you agreed that there was no discussion about him paying the money back but - - -?---Yes.

10 What else was discussed around this time?---Yes. I guess in regards to how that money was supposed to pay back, in a weird sort of convoluted way, it was that he would leave Roads and Maritime Services and work for Novation.

So, I'm sorry - - -

MS WRIGHT: But you said you didn't have any discussion about him paying the money back.---Sorry, I meant from a physical monetary point of view as opposed to working on Novation's books, if that makes sense.

20 All right. So you didn't have any discussion about him physically paying money back to you?---Yes.

And it's the case that there was no loan in that sense between you, was there? You never thought he was ever going to be paying you money back, in other words, reimburse you for cash you provided or he had taken out of accounts?---Yeah, part of, yes, part of me, yes, part of me knew that – yes, part of me knew that this wasn't going to be repaid.

You never even discussed the concept of him reimbursing you the money, did you?---(No Audible Reply)

30 That never arose between you and Mr Soliman, did it?---It did in that form of working for Novation but it was nothing with any serious sort of, it wasn't a serious discussion, like, yeah.

All right. So you had a conversation at some stage, and I'll come to precisely when in a moment, that he might work for Novation. Is that he idea?---Yes. But this was also tied into the lie of the loan. It was myself as well keeping up, sort of.

40 Now, when did you have the, first discuss that fact he may work for Novation in the future?---This was, sort of, a constant thing from mid-2016, it was always there through the, through the restructures that they were going through as well.

When you had the conversation at his parent's house in his old bedroom, he says, "I want to build a house," and he says, "I'm entitled to at least half," was there any discussion on that occasion about him possibly working for Novation?---No, not at that stage.

Was it sometime after that point?---Yes. I think when the, when the loan became sizeable enough, I think that's where the logic, well the flawed logic kind of changed towards that perspective.

Mr Thammiah, you keep referring to it as a loan but you've agreed that you never had a conversation with him about his half or any other money being repaid by him. Do you agree with that?---Yes.

10 Loan is not a word that you and Mr Soliman used at the time in 2016, is it?  
---No, it was a lie that I had to believe and - - -

I see. So it was something in your mind where you construed the arrangement as some form of loan. Is that what you're - - -?---And he did as well. He definitely portrayed it that as well.

Did you ever, did he ever use the word loan in a conversation with you?  
---Yes.

20 What is the conversation and when did it occur?---This was the 2016, sort of, event about those remarks at (not transcribable).

The remark, "I am entitled to least a half," is inconsistent - - -

MR YOUNG: Well, I object to - - -

THE COMMISSIONER: Let - - -

MR YOUNG: I object. I object to this because - - -

30 THE COMMISSIONER: My Young, please sit down. Ms Wright's asking a question. If you've got an objection at the end of the question, then stand up. But please finish your question, Ms Wright.

MS WRIGHT: Mr Thammiah, you've been asked about that particular occasion at his parent's place on a number of occasions. You've said nothing about a conversation in which the word loan as used. Do you agree with that?

40 MR YOUNG: I object.

MR LONERGAN: And object as well, Commissioner.

THE COMMISSIONER: Hold on.

MR YOUNG: The very first - - -

THE COMMISSIONER: Hold on. Right, Mr Young?

MR YOUNG: Well, I don't want to be accused, but - - -

THE COMMISSIONER: I'm sorry, can I just pause for a minute. Should Mr Thammiah, I'm sorry, Mr Thammiah, should Mr Thammiah be here?

MR YOUNG: He should be outside.

THE COMMISSIONER: If you could go outside, Mr Thammiah, sorry.

10 MR LONERGAN: And turning off the screen.

THE COMMISSIONER: Yes, we'll do it. Turned off? Thanks. Right. Mr Young?

MR YOUNG: The witness's evidence as I understand it is that first he, Mr Soliman, asked about getting a loan, then it's said that he, the evidence was that Mr Soliman said words to the effect, "I'm entitled to at least half." Now, it's not an either/or, it's both.

20 THE COMMISSIONER: Can I just pause you there. My note of his evidence that's been focussing on this conversation in his bedroom at his parents' place didn't record the words, "I need a loan," at all. Can I just pause, Mr Young. Does anybody else have a note?

MR LONERGAN: Yes. My notes are that, which concur with Mr Young largely, it was a conversation with Samer about money divided by way of a loan, Samer asked about getting a loan, "I want to build a house and I want to pay the contractors and I think I'm entitled to at least half."

30 THE COMMISSIONER: Does anybody else? Because I had, there was a discussion where the money would be divided, it would be tied to a loan, then Ms Wright pressed him to give the evidence in the way that I requested and I've got, "I want to build a house. I want to pay the contractors in cash. I'm entitled to at least half." And then Mr Thammiah responded with words to the effect of, I agreed.

MR LONERGAN: Went along with everything.

40 MS WRIGHT: The question that is being challenged is, you never discussed, he never used the word "loan." Now, Commissioner, he's been cross-examined about this. It is open to him to answer that question and to disagree with what's being put to him. Now, right at the start of his answers about this he said the word loan. He has subsequently given answers about this being a false construct in his own mind, and at this point I'm testing the proposition that they ever talked about loan, whether that word was ever used.

THE COMMISSIONER: Whether the word was ever used.

MS WRIGHT: And he can disagree. Now, if his counsel and Mr Soliman's counsel are going to continually disrupt the questioning, it's giving the witness an opportunity to, well, he may feel that he's giving the wrong evidence and he has to change his evidence, because he's done that a number of times.

10 THE COMMISSIONER: On the basis that Ms Wright's – look, sorry, I'll start off. My notes of the evidence and my understanding of the evidence does differ from what Mr Lonergan and Mr Young said, but obviously we'll get transcript at one stage. The question that Ms Wright is asking, as I wrote it down, was to put something to him, not to in a sense, to put to him about his use of the word "loan." He can either agree or disagree with that and then she can proceed to challenge him, but I think the question that she's putting is an appropriate question and we can just see what his answer is and depending on that, how she pursues it further. But at the moment I'm of the view that the question is appropriate.

20 MR YOUNG: Please the Commission. I do object to the use of the expression, "Disrupt the, disrupt, disrupt the examination." I mean it's a note which independently Mr Lonergan has a note of as well and I do take objection to the, take offence actually to the suggestion that the purpose of this is to disrupt the examination.

THE COMMISSIONER: All right.

30 MS WRIGHT: I'm not suggesting that the purpose is to disrupt but the objections might be suggesting to the witness that he should alter what he is saying, and this is a witness who has changed his evidence quite significantly and I am entitled to challenge him about what is a very important issue in the inquiry, and that's the basis for the money

THE COMMISSIONER: Indeed, as noted by Mr Young a couple of questions before, that a lot of the evidence would appear to be different. All right. I'm going to allow the question. Could I impose on you, thank you very much, to bring Mr Thammiah back. And could we press the magic button, thank you. Thanks, Mr Thammiah.

40 MS WRIGHT: Mr Thammiah, just taking you back to your conversation at Mr Soliman's parents place where he said, "I am entitled to at least half," all right? Now, he didn't use the work loan during that conversation, did he? ---No, he did.

Him saying, "I'm entitled to at least half," I suggest is inconsistent with there being a loan between you.---Yes. I agree with that, yeah.

All right. So you came away from that conversation having agreed with him that he was entitled to at least half, didn't you?---No. I more or less went along with it because I had no choice. It was less, yeah - - -

So you didn't tell him in that conversation that he wasn't entitled to half, did you?---No. Not at all, no.

10 And you agreed with me when I said that after you had had that conversation, when payments were made to him or he took cash, that was him getting half of Novation's, or at least half of Novation's money. That was the purpose that he was getting half of Novation's profit.---Yes.

All right. Now, you didn't talk about him repaying those moneys during that initial conversation at his parents' place, did you?---No. Sorry, I said no.

20 Yes, all right. Now what did he say during that conversation that you say referred to a loan?---Because that was the premise for it to be legal for me to give him this money.

What did he say?---Words to the effect of, it's not, like, this is legal, what I would be doing and I could provide this money to him.

He said it was legal for you to provide him with money?---Yes.

From Novation, is that what you're suggesting?---Yes.

30 You said you had a conversation in which you asked him, "How valid is this? Is this legal?" And he answered, "Yes, it's completely legal because I haven't breached probity"?---Yes.

Now, is that what you're referring to or was there another conversation on those occasion where he said that it was legal?---I can't -- if he definitely used that sentence, I guess prolifically, to sort of explain or sooth any concerns I might have but - - -

The expression being, "I haven't breached probity"?---Yes.

40 All right. Now, just focussing on the loan aspect. What did he actually say about a loan?---That discussion about the loan was, I guess, all I needed to validate that money being given to him.

What did he say? I'm not asking about your mind, I'm asking about what did he say, if anything, about a loan? What were his words?

THE COMMISSIONER: And sorry, this is at the, in the bedroom at the parents' house?

MS WRIGHT: This is in the parents' house.---Yes. Words to the effect of that it was legal, basically.

Well, see, him saying, "It's legal, I haven't breached probity," doesn't say anything about a loan, does it? I'm asking you - - -?---Oh.

- - - what did he say about a loan, if anything?---So, my question to him would have, was words to the effect of, "Is this loan legal?"

10 But if you said, "Is this loan legal?", you wouldn't be saying that unless you had had a conversation or he had said something about a loan. What is it that was said about a loan which prompted you to say, "Is this loan legal?"  
---Because he needed, because he was telling me he needed cash for building his house, so that prompted him to say that I could loan him the money.

All right, well, you haven't said anything – now you're saying it prompted him to say you could loan him the money. Did he actually use the word "loan" or "lend"?---Yes.

20

Well, you haven't said that in any of your answers until now, have you, Mr Thammiah?

THE COMMISSIONER: No, no, Mr Lonergan, I'm going to allow it to continue, because in – sorry, I'll allow it to continue because he hasn't in a particular important part used the word "loan" before, and it's now just emerged.

30

MS WRIGHT: What did he say? I'm sorry, Commissioner.

THE COMMISSIONER: So I'm allowing Ms Wright to pursue it.

MS WRIGHT: What did he say?---That I could give him the money as a loan.

So he said to you, "I want to build a house. I need money."---Yep.

"You can give me money as a loan." Is that what he said?---Yes.

40

THE COMMISSIONER: All right. You did not give that evidence before in respect of that, definitely in part of that account of the conversation. That is new, Mr Thammiah.---I thought it was more of a reflective response from my perspective when I said the loan was validated by him saying it's legal and – yep.

No, your evidence on that was that, when Ms Wright said to you, what did Mr Soliman say, about a reference to the loan, and you said that it was the premise for it to be legal.---Yep.

And my understanding of that is that when you had the conversation, which you originally gave evidence about it was, “Is this valid, is this legal?”, and he answered, “Yes, it is completely legal, I haven’t breached probity,” your answer, that was the premise for it, for the loan – sorry. That answer was the premise for it to be legal, and I took it that you assumed it was a loan. Are you now saying he used the words “loan”?---Yes, when I said, “Is this,” I meant “this” being - - -

10 I’m not – what we’re trying to get, Mr Thammiah, is your recollection of the words used. We can move to what you understood by the words later on, but the crucial starting point is what is your recollection of either the precise words used or words to the effect. That’s the starting point, okay?---Yep.

MS WRIGHT: You gave some evidence earlier that the loan was a construct in your mind, when – and it was in the context of him saying he would be working for Novation in the future. Okay, do you remember those questions and answers?---Yes, I, I think I might have, yeah, confused things there by saying that it was a construct of my mind. I should explain that  
20 further when I put those words out there.

All right, so you now say he actually said to you, in his bedroom at his parents’ place, “You can give me the money as a loan.”---Yes.

Is that what he said?---Yes, words to that effect, yes.

And what else was said about a loan? Anything to do with a loan. What did he say?---It was just surrounding the fact that I could give him the money as a loan, and that it hadn’t breached any internal processes in regard – and  
30 that’s where the probity sort of comes from. I was, from that point on, I was happy to give him money because I was validated in that act.

Him saying, “I’m entitled to at least half,” means that he is entitled to the money himself, isn’t it?---Yes. As in I’ve got no option, I should say yes.

And it’s not money that he’s going to pay back because he’s entitled to it?  
---He had to give me a premise to work with and that was the premise that I  
- - -

40 THE COMMISSIONER: Sorry, what premise?---That it was legal, that I could give him this money without getting in trouble.

I don’t think Ms Wright’s asking you about that. Go on.---Sorry.

MS WRIGHT: Was it meant to look like a loan but not really be one? Is that what you’re trying to say?---No. For all intents and purposes it was supposed to be, it was supposed to be legal but - - -

THE COMMISSIONER: No, no, not legal. Not legal.

MS WRIGHT: Was it meant to look like a loan but not really be one?---No. It was, it was supposed to be a loan.

Yet you didn't discuss at all him paying the money back?---Yeah. I, I did not care about the money or the consequences of my actions.

And he even said to you, "I am entitled to at least half".---Yes.

10

And so it was not ever going to be a loan, was it, because it was an entitlement of his?---Yes, I can see that logic now, yes.

And you were just giving him the money, in fact, weren't you?---(No Audible Reply)

Giving, gifting it to him. Transferring it without any expectation of reimbursement?---I genuinely thought at the time that I was giving him money that he needed for his home and I was giving him that more as a friend than I was as an accomplice.

20

As a friend, giving him the money, without an expectation of reimbursement.---At the time I didn't have any expectation because, yeah, I was in quite a desperate situation so I didn't really think that far ahead.

And you didn't have that expectation because it was not a loan and you didn't believe it was a loan, did you?---I did believe it at the very, I think I did at the start but at some point I didn't care. At some point I did acknowledge that it wasn't, yes.

30

At what point was that?---I'd say around mid-2017 or early 2017, yeah.

Apart from that conversation at the parents' place of Mr Soliman, where you say he said, "You can give it to me as a loan," did he ever refer to a loan between you again? Did he ever have any further discussion with you in which he referred to a loan?---No, not really. No.

Now, coming back to the WhatsApp messages in Exhibit 53, we were at message 73, which deals with the cash, which is how the topic of a loan came up. If we can just go back up the page slightly, sorry. He says, "Can you pull out cash for me before you leave. Get \$8,000 before Monday, please bro." And you suggest, "Might have to leave cards with you," and you have the conversation about transactions looking bad while you're away.---Yes.

40

And then if we just go back down to 74, and you say you'd rather not to the big ones anymore and I asked you about what the purpose of the money was at this stage and you said that you didn't have any particular business

opportunity in mind, such as the hemp growing business, at this point?---It's not that I didn't have it in mind but it was, it wasn't real.

Now, how much in total cash did you give to Mr Soliman between 2015 and 2018 approximately?---Yeah, I thought it was around the 200 circa, 200,000, but I can see by the transactions that it was a lot more.

10 And was the intention to continue to give him or for him to take amounts such as 4,000 and 8,000 until he had reached about half of the total profit obtained by Novation from RMS business?---Personally I would have given him much, I think I did give him much more but that was a general line in the sand, yes.

What do you mean by, "I think I did give him much more?"---Well, because I put my own money into the company thinking it was real at the time and I used that also to give him money out of Novation.

20 You considered that you putting money into the business was benefitting him as well because it was also his business. Is that what you mean?  
---Because the money, the majority of the money went to him, so it was - - -

Well, by this stage, August 2018, you have been paid for about six scoping study and trials. Yes? Do you agree?---Yes.

And you have won a \$2 million tender for 125 scales?---Yes.

And you made a large profit on that particular transaction - - -?---Yes.

30 - - - because of the mark-up you applied to the scales?---Yes.

And how much do you say your profit was from that transaction?

---Yeah, look, I'm not sure, I just have to - - -

You did not provide half of the profit to Mr Soliman, did you, from that transaction, from the \$2 million transaction?---No, I don't believe so.

40 Your answers a moment ago were that you had given him half I think you said or more than half of Novation's profit.---Yeah, I would look at the projects and payments that came into play around like, mid-June, June of 2018 and yeah, if you work backwards from there you can see that most of it went to him, it wasn't, like, I didn't, yeah, it wasn't about me.

When you say most of it went to him, you had made as profit more than what you say he got, hadn't you, so you've said that you thought you gave him about \$200,000 in cash in total?---Yes.

But your profit was well in excess of \$400,000, wasn't it?---Sorry, I have no idea because obviously this started in mid-2016 where the amount of money that Novation made was just based on those scoping studies.

THE COMMISSIONER: No. I think Ms Wright's asking you about overall.---Yeah, but – sorry.

MS WRIGHT: Commissioner, would it be an appropriate time to take the morning adjournment so I can check something?

10

THE COMMISSIONER: Yes, certainly. Yes. We'll adjourn and resume at about 5 past 12.00.

### SHORT ADJOURNMENT

[11.44am]

THE COMMISSIONER: Right. Thank you, Mr Thammiah.

20 MS WRIGHT: Mr Thammiah, you gave some evidence that in terms of the cash which you provided to Mr Soliman or which he took out of your or Novation's accounts, you thought it was a total of around \$200,000, but that you saw in these proceedings that the transactions were in fact more than \$200,000. Do you recall that answer?---Yes.

If I suggest the figure as \$347,000, would you agree that that is about right in terms of the cash made available by you to Mr Soliman in the course of your work for RMS?---Yeah, I'd agree it's definitely around \$300,000, it's definitely - - -

30

And at the time that the Commission conducted some search warrants, including on your residence, in October 2018, you still had money that had been remitted by RMS in your bank accounts. Do you agree with that? ---Yes.

And you had been paid in June of that year, last year, for the 125 scale tender which Novation won?---Yes, this would have been the second milestone payment.

40 There were two payments of \$1,050,000, totalling over \$2 million, for that particular tender that you were paid in June of 2018. Do you agree with that?---Yes.

And you still had significant funds in Novation's accounts as at the time of the search warrants. Do you agree with that?---Yes.

How much of that money was Mr Soliman's, in your view?---At least half.

And how was he going to get that money?---Through me.

How?---Through Novation's accounts or in cash I guess, if that was the way he kept, yeah.

All right. So he had been either taking out cash himself or you had been giving him cash over period of time since 2016?---Yes.

10 And do you agree that the amounts were generally about \$2,000 at a time?  
---Yes.

There were some payments that were more than \$2,000?---Yes.

And what was the largest payment that you made to him in cash, do you recall?---I think it was around 25, but that's only because I can sort of relate it as well to those messages which, which articulate that 25 as well.

20 And was that 25,000 cash which you gave to him yourself or which he took  
out of an account?---I'm not too sure. It would have been, it could have  
been both, but yeah, could have easily just been me as well, like, I'm not too  
sure.

And was the intention that prior to your arrangement with him being detected, was the intention that he would continue to receive the money in similar amounts, that is in small amounts on a regular basis, until he'd received at least half?---Yes, however, yeah.

Did you discuss that with him?---About ongoing?

30 Yes.---No. I think at the time he always got what he wanted so he never  
really brought up the, he never really brought it up. We never really spoke  
about it, yeah.

40 Now, just going back to the 425 scale tender, could I just take you to some  
messages in Exhibit 53 at around message 100. Mr Soliman asks you – if  
we just go back up to 99 and if we could just go up to show the date. If you  
keep going, please. 21 August, 2018, in blue there and then just going back  
down. You reckon you'll have a draft ready by tomorrow, "So we can  
review," in the middle of that mobile phone page.---Yep.

And you understood he was referring to your draft tender submission for Novation for that tender?---Yes.

And over the page, at message 100, on 22 August, 2018, you say, "What's happening? Let's hit this." And he says, "Yeah. Sweet. Come soon. Let me wake up." And then going down to the next messages he asks you not to forget to bring your card, "So I can withdraw when you're gone." You answer, "Yeah, no probs." And he says, "Sweet. Send any RFP docs you

have. We'll work on my laptop." And you say, "I'll bring my laptop, we'll just go from here. USB all good?" You were talking about Novation's tender submission?---Yes.

And then going over to the next message, 102, you have a conversation about Rish and then we'll just go over to 105. You asked him whether it was okay to answer some questions in the tender submission.---Yes.

10 And he says, "Keep them short and sweet. The only part that needs elaborate [sic] is the scoring criteria questions which I've done." See that? ---Yes.

So you sent him there a screenshot of how you propose to answer some questions in the tender?---Yes.

20 And then going over to message 308, you said, "Hey dude. Sending the doc to review now. Let me know, I'll make changes today." When you said that you were indicating that you would be sending him the draft Novation tender submission?---Yes.

For the purpose of Mr Soliman reviewing it?---Yes.

And he says, "I'll send the docs back within an hour." And then going down to message 109 he says, among other messages, "Overall looks good, no issues. Give it another skim before you submit to make sure nothing's missed. We're golden, son." So it's the case he actually reviewed the Novation submission. Do you agree with that?---Yes.

30 He didn't just offer to but he actually did look at it?---Yes.

And then over at 110, he asked you whether it was all good with the submission, tender closes in five hours, and he asked, "Want me to check it?" You say, "Yeah, I sent it to you for one last review. Think everything looks good." And he says, "Yeah, looking at it now," at 11.50, "Give me 10 minutes." And then at message 111, you were in Canada at this stage? ---Yes.

40 So at the same time as seeking to lock in Novation with IRD, you were having Mr Soliman check your tender submission to ensure that RMS, for the purpose of ensuring that it would be acceptable to RMS?---Yes.

So you were manipulating the tender process yourself, weren't you, Mr Thammiah?---Yes, I can agree with that now.

And Mr Soliman was regularly giving you internal RMS information about the tender process to assist you.---Yes.

And you were, you agreed with that, and you encouraged that, didn't you?  
---I don't think I encouraged it, but I, yeah, it's - - -

You even went to Canada to ensure that Novation could win this tender,  
didn't you?---Yes.

So – I withdraw that. Now, in relation to this order, could we have volume  
12, at page 244? Novation ultimately won the tender, you agree?---Yes.

10 On 30 October, 2018, you sent an email, if we could just go down the page,  
to Mr Lee, and saying that, “Unfortunately, the manufacturing arm of IRD  
have said in uncertain terms said that they cannot complete this order on  
time, and as such, I have to terminate this contract. Can you please advise  
what the next step would be?”---Yes.

Now, IRD has told the Commission they were always in a position to fulfil  
the order, and I'll take you to that.---Ah hmm.

20 But do you agree that you, in this email I've just taken you to,  
misrepresented the position to RMS when you said IRD was not able to  
fulfil the order?---Yeah, I was, it was based on a comment that I got from  
Fernando about paying at the time. I, I led myself to believe that the  
manufacturing wasn't being done based on that comment, and that's why I  
sort of put that - - -

THE COMMISSIONER: Sorry, Fernando made a comment to you?  
---Yeah, I was trying to make further payments on the delivery, and he said  
that it could wait two months, and it was almost unheard of that they would  
wait on a payment. So I took that to mean that the manufacturing wasn't  
30 going ahead, and wrote a very sort of kneejerk reaction email, and - - -

What, sorry, to RMS?---Yes, and tried to pull out of everything, because I  
was obviously quite scared at the time.

MS WRIGHT: If we could just have some correspondence, a date in May,  
2019. This is an email from Mr Garza to you on 18 September, 2018,  
setting out the dates the scales will leave the IRD factory, saying, “We're  
already,” – no. Do you see here, Mr Garza sent you an email on 18  
40 September?---Yes.

Saying, “We're already manufacturing.”---Yes.

Proposing delivery dates from January 2019?---Yes.

And then if we just go forward a page, you thanked him for that and said  
you're finalising a new account to transfer funds at a more competitive rate  
and you'd send a receipt. Do you see that?---Yes.

And then just going forward a page, another page – no. Then if we could go, you see here an email chain, if we go down to 26 October, this is an email from Mr Garza. “Good to hear from you.” Now, go back up, please, to 30 October, “Hi, Fernando,” you say, “Can you confirm the payment milestone schedule for this delivery, please?”---Yes.

And he then responds, if we go forward a page, on 1 November, based on the readiness of the scales at the factory, and he indicates the quantity of the scales and the dates. Do you see that?---Yes.

10

And he proposes payment milestones and asks whether that would work for you.---Yes.

So the scales as at November 2018 are ready as at dates he’s indicated. And on the same day, if we just go backwards a page to 30 October, that email you sent on 30 October is the same date is your email to RMS saying that you couldn’t complete the order.---Yes.

But these emails with IRD suggest otherwise.

20

THE COMMISSIONER: With RMS?

MS WRIGHT: Sorry, these emails with IRD that I’ve taken you to suggest otherwise, Mr Thammiah, they suggest that the scales order could be completed according to the dates indicated to you by Mr Garza.---It wasn’t, it wasn’t the delivery dates, it was the payment dates that they just threw me off completely because they’ve never, they’ve always asked for prepayment, they’ve always asked for money up front, and this is the first time that they actually said wait till January, almost two months, before paying. So I thought that the manufacturing wasn’t going ahead, I got really scared that this contract wasn’t going to be filled and - - -

30

There’s nothing here in the correspondence with IRD to suggest that the manufacturing couldn’t go ahead. In fact, they say they’re already manufacturing as at September and that the scales will be ready from 18 January, 2019, aren’t they?---Yes.

And so when you told RMS that IRD couldn’t complete the order, that was a misrepresentation, wasn’t it?---No, I was completely reading into this payment milestone that was pushed back and I basically got scared and didn’t want anything to do with this contract.

40

So isn’t it the case you got scared and so you misrepresented the position to RMS?---No. At the time I genuinely thought that they weren’t manufacturing because they always took payments before manufacturing. So by waiting two months it meant that they weren’t going to complete the order on time at all which meant, yeah, everything could go as planned.

If we can just go back to the email on 1 November. He's telling you, consistent with what you're suggesting was the approach, that the payments would be made before delivery. So he proposes milestones on 1 January. Do you see that?---(No Audible Reply)

10 And then a delivery on 18 January?---Yeah, sorry. Manufacturing takes quite a bit of time and it was well before these delivery dates. That's why I always paid upfront and they always made sure that I paid upfront before they started manufacturing. So it was purely because of this, because I wanted to pay at that point in time and when they pushed it back two months, that just threw me off and scared me about this whole contract.

You say to him, "Can you confirm the payment milestone schedule for this delivery?"---Yes.

20 You say nothing about, "I'm wanting to pay you now," did you?---No because that's the way we've always operated. That's the way it's always worked. I was, yeah, yeah, it was just a knee-jerk reaction to a very stressful event and I just wanted out of - - -

What's the stressful even you're referring to?---The search warrants being conducted.

Right. And so the search warrants meant that you knew that your scheme with Mr Soliman was finished, didn't you?---I knew something was wrong at the time but I didn't know how profoundly wrong it was.

30 And you knew that you were about to receive a very large order of scales from IRD for RMS, didn't you?---Yes.

And are you saying that you didn't want to have anything to do with that scheme because your wrongdoing had been detected?---No, because I, I was, I was told even in regards to delivering the scales, it would, as long as I delivered the scales, it was okay.

THE COMMISSIONER: Who told you that?---I was given some advice from my solicitor at the time.

40 So after the execution of the search warrant you saw a solicitor?---Yes.

And the solicitor told you, "As long as you deliver the scales on time, you will be okay"?---Yeah. I wouldn't have any issues. In regards to the contract being delivered.

MS WRIGHT: So why did you go ahead and tell RMS that the contract couldn't be completed?---Because of that risk towards delivering on that time frame because of the way our relationship worked previously, where I

paid upfront. I just didn't believe that they were actually manufacturing, yeah. I just - - -

Mr Thammiah, that just makes no sense in circumstances where at the same time, having been told by IRD that they're already manufacturing, you asked for confirmation of the payment milestone schedule for this delivery and you are then told of the dates of readiness of the scales.---Yeah, but I, I thought Fernando was just putting up a front and I - - -

10 What front?---I, I thought he - - -

Why would Fernando, who has an interest in this contract being completed, be putting up a front about the delivery of scales?---Yeah, I know, it doesn't, it doesn't make much sense but at the time I thought that IRD were trying to protect their reputation. So I thought they might want to distance themselves from Novation.

20 But this is an email between you and Mr Garza. It's got nothing to do with anyone else. What's his, what's the reputation issue you're talking about?  
---Well, that's why I, look, I, I went down that pathway of a worst-case scenario that IRD don't deliver these scales, they don't manufacture these scales. And that's, and the comment by Fernando to delay payment was just something that threw my mind towards that - - -

30 There's no comment here by Mr Fernando about delaying payment. What is it that you say he said?---Well, it's the, the payment milestone of January, where I've asked two, two months ahead of time about paying. He's, he's always, like, we'd always paid as soon as possible upfront. It's never been this sort of delay. It's - - -

THE COMMISSIONER: You don't think the fact that there's 400 scales might have made a difference?---They, they always ask for money upfront. They - - -

40 But you, they're getting money upfront here.---I know it seems before the delivery dates, but they always explained that manufacturing happens, you know, two months before, we need to buy all the components and all the materials before we even deliver. So that was always the perspective that they needed the money upfront.

I - anyway.

MS WRIGHT: The scales in the previous tender weren't actually delivered until well into 2019, were they? They weren't delivered until around June, were they?---Sorry, are you talking about the 125?

Yes. There was not immediate delivery by IRD of those scales, was there?  
---Oh, sorry, you mean, oh, I'm (not transcribable)

The 100 and - - -?---You said 2019 though.

The 125 scales.---Was delivered in June, 2018.

And what I'm suggesting is they weren't immediately delivered by IRD, were they? There was some delay of some months before they could deliver 125 scales, wasn't it?---Yes. There's a manufacturing process.

10 And this was no different, this situation where IRD had a delivery schedule starting in 2019.---But the payments to IRD was always upfront.

That is not a basis, I suggest, for you to have believed that IRD were not going to complete the contract.---Yes, I agree, it's a weak basis, but I was quite scared at the time, and I didn't want anything to do with, well, any work at that point.

20 Isn't that the true reason, that you were scared because of the search warrant, and so you lied to RMS when you said that IRD was not able to fulfil the order?---No, I genuinely was scared that they weren't going to fill in the order and then it would be much worse, I thought.

You'd learned that the Commission was investigating.---Yes.

And you knew that the transaction was a fraudulent one, didn't you?---No, I didn't know whether it was fraudulent at the time, but I definitely knew Samer had thrown his weight behind Novation.

30 Well, you knew you'd been engaged in a fraud on RMS with Mr Soliman, and that this may have been discovered.---I didn't have the perception of a fraud. I had the perception of something being wrong, but it was never on this scale.

Well, you knew at least that through this transaction - - -?---Yep.

- - - you were unfairly enriching yourself at the expense of RMS, didn't you?---It wasn't about the money, but I knew what I was doing. Yes.

40 All right, well, you knew that through this transaction, Mr Soliman was unfairly enriching himself at the expense of RMS. Didn't you?---Yes.

And you knew there was a risk that you would have to return the money, having been investigated by the Commission at your home, didn't you? You knew there was a risk you'd have to return the money.---Yeah, but it was only in regards to - I was, I was told that, but it was more in regards to the, the profit margins, so as long as they delivered, it would be just the profit that would be clawed back (not transcribable)

And so you sought to bring the transaction to an end by telling RMS you couldn't deliver, that IRD couldn't deliver.---I did think it would be much worse if they didn't deliver, and it was just based on those payment milestones. It was just, yeah.

But you were prepared to lie in whatever way necessary at this time to conceal your relationship with Mr Soliman from RMS, weren't you?---I beg your pardon, sorry?

- 10 You were prepared to lie in whatever way necessary at this time to conceal your relationship with Mr Soliman, and I'm suggesting that's the reason you sent that email saying IRD cannot complete.---No.

Now, I'm just going to ask you a few more questions about the spare parts issue.

THE COMMISSIONER: Just before you do that, the documents you put up, do we need to tender those?

- 20 MS WRIGHT: Yes. I tender a – and I'll provide a hard copy so that it's easier.

THE COMMISSIONER: That would be good, thank you. So it's this bundle?

MS WRIGHT: It's a bundle under the cover of a letter from Eakin McCaffery Cox dated 27 May, 2019.

- 30 THE COMMISSIONER: The emails between IRD and Stephen Thammiah covering the period 17 September, 2018 to 1 November, 2018, produced under cover of a letter from Eakin McCaffery Cox dated 27 May, 2019, will be Exhibit 64.

**#EXH-064 – EMAILS BETWEEN IRD AND STEPHEN THAMMIAH COVERING THE PERIOD 17 SEPTEMBER 2018 TO 1 NOVEMBER 2018 PRODUCED UNDER COVER LETTER FROM EAKIN McCAFFERY COX LAWYERS DATED 27 MAY 2019**

- 40 MS WRIGHT: We'll provide copies of that, Commissioner, to the parties. If I could have a table on screen of spare parts and scales. Mr Thammiah, do you recognise this table which I took you to when you were last giving evidence before the Commission, setting out some responses from IRD in relation to spare parts - - -?---Sorry, yes.

- - - provided by Novation?---Yes.

The document sets out the items and quantities of parts which Novation invoiced RMS for and the date of Novation's invoices. Do you see that?  
---Yes.

If we could just go to the second page. IRD were asked whether any steel baseboards right and left were sold to Novation and if so how many. Do you see that?---Yes.

10 And IRD indicated that it had not sold steel baseboards to Novation. Do you see?---Yes.

And the invoices which were sent to RMS by Novation between 20 March, 2017 and 15 May, 2017, indicate that Novation invoices for 16 steel baseboards. Do you see that?---Yes.

And you issued those invoices, did you?---Yes.

You didn't order any steel baseboards from IRD?---No.

20 And you didn't supply any steel baseboards to RMS?---No.

And you didn't – I withdraw that. You issued the invoices here knowing that you were not going to order them for RMS. Do you agree with that?  
---Sorry, did you say RMS?

You issued the invoices to RMS knowing that you were not going to order the steel baseboards for RMS, didn't you?---I'm not too, that's, look, from a – sorry, yeah. I really can't recall about this one.

30 You say you can't recall but you issued multiple invoices in which you included steel baseboards on them, didn't you?---Yes.

So it's hardly a matter that you'd forget, Mr Thammiah.---No. It's - - -

And you must remember having issued invoices for steel baseboards and what you planned at the time and I'm suggesting that you planned not to ever supply the steel baseboards to RMS, didn't you?---I don't think there was any forethought on my part to not deliver anything.

40 Well, you're issuing to a government department an invoice for an item that you're not supplying. You must have given thought to that.---Yes. And, yes, I did, but I was actively lying to myself again. I have created the perception that it didn't matter in order to fulfil this request but ultimately I did know on some level that it was wrong that I was – yeah, it wasn't with the true intent of not delivering, if that makes sense.

THE COMMISSIONER: No, it didn't, I'm sorry, Mr Thammiah. That didn't make sense at all.---Sorry, yep,

My notes were you had a perception that it didn't matter to fulfil this request and then I got completely lost. Ms Wright, do you want to explore it?

MS WRIGHT: Mr Thammiah, no one had suggested to you that RMS needed these steel baseboards, had they?---No.

No one had suggested that you should invoice for them?---No, Samer knew I was invoicing for them.

10

And you knew that Samer was in a position to have the invoices paid.---Yes.

And that's why you issued them because you'd be paid for invoices, notwithstanding you weren't supplying the goods?---Yes but I created the, a false perception that I could still somehow deliver in the end by using the narrative of a checking process in place or an inventory, like a yearly sort of inventory. I still convinced myself that even tough, yes, it was wrong.

20

An inventory would reveal that you had invoiced multiple time for things you hadn't delivered.---Yes. And I convinced myself that it was okay to act his way because of that.

But you'd get in trouble for that, wouldn't you? You'd get in trouble if someone did an inventory and they saw that you'd invoiced for things you'd never supplied?---Yes. Consequences that related to me were not something I really recognised or was, I was happy to take on those consequences.

THE COMMISSIONER: Who was going to do the inventory?---Jai.

30

Who?---Jai Singh.

And you'd discussed this with Mr Singh, had you?---Yeah. It came up in, well it came up early on in the whole parts delivery. It was an email to that effect.

MS WRIGHT: And what did the email say?---That he was checking with the maintenance guys and checking the order and making sure that everything married up.

40

And this - - -

THE COMMISSIONER: My recollection – oh, I'm sorry Ms Wright.

MS WRIGHT: I'm sorry. This was a friend of you and Mr Soliman, Jai, who's supposedly doing the checking.---Yes, he's a friend of Mr Soliman's.

And you knew that this was never going to be taken up with you, didn't you, no one was ever going to say, hang on, you've invoiced for all these steel

baseboards you haven't supplied?---No, at the time it didn't matter whether someone said something, I was willing to bear any consequences, but I also just was desperate enough to go along with everything, so I did.

And you thought there was a good chance you'd get away with it.---Part of me wanted the friendship to be real and the whole scenario to be real, but realistically none of it was real and I was more like a ticking time bomb. This, yeah, this was inevitable.

10 And these invoices for steel baseboards you were not going to deliver, you agree that you were acting dishonestly in issuing these invoices, weren't you?---Yes, however way I may validate it, it was a dishonest act.

And you knew that at the time, didn't you?---No, at the time I was validating all my insecurities with false realities and lies, yes.

Now, just going back to the table, the weigh pad platform board, do you agree – well, firstly I'll take you to IRD's response, which is that, "We sold eight units to Novation in February 2018 and shipped in April 2018." Do  
20 you agree that you didn't order any weigh pad platform boards from IRD in 2017?---Yes.

Yet you invoiced RMS for one weigh pad platform board, didn't you?  
---Yes.

And when you did that, you did it knowing that you were not ordering, you were not going to fulfil that order by actually providing the goods, didn't you?---Yeah, at the time, yeah.

30 Because you won a tender for spare parts later in 2018, didn't you?---I wouldn't say it was because, but I did, yes.

And you put in a quote for \$218,000 plus GST for some spare parts?  
---Yes.

And that included I suggest eight weigh pad boards?---Yes.

And you were paid by RMS for those items, weren't you?---Yes.

40 So this extra one in 2017 was one you were paid for but never supplied to RMS?---Yeah. I think that was a, this one particular weigh pad, I believe it was sort of, yeah, look, I'm, I'm, I think I'm mixing up the two. Sorry, could you repeat the question?

You invoiced RMS for this particular weigh pad which you never supplied to RMS?---Yes.

And you were paid, you invoiced for \$ [REDACTED] for this item?---Yes.

Which was a nine or 10 time profit on what IRD was charging for that item.  
---Yes.

Now, in terms of that charging 10 times the mark-up, 10 times the wholesale price, that was something that you agreed with Mr Soliman?---Yes, I would have, yes.

10 Did he in fact send you a Novation pricelist to use with a 10 times profit?  
---I don't believe so.

Could I have volume 18, at page 280? Do you see here an email from Mr Soliman's personal email address to Novation, on 28 Novation, 2016?  
---Yes.

Will you note the time is 9.18pm, you see that?---Yes.

20 And it says, "Parts list in progress," as the subject to the email. You see?  
---Yes.

And complete Series II and Series 2.5 listings, is indicated in the body of the email?---Yes.

Now, I'll take you over to the attachment. Do you see here it's a Novation quote, numbered 101, for parts and servicing?---Yes.

And do you see there's a number of prices here, including [REDACTED] 0, for a weigh pad platform?---Yes. Yes.

30 And other prices, [REDACTED] 0 for an aluminium baseboard.---Yes.

A steel baseboard at [REDACTED] 0, et cetera. Now, that's an email that you received from Mr Soliman, you agree?---Yes.

Did he prepare that quote or price list?---I feel like we would have done this in his room together. I don't think he did it by himself.

40 Could I have page 306 of this volume. Do you see at about 8.00pm, 7.57pm on the same date, you send to Mr Soliman an email, didn't you?---Yes, yes.

And it says "parts list". You see?---Yes.

If we go over, your email attached IRD's parts list, didn't it?---Yes.

Mr Fernando Garza had sent you the IRD parts list on the 25<sup>th</sup> of that month, hadn't he?---(No Audible Reply)

Which is contained here in this attachment to your email to Mr Soliman.  
---Yes.

I note the time, Commissioner.

THE COMMISSIONER: Is that an appropriate time?

MS WRIGHT: Well, I can come back to it. It's in the middle of this, but I can come back to it.

10

THE COMMISSIONER: All right. We'll adjourn for lunch and resume at about 5 past 2.00.

**LUNCHEON ADJOURNMENT**

**[1.08pm]**