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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 3 APRIL, 2023

AT 10.00AM

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

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

THE COMMISSIONER: Yes.

MR ENGLISH: Chief Commissioner, Mr Aziz is sitting with his lawyers at the back of the Commission.

THE COMMISSIONER: Thank you. Yes. Mr James, you appear for the witness?

MR JAMES: Yes, Commissioner.

10

THE COMMISSIONER: Yeah, thank you. Authorisation is granted.

MR JAMES: Thank you, Commissioner.

THE COMMISSIONER: I think it's already been granted actually. Mr Aziz, would you come forward? Do you take an oath or an affirmation?

MR A-AZIZ: Affirmation.

20

THE COMMISSIONER: Mr James, has the witness been advised of the provisions of section 38 and does he seek a direction pursuant to that section?

MR JAMES: Yes, Commissioner and, yes, Commissioner.

10 THE COMMISSIONER: Mr Aziz, as a witness you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You can object to answering a question or producing an item. The effect of any objection is that although must still to answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used
20 against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment of up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official can be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

I can make a declaration that all answers given by you and all items produced by you will be regarded as having been give or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I understand from Mr James that
30 he's explained that to you and you wish for me to make a direction under section 38. Is that the case?---Yes.

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

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

THE COMMISSIONER: Yes, Mr English.

MR ENGLISH: Chief Commissioner, I don't know how we might go with recording and picking up the sound if Mr Aziz keeps a mask on. I'm in your hands, Chief Commissioner, as to whether that might raise an issue.

THE COMMISSIONER: You can remove the mask, Mr Aziz. Thank you.

MR ENGLISH: Thank you, Chief Commissioner. Could you just state your full name and age for the record, please?---My name is Abdal Aziz, age 37.

Okay. Mr Aziz, there was some correspondence sent by your lawyer to this Commission on 13 March of this year notifying the Commission that you intended to travel to Bahrain. Do you recall that?---That's correct.

And that was on account of your father - and I don't need details - your father being due to have surgery. Is that right?---That's correct.

And in some of that correspondence that was passed on you said that your father's surgery is scheduled to take place between mid-March and mid-April with a date to be confirmed by the hospital soon, we hope. Do you recall saying that?---Yep.

And you were requested to provide records of that surgery to this Commission?---Yep.

That request was made through the Commission's solicitors to your solicitors, do you recall that?---Yes.

And nothing's been produced to date by you in relation to those hospital records. That's right, isn't it?--No, that's not correct. I have produced it but I don't believe my, my legal team has issued it to the Commission.

All right. Commissioner, might I seek a section 35(2) direction for the production of those hospital records to the Commission?

10 THE COMMISSIONER: Yes. Mr James, are those records in your possession?

MR JAMES: Commissioner, my instructing solicitor has an electronic copy. Those can be provided at the mid-morning adjournment.

THE COMMISSIONER: When they can be provided?

MR JAMES: At the mid-morning adjournment.

20 THE COMMISSIONER: All right.

MR JAMES: If it assists, Commissioner, we could probably show Counsel Assisting in the next couple of minutes depending on - - -

THE COMMISSIONER: Well, what I'll do is I'll make a direction pursuant to section 35(2) that the witness Abdal Aziz produce such records as are in his possession and control relating to his father's hospital admission in Bahrain between March and April 2023 to the Commission by 1pm today.

30 **DIRECTION TO PRODUCE: I WILL MAKE A DIRECTION PURSUANT TO SECTION 35(2) THAT THE WITNESS ABDAL AZIZ PRODUCE SUCH RECORDS AS ARE IN HIS POSSESSION AND CONTROL RELATING TO HIS FATHER'S HOSPITAL ADMISSION IN BAHRAIN BETWEEN MARCH AND APRIL 2023 TO THE COMMISSION BY 1PM TODAY.**

40 MR JAMES: Thank you, Commissioner.

MR ENGLISH: Thank you, Chief Commissioner. And, Mr Aziz, once those records are produced we'll have an opportunity to look at them and then I might ask you some more questions on that topic.---Yeah, sure.

If that's okay, thanks. Can you please tell the Chief Commissioner what qualifications you hold?---I have a Bachelor of Engineering, Mechanical Engineering, from UTS.

10 And when did you obtain that degree?---I finished studies 2009, from memory.

Okay. Do you hold a Diploma in Project Management?---That's correct, yes.

Where did you obtain that from?---I can't remember the name of the institute.

20 Okay. All right. So since obtaining that degree in 2009, where have you worked?---I started working before that when I was in university. I worked part-time, mainly looking after mechanical installations and process equipment, design and manufacture, and then from there moved into utilities, so the natural gas pipelines and that sort of thing. And then in around 2012 I joined a design consultancy doing similar work, things like pump stations and process equipment and that kind of work. And then a few years after that I got into rail when I joined Downer EDI. I did a little bit of rail work before that, before joining Downer, but at Downer is mainly rail-focused and I've been working in the rail sector since then, since 2017.

30 You started, is that when you first started with Downer, in 2017?---Yeah.

Before then had you had any rail experience or - - -?---Yeah, I've had, I've had some exposure to where we'd worked on locomotive provisioning centres, so we've had an interface with, with heavy rail, and I was a rail safety worker so I had my card and inductions and things like that.

And where was it that you gained, at what workplace did you gain that experience?---That was at a company called, initially it was Moore Consulting and Engineering and then I joined Moore Management.

40 So did you work for ACOR at some stage, A-C-O-R?---Yeah.

And just to be clear, what you spoke of there, the rail work and obtaining the rail safety card, was that at ACOR or was that at Moore Management, M-o-o-r-e Management?---So ACOR basically bought out the consultancy I was initially working for and then after that acquisition I moved onto Moore Management. Can't quite remember when I started on the rail projects but it could have been before or after the acquisition.

Okay.---Yeah.

10 And before that you worked for Jemena, didn't you?---Jemena, yeah.

Yeah. And so you had some speciality in that area, did you, prior to moving into rail?---That's correct.

Okay. What projects when you joined Downer did you work on?---The first project I worked on was the TAP project.

Whereabouts?---In Victoria Street of East Maitland.

20 Yeah. And then what else did you work on when you were at Downer?
---From then I moved onto the New Intercity Fleet project.

Yep. What areas did you work in that project?---So in that project I was looking after, I was the project manager for portions, it was in three portions, the project was split up into. And it was based on geographical location of the job sites. And I was looking after the west and south packages, so the portion 2 and 3.

30 So is that the line? When you say the west and the south, is that the western line out to Blue Mountains way?---It's basically everything from Strathfield out west to Lithgow.

Yeah. Yep.---And then south, basically Hurstville and one other station all the way down to Port Kembla.

Okay.---Yeah.

40 What about Central Station, did you work in the NIF project at Central Station?---I had, yeah, I did, although that wasn't part of my, I guess, official role, but I did assist on the Central Station works.

And who did you assist with? Was there someone that was your report, your direct report that you were assisting?---Look, I was reporting to the project director, so that package, there was a different project manager and a project engineer looking after that package as part of portion 1, but for whatever reason it, it ended up with me, so - - -

Okay.---I was tasked with delivering that.

10 And what was the name of the person you were reporting to in that role?
---Initially it was, the project director changed so I think when I joined it was Greg Barnes, potentially.

Yeah.---And then following that it was Andrew Bedwani.

Okay. You know Nima Abdi?---Yeah.

Did you go to school with him?---Yes.

20 How long have you known him for?---Since school. I'd say since year 11 or 12 when we met, yeah.

Okay. So you didn't go through schooling the whole way together?---No. No.

Okay. And you became friendly, did you, at school?---Yeah.

And you maintain that friendship after school with Mr Abdi?---Yeah, I would say on and off. When we're going through uni, I'd say yeah.

30 Did you commence university at the same time?---Yeah. Yeah. We were in the same year at school at then commenced at uni at the same time.

And you both went to the same university?---Yeah, but we did different courses, but, yeah, the same uni.

Did you graduate in the same year?---I'm not sure when he graduated, to be honest.

40 Okay. You don't remember attending a graduation ceremony together?
---No, not together, no.

Okay. And have your families become friendly over time?---Yeah.

And who's friendly amongst your families?---I'd say our wives.

Okay.---Yeah, and the kids.

All right. And Tony Nguyen, you know who I'm referring to when I ask you about Tony Nguyen?---Yes.

- 10 How did you meet him?---I met him when, on Victoria Street project and it would have been through Nima.

When you say it would have been, do you recall actually the first introduction with Mr Nguyen?---No, not specifically, but I do recall how we got to that, so I asked, I asked around of who can, who can do this sort of building work on the train station. We had a package to tender.

Whereabouts was that for?---That's Victoria Street.

- 20 Yeah.---And we were sort of struggling to get interest into the tender.

Why was that, that you understood?---It just wasn't a great package and not a great location, and I think everybody we had gone to was too busy.

- The Commission's heard some evidence that that area might have had some difficulties with crime and some break-ins. Is that right?---Yeah. So when, when we went through the job, yeah, that, that became evident but I don't know if people knew that during the tender stage or, yeah, but that, we did definitely have that as an issue but all the, a lot of the tenderers we
30 approached, they either declined it or, yeah, we just didn't get a good response, market response.

All right. So within that context how was it that you were introduced to Tony Nguyen?---Like I said, I don't, I don't remember the exact how and where but it, Nima introduced me to, to Raja and, and then I, I think maybe through him or through Nima I later on got to meet Tony, yeah.

- Well we'll come back to the Victoria Street project a little later. Can
40 volume 8.1, page 19 please be brought on the screen? You can see there that's a company search for Tresca Pty Ltd. Do you see that?---Yes.

Now, if we scroll down the page, please, you can see that you were a previous director in 2011 and 2012 of this company. Do you see that?
---Yep.

And then the current director is identified as someone who I believe is your wife. Is that right?---That's correct.

Can you tell the Commission, why was there a decision made to remove you as the director of this company and to place your wife as the director?
10 ---Yeah, sure. So I think at that time in early 2012 is when I was signing a new contract with a new employer who was Moore Consulting, I believe, and, and I would have had to declare any ownership or something along those lines when signing the contract. So, I, I decided to move the company into her name and avoid the, the need to make such a declaration.

I see. And your CV at the time, I can bring it up if you like, but it doesn't mention Tresca, does it?---No.

And why is that?---Look, it, it started as a, a side business, really. It wasn't
20 something that, that I thought to put on the CV. It's, it was like a side gig kind of thing. That's how it started. So, yeah, I, I didn't think it, it would help me get a job putting it on there.

And so your wife's identified as the director and if we scroll down another, I think, two pages - I'm sorry. Just one page there. So you can see you were formally also a shareholder and then the company, the ownership structure was transferred to your wife as well. Do you see that?---Yes.

Was that about the same time that the directorship was changed?---I'm
30 trying to look for a date but, yeah, I, I started the company in my name and then I changed it into her name.

And does your wife do anything at all in terms of the management of the affairs of this company?---No.

All right. So effectively it's your company, is that right?---That's correct, yeah.

Who had access to the bank accounts for the company?---Only me.
40

Okay. Now, if we can go to page 29, please. Here is, it's a proposal on some Tresca materials and was this a proposal that you pitched for or a job that you sought to gain in, it looks like, it's a gas - - -?---Yeah, that's right.

And was Tresca successful in obtaining this work?---I believe so, yeah.

Well, it would have been you who did the work, wouldn't it?---Yeah.

10 So you would know for certain, wouldn't you, if you got this job?---Oh, look, I've, I've tendered a few of these. So, I've won a couple and I've lost a couple. So I would have to look up the project name to, to ascertain that.

Well, you can see it there, it's says, "APA Group, Yamarna Gas Pipeline project", do you see that?---Yeah, yeah, no, what I mean is I've, I've done quite a bit of work for them on different projects.

Okay.---I just don't remember this project name, but - - -

20 All right.---Yeah, I've done this type of work.

And you can see it says "proposal (priced and confidential)", do you see that?---Yep.

And then if we skip down, please, to page 34, you can see you've got a confidentiality clause there for Tresca.---Yep.

Saying, "The information contained in this document and all attachments supplied are strictly confidential."---Yep.

30 And it says, "These documents are provided to the recipient only for the purposes of evaluating our bid and design." Do you see that?---Yep.

And it says, "The recipient shall ensure that each employee or officer to whom confidential information has been disclosed takes appropriate measures to ensure the confidentiality of the information." Do you see that?---Yep.

40 And then it says, "The recipient shall ensure not to divulge any information provided by Tresca in this quotation to any third party without the prior written consent of Tresca." You see that there?---Yes.

So this is a document - if we go to, I'm sorry, if we go to page 30, and it doesn't, there's not a date there on your letter. Do you recall when this document was - - -?---There should be a date on the front page, yeah.

Oh, it should be the page - yeah, the page up, just one up if we can, page 29, please. You can see it's 18/9/2017.---Yep.

10 Now, do you recall, was this submitted before you got the work at Downer, this project proposal?---No, I think I joined Downer earlier than that, maybe a couple of months earlier.

Okay, so you'd started at Downer, you think, and we can check this, and then you were still doing this work on the side - - -?---Correct.

- - - with Tresca. And did you tell anyone at Downer that you were doing the work on the side for Tresca?---No.

20 Okay. And why not?---I just thought it wasn't relevant to Downer and Downer's work, so - - -

What led you to form that belief?---Well, it's a different, it's a completely different industry, so the division I was in, or the Downer EDI, deliver Transport, predominantly Transport projects and rolling stock and that sort of thing, whereas this is more piping and specific equipment for the natural gas industry. So it was a completely different feel.

30 And if you assume hypothetically that you obtained, or Tresca obtained this work, how were you going to perform it while you were employed by Downer?---Yep, so this, this work is not construction work, so it's not really any, any type of site work. It's supply of equipment. So I would be able to do the work from home. I typically worked at night and weekends and holidays and that sort of thing and I would complete the design and all the paperwork and the drawings and place orders for parts and that sort of thing and then, without actually physically having to go anywhere. So - - -

Okay. And you certainly understood, as at the date of this document, being 18/9/2017, that your proposal here was to be treated by its recipient as confidential?---Correct, yeah.

And you wouldn't have been happy if this document was shared to other people who might have put in a proposal on the same project, would you?
---No.

All right. Can I just ask, if you focus on the period from 2017 to 2020, do you recall how many mobile phones you might have been using or how many mobile services?---I would have had a personal phone, which I still have.

10 Does that end in 108?---No.

What does that end in?---341.

341.---Yep.

Was that a Tresca phone?---Yeah.

Yep. What else do you recall?---I would have had a Downer phone.

20 Do you remember what that ended in?---No, I, I couldn't tell you.

Yep. What else? What other phones do you recall using?---I don't have, I don't think I had any other phones in that period.

Do you remember one ending in 976 that was registered in the name of Loy, L-o-y, that you might have been using?---No, not, not specifically, no.

Do you remember a phone ending in 056 registered in the name of Bromley, which I understand was a subcontractor engaged by Downer on Victoria
30 Street that you might have been using?---Not specifically but I did use other phones throughout my time at Downer.

And do you recall a service ending in 108 that I understand was subscribed in your name that you might have been using?---No, not specifically.

Did you ever receive a phone from anyone involved in the Sanber Group to use to communicate? You know who I mean, you know Sanber Group, you understand that?---Yeah, yeah. Yeah, yeah, I do, yeah.

Yeah.---Look, I, I have used different phones. I don't think I can recall the specifics of how or when I got the, the handset or the SIM card in each of those instances because there was quite a few.

So I'm just asking about Sanber Group. Are you saying there was more than one occasions you received a phone from someone connected with Sanber Group to use. Is that right?---No, no. I, I would have used more than one phone during my time at Downer, yeah, yeah.

10 And why were you using more than one phone during that time?---Well, initially I was just using my phone but after a while - how do you explain it? Basically Sanber, Sanber were using alias phones and they thought I should do the same.

And who said that to you?---Look, it, it's hard to specify who. When I say Sanber it's all three of them, it's - - -

And do you mean Tony Nguyen - - -?---Yep, Nima.

20 - - - Raja Sanber and Nima Abdi?---Yep. Yeah, that's right.

So they had a phone number that they were, what, were they answering it using an alias?---No, no. They'd just use it to communicate.

Well, you said an alias phone. So that would suggest it's connected with a different name.---Yeah, correct, yeah.

And so they suggested you should do the same thing?---Yeah.

30 Did you give yourself an alias?---Well, you mean did I change my name?

Yeah. Or did you make up another name that people could call you?---I don't know. Yeah, there was, there was probably a few nicknames going around, yeah.

What are they?---Oh, look, I don't specifically remember but whoever the phone was registered to that's not the name I was using. It was, yeah, it was mainly to - - -

40 Well, you mentioned nicknames. You were referred to on occasion as the Baker, weren't you?---Yeah.

Why was that? How did that nickname come about?---I don't remember. I don't know.

10 Why did you perceive there was a need to use these different phones in your dealings with those from the Sanber Group in 2017?---Look, initially I actually didn't. I was using my phone to deal with Sanber and then, yeah, and then after a while, after a few months of me using my own phone they said, "Look, you should get a different phone so that it's not tracked" or it's not, yeah.

Sure. So you saw a need for some secrecy or a need to be covert in your dealings with them. Is that fair?---Yeah. Yeah. I would say that's fair, yeah.

20 And what was giving rise to that concern? Was it the fact that you were working with Downer at the time or was it due to some of their connections with Transport or other jobs?---It, look, initially I think they had different phones because of their connections with Transport. Obviously they're Transport employees.

Well, Mr Abdi was and Mr Sanber was.---Yeah. And Tony was - - -

He was with the council.---Yeah, that's right. So, they had, I guess, day jobs and they were running a company on the side so they, they wanted to obviously try and keep that under wraps.

30 Yeah, sure. And the handsets that you were using between 2017 and 2020, have you kept those?---No.

What happened to those handsets?---Oh, they would have been binned.

When?---Along the way.

Along the way or after you might have become aware of the Commission's investigation?---I think the last one was after I became aware but the other ones, they would have been replaced.

40 So the last one then, when did you, as you said, bin that one?---Look, I couldn't tell you specific date but, yeah.

All right. Was that something that you did on your own impetus or did you have a discussion with anyone about the need for potentially getting rid of that phone?---It was when I became aware of the investigation and, yeah.

All right. And so, what, was that after the search warrants were executed on 2 December 2020?---No, it was before.

10 It was before. How did you become aware of the Commission's investigation before the search warrants were executed?---I became aware of, that you have searched Nima's place.

So that's right. So that's the execution of the search warrants.---Yeah.

So once a search warrant was executed at Nima's house, you made the decision, did you, to bin that phone?---Yeah.

Okay. And a search warrant, was it executed at your house some time later in 2021?---It was. I just can't remember specifically when, yeah.

20 Sure. Okay.---I thought it was at the end of 2020, but - - -

All right.---Yeah.

So how was it that you came to apply for the job at Downer?---I actually didn't, didn't apply for a, a job ad or anything like that. It was more me reaching out to people and expressing interest in moving on.

30 Was it you reaching out to people or was it Mr Abdi reaching out on your behalf to people?---No. No. I would have reached out to people like, like Mr Abdi.

Yeah.---Friends and people I've worked with before.

Yep.---And I guess they would have reached out to who they know and - - -

Yeah.---Yeah.

40 And why did you want to leave your employment then at Moore Management?---Look, it was mainly to, to come back home. So I was doing a lot of fly-in fly-out and I was living away from home Monday to Friday most part of the year.

Yeah.---And when I made that decision I was working and living in Muswellbrook. So, yeah, and with a young family it was just a bit difficult.

Sure.---So I was looking for something to relocate back to Sydney.

And were you interested in working in rail work then or - - -?---Not specifically, to be honest. I was fairly open-minded about it. I just wanted to get back into Sydney.

10

All right. So you had a discussion with Mr Abdi or you reached out to him to say you were looking for other work. What did you say to Mr Abdi? What was that discussion you had with him?---I just said, "Let me know if you know anyone hiring or any jobs or anyone I should approach," and I gave him my CV.

20

Okay. And did Mr Abdi ever tell you that he knew someone called Eddie Kim who might be able to assist with getting you some work?---Not initially. So I think he might have reached out to a few people and then got back to me and said, "There's a company called Downer. They might be hiring." And he, I believe he passed my CV on to somebody at Downer.

Yeah.---Who, who would have been Mr Kim, yeah.

And he said there's a company called Downer. You would have heard of Downer before - - -?---I don't think so.

You hadn't heard of Downer, even though you were a mechanical engineer at the time?---Yeah.

30

Okay.---Well, maybe I have, I just don't specifically remember.

And, well, he must have said a bit more than that, mustn't he? I mean, you'd apply for a particular role, wouldn't you, rather than just saying, oh, there's a company called Downer. Did you discuss the type of roles that might be available?---Yeah, yeah, he said it's a, it's a rail project. They're upgrading some train stations and they're looking for a project manager, so -
- -

And did he say where? Because, I mean, did Mr Abdi say where they were upgrading the rail stations?---No, I don't think he knew. I think at that stage he just knew that they, they had a package to deliver.

All right. But wouldn't it, wouldn't it have been in your interests, because you've just been working in Muswellbrook and so you wanted to come closer to your family. Did you inquire and say, "Well, where are these train stations 'cause I don't want to be away from home"?---Look, I said, "Where's the job?" and I think the early discussions were, look, they're in
10 North Sydney. That's where the project office was. And I don't know if he had any more detail, to be honest. It was, yeah, a while back. And I became aware that it was not one hundred per cent based in Sydney in the interview, when I went in to, to do the face-to-face interview.

Okay, and how did you learn that? What were you told there?---Look, I was told, when they said Victoria Street, I thought, you know, it's somewhere closer. And then they said it's in East Maitland and, you know, I remember telling the interview panel that, you know, the reason I'm looking for a job is to come back to Sydney. So I wasn't, to be honest, I wasn't too interested
20 when they said that. But they assured me that, that it's only a short duration and I don't have to be there full-time. I can be working in North Sydney two or three days a week and then head up there once or twice a week to keep an eye on things. And, and I believed that, yeah.

Okay. And so you were made aware in the interview that the first job was going to be Victoria Street?---Yeah.

And notwithstanding that you'd just come from the Mid North Coast, you were willing to go back up that way, towards Newcastle again, to do this
30 project?---Oh, look, I thought if it was a, a day or two a week, like a day drive, I'm not living out there, then it should be okay.

And did it turn out to be a one or two day a week trip up there or were you up there - -?---Look, initially, yeah. It, it was actually fairly well balanced.

Manageable, was it?---Yeah. But as the work ramped up and all of the subcontractors mobilised to site, it was really difficult to, to manage from far away. So I had to go up there Monday, come back Friday.

40 And when you say it was difficult to manage from far away with the subcontractors, was that because you were wearing, you're doing two jobs?

You're helping Mr Sanber in one hand and you're doing your Downer job at the same time?---That, that became an issue as well. But I think even before that there was just too much happening. I was getting too many, too many phone calls that could be dealt with just at a site level easily and, yeah.

Did that upset you at the time that it was taking up so much of your time, that project, and requiring you to be away from your family?---Yeah.

10 Did you have a discussion with those from Sanber Group about the fact that you were working so hard on this project?---Yeah, I did.

What was that discussion?---It was saying, basically, it started with me asking people to be onsite, to manage the job from their side. And when I realised that it wasn't going to happen, I kind of did the day-to-day coordination and planning and everything else because they didn't, you know, the, Tony, Raja, Nima, they were not onsite.

20 Well, they've got full-time jobs.---Yeah. And it's very far away, so they had no interest at being hands-on.

So did you assume a project manager-type role for Sanber Group to ensure the project would get completed?---Yeah, more of a, maybe a site manager or a planner, coordinator, whatever was needed on the ground.

Yep. And you've got to balance that with your responsibilities also for Downer in being the official project manager for the site, correct?---Yeah. That's right, yeah.

30 If we can, just bear with me one moment, please. If we can go, please, to page 55 of volume 8.1. This is the CV that was provided in connection with your application for a job at Downer. Do you recognise that?---Looks familiar, yeah.

There you say you've got a Masters in Engineering Management, do you see that, from UTS?---Yep.

40 You didn't mention that, I don't think, when I asked you about qualifications?---I didn't finish it, no. That was, I was still doing that. It was like a distance mode study.

But this, you said in 2008 to 2009. This was in 2017 that this CV was provided. So is that just, is that just inaccurate, is it?---No, that's the period I did the study but I never finished that course.

But you understand you're conveying the impression there that you've got a Masters in Engineering Management when you say that there, do you not?
---Yeah, it looks that way, yeah.

10 Yeah. And then if you can scroll down to page 56, please. Here you identify what you've done at Moore Management Pty Ltd, and that's the job you had before you moved to Downer. Is that right?---Yep.

And you can see there that you've identified some train projects starting with Greta Train Support Facility - - -?---Yep.

- - - Asciano, and then you've identified Clyde Locomotive Support Facility Upgrade Project.---Yep.

20 The Outer Harbour Bulk Rail Terminal / Port Kembla Station upgrade project.---I think that was a tender, that one.

Was it?---Yeah.

And then Sydney Rail Freight Terminal upgrade. Do you see that?---Yeah, that's a tender as well.

30 So you didn't have experience on those two, being the Outer Harbour Bulk Rail Terminal or the Sydney Rail Freight Terminal?---No. No. That was, that was in the tender phase.

You've said, "Successfully managed and delivered the below projects."
---Yeah. Those ones were a tender.

So that's not true then?---Well, a tender is, well - - -

Well, you haven't - - -?---Arguably a tender is a project. It's run as a project, so, but it's not, it's not the delivery of the project.

40 Yeah. So you didn't have practical experience on those projects?---Not to deliver it, no.

No, nor to manage it either, correct?---Well, Greta and Clyde, yeah, but not the other two.

All right. What was your experience in Greta and Clyde?---We were doing some of the mechanical and structural packages there. So we had a package within the facility that we were delivering, basically.

All right. Did you draft this CV?---I would have, yeah.

10 Did you get any input from Mr Abdi preparing it?---No.

Okay. If we can go down to the next page. This is at ACOR, you say you have “proven successful contribution to the following projects: Chullora Intermodal Rail Terminal Upgrade Project,” was that true?---Yeah, these are more consultancy than construction.

What - - -?---As in, as in design. So ACOR is a consultancy.

20 Okay. So you did work on that Chullora Intermodal Rail Terminal Upgrade Project one year at ACOR?---I can’t specifically remember, to be honest.

What about the Hunter Bulk Rail Terminal Upgrade Project?---Yeah, sounds familiar.

But did you do any work on it, on that project, when you were at ACOR?
---Well, when I was there there was multiple projects going on at the same time. These are not, I was, I was the package engineer on a specific project and I was looking after multiple packages across multiple projects. So - - -

30 All right.---Yeah.

If we go down to page 60, please. This is a Downer document. It says “Reference Check Notes – Salaried Employee” and you understand this was filled in by someone at Downer when they check the referee details that you provided with your job application?---Okay.

If you can see down the bottom, “Section 1 – Candidate and Referee Details”. Do you see that?---Yep.

40 And it names you as the person applying for the project manager position and then the referee is Mr Abdi. Do you see that?---Yep.

And he's identified as a senior project manager at Transport for NSW via ACOR Consultants. Do you see that?---Yep.

He wasn't your - you didn't work with him at all while you were at ACOR, did you?---No.

And he wasn't your direct supervisor for a couple of years?---No.

10 So how was it that you decided to put Mr Abdi's details down as your referee for this job?---Well, I needed, I needed some referees and I couldn't use my current employer's details at the time. I was still working there so I might have asked Nima to be a referee for me.

Why wasn't it that you could have said something along the lines of, you know, "Referee to be provided upon request if the position is formally offered"?---I did say that.

20 Did you?---Yeah. This was, I think this was at the later stages where I knew I got the job.

Well then why not give some details from Moore Management or from ACOR?---Well, I don't think I had resigned then because I don't think I had a contract that I had signed.

30 What about, you were working at Moore, why couldn't you go to someone from ACOR and provide a real employee from ACOR as your referee?
---Oh, look, that's going a few years back so it's a bit hard to find anyone who's still working who I knew. I knew a few people had moved on when, when I moved on.

Well, isn't it the case that you knew Mr Abdi would give you a false glowing reference?---Look, I don't know about false but I knew he would give me a good reference because he knows I'm, you know, he, he knows I'm a good worker. So - - -

Well, he's known you since school, correct?---Yeah.

40 When had you ever worked together?---No, we didn't work together but he, I mean, he would have an idea of how I work. I mean, we don't see each

other, we see each other once a year because I'm always working, yeah? So he knew my work ethic and how, how hard I worked.

How could he possibly have any idea what your working capabilities were like if you'd only see each other once a year and you'd never worked together?---Because I'm always working, Commissioner. That, that was one of the things where he knows I'm always working, I'm travelling, I'm doing whatever my employer needs me to do.

- 10 Well, if we go to the next page, this is Mr Abdi answering these questions. "Can you detail the duties he/she performed?" and he says, "Looking after two alliances, two tier one contractors. Looking after their site works, finances, any commercial issues in terms of variations, monitoring performance." Is any of that true?---No. I, I didn't work on alliances.

And it says, "Can you describe his or her attitude to safety? Did he/she cooperate with safety issues?" and he says, "Great." Do you see that? ---Yep.

- 20 How would Mr Abdi know what your attitude towards safety issues was?---I can't answer that.

And if we go to the next page, Mr Abdi's asked "Would you rehire? If not, why?" and he writes "Yes, for sure. We were trying to get on board here." I think that should be "get him onboard here." Do you see that?---Yep.

That's just false, isn't it?---Probably, yeah.

- 30 And then "Overall how would you rate the candidate's work performance on a scale of one to six where one is poor and six is excellent?" and he says, "Five. No doubt working way to six." Do you see that?---Yep.

This is just designed to deceive the people at Downer, isn't it, into employing you?---I don't know if it's to deceive. I mean, five to six, that is accurate so I don't think that's meant to deceive.

- 40 So is your evidence before the Commission that putting Mr Abdi up as your referee as a direct supervisor in a job where that never occurred, and him writing this reference for you isn't designed to deceive anyone?---I, look, I don't recall telling anyone he's my direct supervisor. It, you've seen my CV that I used to apply for the job, and it says nothing about these, these

alliance projects or whatever was mentioned in the previous page. So, yeah, I, I can't speak for what reference Mr Abdi gave to Downer on the phone, but I was clear on my CV what my experience was to Downer, and throughout the interview I was truthful and honest about it as well. So this was more of a tick-the-box exercise and I needed to put someone's name in, you know, to get the process going. And Nima agreed to do it so I just put him in rather than, you know, approaching my current employer or trying to dig somebody up from past years.

- 10 Sure. But you just said that you put through a truthful CV. You just admitted that you hadn't managed or delivered the projects at Outer Harbour Bulk Rail Terminal or the Sydney - - -?---No, they were tenders. I just didn't write tenders in there. That's, that's, there's other projects in there. There's probably 20 other projects in there that I have delivered. So those, those three you mentioned, they were tenders. I just didn't write the word "tender".

- 20 So the absence of the reference to "tender", do you say what you've - sorry, let me start again. Notwithstanding the absence of the word "tender", do you say what you've written when I took you to page 2 of your CV in relation to those projects at Outer Harbour Bulk Rail and Sydney Rail Freight Terminal, do you say that's not misleading?---Not putting the word "tender"?

Yeah.---I think it is misleading, yeah.

- 30 Okay. Well, so I'm just trying to understand your evidence that you've got aspects of your CV which you've admitted are misleading and you've put up a false referee and we've seen how he described your abilities and capabilities, but you don't agree that this is deceiving anyone? Can you explain?---I don't think so, Commissioner. I think, you know, the, was it fluffed a bit? Yeah. But was it deceitful? I think within the first six months I would have been fired if I couldn't deliver, yeah? So I don't think he lied about everything he said in there. But, yeah, when he said he, you know, he was my direct supervisor or whatever, that's not truthful.

What did you know, if anything, of a company called ASN Contractors?
---Now or - - -

No, back then. Back in 2017. What did you know then? Oh, sorry, let me - in 2014, what did you know about a company called ASN Contractors?
---Nothing.

When did you first learn about that company?---When I was at Downer, I'd say.

Okay. And how did you learn about that company?---I've heard RJS talk about it, the people within RJS talk about it.

10

All right. Can volume 16, page 46, please be brought on the screen. Here you can see a safe work method statement. You know what that is, don't you?---Yep.

It's on the ASN Contractors letterhead. And it says the client's Tresca Pty Ltd. Do you see that?---Yeah, that's, that's wrong.

So you haven't seen that document before, is that right?---No, never.

20 Okay, fair enough. Can I ask you - if that can be taken down, please - have you ever looked at purchasing property with Mr Abdi?---Yeah.

Can you tell the Chief Commissioner about those circumstances, please?---I think it was, it was more of a business rather than a, like a house. It was a block of land. Yeah, I, I can't remember too much else about it, to be honest, but, yeah, there was, there was, we were looking at some blocks of land.

30 Okay. And what were you going to do with those blocks of land? You said it was a business.---It would have been some sort of a farm. We even looked at a, an established farm or a block of land with a farm on it already.

And was that to run yourself or, was the idea to run it yourself, the farm?
---I, I don't know how we could have done that with full-time jobs, but - - -

Well, if volume 2.1, page 255 can be brought on the screen. So here, this is 15 April 2015 and it's an email to you from Century 21 at Dural. Do you see that? With Mr Abdi copied in.---Yes.

40 And I'm not going to mention the address but it's about a property in Glenorie. Do you see that?---Yes.

And you make a formal offer there, do you see that? “Having consideration to the above we would like to make an offer of”, you can see the amount there. “Our finances are approved. We’re in a position to place a deposit ASAP. We are also happy to accommodate the vendors with a longer settlement to allow relocation et cetera.” Do you see that?---Yep.

10 What discussions had you had with Mr Abdi at around that time in relation to this block of land?---I honestly can’t remember. I think we went and looked at it. We would have, we would have spoken about it. It looks like we were pretty serious about it and I think, I think this is his property actually, looking at the address.

Well, it might have ended up as his property but it wasn’t his property when you were making these offers through Century 21, was it?---Yeah, correct.

And so you and Mr Abdi were looking at going into business at least in this respect as at 15 April 2015, is that right?---Yeah.

20 So did you two, at least from that date, have some ideas that one day you might be in business together?---I think we did but it never eventuated.

You ended up in business together at Victoria Street, didn’t you?
---Indirectly, yeah.

Well, you’ve just admitted that there’s three people involved in Sanber Group, Mr Nguyen, Mr Abdi and Mr Sanber, and you had to essentially step in and be the project manager so that their project could be delivered.
---Yeah. That’s right.

30 So you were definitely in business with Mr Abdi there, weren’t you?---Not as a co-owner, like, the block of land we were looking at, but yes. I, I would have worked, done work for them.

40 So, what I want to know is whether you ever spoke with Mr Abdi prior to joining Downer that you might be able to go into business with him if you joined that company because he was with Transport and things might come up that you could work together on in this way that you could make money on the side?---No, not at that stage.

But at that stage you were interested in earning more money on the side, correct?---Yeah.

You've got proposals going out for Tresca that you hadn't told Downer about?---Yep.

You were looking to make more money, is that fair?---Yeah. Who isn't? Yeah.

10 That's right. And you were aware Mr Abdi was entrepreneurial?---Yeah.

And you were applying for jobs in rail where your previous experience is within gas piping, correct?---Yep.

You were embellishing, or to use your words, you were fluffing your CV to get that job, correct?---Yep.

And you were putting up Abdi as your referee in connection with that job? ---Correct.

20

And the first job you go into is one where you end up going into business together?---That, that's what happened but that was not the plan.

Well, how was it - just explain how it was that that just happened by chance, can you please?---Look, I touched on it earlier. There was, so all the other packages that were awarded, the civil package, the electrical packages, the structural packages, all of those packages went smoothly, right? There was tenderers there, there was a tender process and it was awarded and there's no issues. With this particular package we couldn't - - -

30

This is this building?---The building package. Nobody wanted it, right? That's why I was forced to go out and, and ask these questions to say who could do this, right? So that, that wasn't a, that wasn't planned. It just happened that way. So I reached out to everyone and Nima came back with a list and said, "Here. Reach out to these people."

And who was on that list, do you recall?---Well, RJS, there was Dabcorp I think. Well, Dabcorp might have been the first one who was a serious bidder. I can't remember who else.

40

I just want to show you some materials relating to your employment at Downer. There were some materials obtained over the weekend. If tab 20 of those materials can be brought on the screen? Chief Commissioner, are you happy for these documents to be tendered on the screen as we go?

THE COMMISSIONER: If you've got hard copies - do you have hard copies?

10 MR ENGLISH: Yes, I do. I'm gratefully assisted by Ms Cathcart. I'll provide the first document to you and I tender that document. It's titled Competency - Employee Records, and it's for - - -

THE COMMISSIONER: Exhibit 96.

MR ENGLISH: I'm told we might be up to exhibit 101. Can I hand, Chief Commissioner, the exhibit list that I've got?

THE COMMISSIONER: Sorry, I was up to 96 on mine.

20 MR ENGLISH: I'll just hand this up, if I can. You can't see this, Chief Commissioner.

THE COMMISSIONER: Oh, I see. Yes. They weren't marked off on this list here.

MR ENGLISH: That will be Exhibit 101.

THE COMMISSIONER: Yes, 101.

30 MR ENGLISH: Thank you.

#EXH-101 – DOWNER ABDAL AZIZ RECORD OF TRAINING COMPLETED

MR ENGLISH: Mr Aziz, this is a document that's been supplied by Downer that says Proof of Learning Records in relation to you.---Yep.

40 It'll just be brought on the screen. Here, so it shows what qualifications or courses you've attended and it identifies that on 3 December 2019 you

received training on the anti-bribery and corruption. Doesn't say any more than that, but in relation to that topic at Downer. Do you recall that?
---Yeah, I can see that.

Do you recall receiving that training?---Not specifically, no.

Okay. And if we go to the next page you can see you received training on engaging contractors at Downer, this time on 27 August 2019. Do you see that?---Yes.

10

Do you recall receiving that training?---No.

Now, you had a financial delegation of authority, didn't you, at Downer?
---Yes.

How much was that up to?---Well, depends when.

Okay, what - - ?---Because I think it changes.

20 When you first started in 2017, do you recall?---I don't think I knew what it was back then.

Okay.---On the, on some of the documentation, like contracts and things like that, it, it has a delegation under each person's title or name, so I sort of went off that, which would have been 100 or 150 or something like that.

So whatever the delegation that was attached to your title was?---Yeah.

And you followed that?---Yeah, that's right.

30

Okay. And do you recall receiving that training on financial delegation of authority on 3 April 2017?---That, that would have been part of the initial induction package.

When you first joined Downer?---When I first joined, yeah. But I don't specifically remember that module.

40 All right. Okay. And just the next page down, please. You can see there they're all entitled Induction Module 2. Apparently you received training on 4/4/2017 on the group compliance standards of business conduct, and

then again on 5 July 2019 and then again on 24 January 2020. Do you see that?---Yes.

Do you recall receiving that training?---Not, not specifically. These would have been all I think online training modules.

Okay. We might just go to the first of these. And I've got a copy for you Chief Commissioner that I could tender. If the document behind tab 4 can be brought on the screen, please. And if that could be given an exhibit
10 number, please, Commissioner.

THE COMMISSIONER: Exhibit 102.

#EXH-102 – DOWNER ONLINE LEARNING MODULE 1 ANTI-BRIBERY AND CORRUPTION

MR ENGLISH: So this is the anti-bribery and corruption, I think you said it
20 might have been online training. I think you might be right. You see it says, "Click here to begin." Do you see that?---Yes.

And according to the record, which was Exhibit 101, you received training on this or completed this online module on 3 December 2019. Do you recall doing that?---No.

Does it look familiar to you, the slide you're seeing there?---Not really, no.

If we go to the next page, it says, "After completing this lesson you should
30 be able to state what bribery and corruption is; explain the types of circumstances where bribery can occur; recognise the laws prohibiting the bribery of public officials; and explain private sector bribery and false accounting." Do you recall learning anything about that when you were at Downer?---Not specifically, no.

Okay. You're not saying you didn't complete this module, are you?---No. No. I'm not saying that. I just don't remember. There was a lot of modules that I would have done.

Yeah. If we go to the next page, which is page 3 of 29, do you remember learning there that public officials are frequently the subject of corruption inquiries because of the positions they hold?---Yep.

You can see that. Did you remember learning about that at the time?---No, not at all.

If we can go to page 6, do you remember seeing that slide at all?---No.

- 10 You can see that bubble in yellow where it's suggested, "Hi, Bruce. I know you're busy but it would mean a lot if you could consider approving a mine construction project. I'll tell you what, as soon as the application is approved I'll transfer you \$20,000." Do you remember receiving any training on circumstances like that?---Not specifically, no.

And the it goes the next page, it says, "Does Oliver's conduct amount to bribery?" And it says, "Yes, because Oliver is giving the money to influence Bruce's decision." Do you see that?---Yes.

- 20 Do you recall learning about that at any time, a situation like that at Downer?---Not specifically, no.

Did you not want to learn something like that when you were at Downer? ---No. No. There would have been a lot of online training modules that we would have had to complete at Downer.

- 30 Yeah.---It's just, you know, this is not something I would have either been able to retain or spend the time on. It would have been a quick exercise of getting through it so that somebody would get off my back about it, so I would have been onsite trying to deliver a job.

Sure.---Yeah.

So is it fair to say you viewed this as a tick-and-flick type exercise that you just - -?---All of them. All of them would have been a tick-and-flick at the time because there's just too much going on.

- 40 Do you recall any face-to-face training about bribery and corruption at Downer?---No.

Was it something that you recall that was emphasised internally within the business?---Look, not specifically, no.

Do you recall your colleagues ever mentioning it, that it was something you had to be vigilant to look out for?---No. I, not specifically, no.

Was there any occasion you recall a colleague raising concerns about bribery and corruption with you?---No.

10 Did you yourself see other people engaging in what you might have thought was bribery and corruption at Downer?---Not specifically, no.

Did you hear about other people doing it?---Bribery?

Bribery or corruption?---Nothing specific. It's, you know, you always hear things about what people are doing or people running second businesses and things like that, but it's hard to tell what's real and what's not.

20 Well, you were running a second business almost as soon as you joined Downer.---Yeah.

And did you at any time stop and think this is wrong, I shouldn't be doing this?---No, not specifically. When I, when I say people running other businesses, I mean directly related to the business of what Downer was conducting, and potentially with stakeholders who are involved with Downer. So with my business, it has nothing to do with any suppliers or clients or projects that Downer was doing.

30 Yeah, but that's Tresca you're talking about?---Yeah.

But then what about all this assistance you're giving as the de facto project manager to Sanber Group?---Oh, yeah, that, yeah, that, yes, that's - - -

Did you ever stop and think that that was contrary to the bribery and corruption policy at Downer?---No, not specifically. I, I did stop and think and think this is not right, but I, not in this context.

40 Well, what was it, then, that made you persevere down that path if you did stop and think for a moment?---Well, the job had to be done, so I think at that stage we would have either had to stop the work and start again with somebody else or it just had to be done. It's, yeah - - -

Okay. So did you see the completion of the project as the most important thing?---It is.

Okay.---At the time, yeah, that's basically - - -

And the process by which that project was completed was an inferior consideration as far as you were concerned, is that right?---Maybe not when you put it that way. The delivery of the project was very important to
10 Downer and to me, and there was some very specific timelines that had to be met otherwise the project would blow out by months because of missing shutdowns. So it's not something that we could have – well, maybe we could have done it differently, but at the time, yeah.

And so missing shutdowns, would that have been, as far as you understood, been a financial or caused a financial penalty to Downer if possession work wasn't finished on time?---Yeah, that would have been a disaster. That was the number one thing that you shall not do is miss a possession.

20 That's at Downer, is it?---Not just Downer but Transport as well.

Okay.---So we used to be, we used to have to present the Transport representatives at a very high level every possession or shutdown, and what we were intending to do, whether we had procurement, resources, plant, documentation, everything ready. I remember being in the Transport office one day presenting this stuff, so it was priority number one.

All right. But what about, but was there a – in relation to the building package at Victoria Street, was there a shutdown or possession?---Yeah.
30

What had to be shut down?---The station. So the tracks would have been taken out of service and the station building itself would be vacated by station staff for us to gut it out.

I see.---Yep.

So when those works were completed, passengers weren't allowed on the station?---Correct.

40 Okay, I see. And did you ever think of going up to management at Downer and saying, "Hey, look, no one wants to do this work. We can't fill it.

Here's some people that we can offer but we've got to declare that we know them," and let Downer consider that then? Why not make it their problem? ---Look, I did, I did make it their problem but I, I didn't declare that I knew Nima, which is something I regret. I don't think it would have made a difference if I did or didn't. But, yeah, at the time we did, I did escalate this and everybody was aware of it. It was a program-critical package that had to go out and the decision at the time was to, well, just go ahead then and if they don't deliver we'll throw them out.

10 At what stage had you agreed with either Nima, Raja or Tony Nguyen that you were going to receive some of the money from this project that was completed by Sanber Group?---It would have been a few months in after I cracked it. So initially it was okay but then after a while when I realised they're not going to be onsite, they're living their happy lives in Sydney, then, yeah, that's when I said, "This, this is not acceptable. You either be here or hire someone or do something" and then that's when it ended up being me being that guy.

20 So, your evidence is that you didn't form an agreement with anyone in advance of the tender being awarded that you would receive part of the profit?---Not at all.

And when you said you escalated, I think escalated issues about this site, about how difficult it was to get someone to fill it, do you recall who you raised that with?---Well, to be honest I think initially it was raised to me by the Procurement Team and the Commercial Team and Planning because there, it was one of the late packages. So it was, like, an outlier.

30 So who at the Procurement or Planning Team?---I think at the time it would have been Amit Patel. He would have led the procurement process with his team and we spoke to the project director actually.

Who was that?---Greg Barnes.

Yep.---And shared our concerns with him and we said, "Look, this is the, the story. We've got, I don't know, nine or ten parties we've gone to and one has priced it and is non-responsive and one or two who are unknown." So, yeah.

And was that in an email you had those discussions with Mr Patel or Mr Barnes?---No. I think that was a, a three-way phone call. So they were in Sydney and I was onsite and - - -

And when was that, do you recall?---Oh, I, I wouldn't be able to remember that.

Is it fair to say that you assisted in rigging the tender for Victoria Street so RJS got it, so Sanber Group got that tender?---I assisted them in winning the
10 tender, yeah.

Why did you do that if you hadn't struck a deal with them for a slice of the money?---Like I said, we, we needed someone to do the job. There was, there was no other, there was no other real competent contractors ready to go. It was Dabcorp and Dabcorp pulled out as well from memory. So it was just RJS or Sanber.

But you knew that Mr Nguyen wasn't quitting his job to take on this project?---Well, at the time they assured me they can deliver it.
20

And delivering it, they were going to have to deliver it through subcontractors, weren't they?---Yeah, correct.

So, when did you become aware of the subcontractor that was delivering the job on behalf of Sanber Group?---They've had a few subcontractors. The, the initial one was - - -

Was it SDL?---Yeah, yeah. Seng, it was Seng, Seng's company and then there was, I think the brickies were a different subbie and some of the
30 heritage work was a different subbie as well but there, there was a few subbies. I think the bulk of the work that was done was by SDL. I, I couldn't tell you when I became aware of that.

All right, well, we'll come back to that. If the document behind tab 8 can be brought on the screen and I'll tender this too, please, Chief Commissioner.

THE COMMISSIONER: 103.

**#EXH-103 – DOWNER ANTI-BRIBERY AND CORRUPTION
POLICY EFFECTIVE 25 SEPTEMBER 2013**

MR ENGLISH: Thank you. Do you see that on the screen, Mr Aziz? It's the Downer anti-bribery and corruption policy. Do you see that?---Yes.

Do you ever recall reading this?---No.

10 If you see on the next page down the bottom it says, "What is bribery?" Do you see that?---Yes.

It says, "Bribery means making a payment directly or indirectly of any value to a person deliberately to distort a decision-making process, to influence that person's decision, to secure an improper commercial advantage or to enter into a dishonest arrangement." Do you see that?---Yes.

20 Did you ever consider, well, you took money, we'll focus on Victoria Street, you took money on the Victoria Street project?---Yes.

Did you ever consider that you were being bribed in that regard?---No.

What did you think you'd received that money for?---Well, it would have been for work and hours that I've put in on behalf of the subcontractor.

On behalf of Sanber Group.---Yeah.

30 So you think you were being paid for delivering a service to that company? ---Yeah.

All right. What do you think Downer might have said if you told them, "I'm going to do this job for Sanber Group while also doing my job for you."---No, that, that wouldn't have been an acceptable situation to Downer.

All right. It says, "What is corruption?" then, and then over the, it says, "Corruption is the abuse of a position of employment or trust to gain an advantage in contravention of a duty in the law." Do you see that?---Yes.

40 Do you consider that you were abusing your position of employment at Downer to assist Sanber Group with the Victoria Street building project?---I don't think so. I don't know.

Well, you helped them, you helped Sanber Group win the project, correct?
---Yes.

You assisted with their variation claims, correct?---Yes.

You assisted in inflating their variation claims, correct, from time to time?
---No, I don't, I don't agree with that.

10 Okay, but you assisted with their variation claims?---Yes.

And you assisted in approving progress payments to Sanber Group, correct?---No, I, I did my job as the project manager at Downer which involved approving the subcontractor's claims.

Right. So that was part of your position or employment, correct - - -?---Yes.

- - - at Downer? And you performed that while receiving a secret commission from Sanber Group in connection with the work, correct?

20 ---Correct.

Okay. So do you accept that that was a corrupt abuse of your position at Downer?---Look, if you say so. I don't really, I don't even - - -

I'm just asking for your opinion.---Look, it wasn't right. I don't know what the, what term you want to use but, yeah. It's not, it's not orthodox, yeah.

All right. And you knew it involved a conflict of interest, didn't you, at the time?---Yes. Correct.

30

All right. We might go to the document behind tab 12. Chief Commissioner, I hand that up and tender it.

THE COMMISSIONER: Exhibit 104.

**#EXH-104 – DOWNER STANDARDS OF BUSINESS CONDUCT
MARCH 2015**

40

MR ENGLISH: Thank you. That's the Standards of Business Conduct document. You remember I took you those three modules it said you'd received training or you'd completed this module?---Yes.

Have you seen that document before, the Downer Standards of Business Conduct?---I don't recall.

10 Okay. If you go to page 5, you can see that it says, "The standards of business conduct applies to all our people including directors, employees and contractors and agents." Do you see that?---Yes.

And you were an employee at the time at Downer?---Yes.

And if we go to page 7 you can see it says, "How do I raise a concern? Downer aims to create an environment in which our people can raise concerns about conduct which may be unethical, unlawful or in breach of standards of business conduct without fear of reprisal, dismissal or discriminatory treatment." Did you see that?---Yes.

20 Did you ever think about raising a concern about what was going on in your own dealings with Sanber Group and RJS Infrastructure Group?---No.

Did you ever think about raising a concern about anything else you might have heard or seen whilst on the job that may have involved corrupt conduct or bribery at Downer?---Not, well, if I saw something tangible, yes, but, yeah, I didn't, no.

You didn't see anything tangible? Is that your evidence?---Yeah.

30 Go to page 17, please. There you see "The letter and spirit of the law", do you see that?---Yes.

It says, "At Downer, we obey the letter and spirit of the law in every place where we do business. This applies to our people, our contractors, our suppliers and our agents." Do you see that?---Yes.

The law wasn't being obeyed down at Victoria Street, was it?---Oh, I think it was.

You've just admitted that you were involved in a corrupt agreement down there where you were paid secretly commissions.---I didn't think it was corrupt at the time, Commissioner, otherwise wouldn't have engaged in it.

You would have, I suggest. That didn't trouble you, I suggest, Mr Aziz.
---No, I don't think, I knew there was a conflict of interest of some sort, but, yeah.

10 Mr Aziz, there's been deceit on your hand even before you got the job at Downer, by putting up a misleading CV and putting Mr Abdi down as a false referee, correct?---Yep.

And then without declaring, you're trying to get work on the side for Tresca, correct?---Yes.

And you've involved yourself with RJS Group and you're taking a secret commission from them, correct?---Yes.

20 So the letter and spirit of the law wasn't applying insofar as your dealings with Downer were concerned at the time, correct?---Okay.

All right. And was that something that you thought was acceptable, to behave like that when you were employed at Downer?---I don't know.

Well, did you see - - -

THE COMMISSIONER: Sorry, what was your answer?---Sorry?

30 What was your answer?---I don't know. I don't know how to answer your question. Maybe rephrase it.

MR ENGLISH: Well, did you see anyone else behaving like that down at Downer that might have given you the impression this was acceptable?
---Not at that time.

You're saying subsequently you saw something that made you think that what you were doing was fine and acceptable?---Not, not fine and acceptable, no.

40 Well, what was it?---What do you mean? I don't know what you mean.

What did you see at Downer that made you think that what you were doing might not have been anything other than illegal?---Well, I don't think it was something I saw.

Well, was it something you heard? What was it?---I mean, look, at, it's hard to pinpoint or give an example, right? It's just – did I think what I was doing was wrong or, you know, yes.

10 If you were aware or suspected that other people at Downer were behaving in a similar way, this Commission's interested.---Like I said, Commissioner, this was years ago and, you know, there might have been discussions and he said and she said, but I don't have anything to, to offer here that's tangible or that I can rely on my memory on to bring up to the Commission's attention, yeah?

All right. Is that a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes. Thank you, adjourn.

20

SHORT ADJOURNMENT

[11.34am]

THE COMMISSIONER: Mr Aziz, you're subject to the same affirmation you took at the commencement of your evidence to say the truth. Understand?---Yes.

Thank you. Yes.

30 MR ENGLISH: Mr Aziz, when you were at Downer you were involved in – I withdraw that. Let me start again. Downer's client, when you were employed there, was Transport for NSW, correct?---Yes.

And also Sydney Trains on occasion?---No. They were a stakeholder.

They were a stakeholder, okay.---Yeah, they operate the stations, so, yeah.

40 Were you ever told about, or did you receive any training, that you can recall in relation to the NSW Government Code of Business Ethics?---Not that I remember, no.

And were you ever told about or received any training from Downer in relation to the NSW Government Procurement Framework?---Not that I recall.

Do you recall receiving any training in relation to your financial delegations authority?---Not specifically.

I just wonder if, in the documents supplied over the weekend, if tab 16A can be brought on the screen? And I will hand you a copy, Chief
10 Commissioner. If that can be tendered, please.

THE COMMISSIONER: Exhibit 105.

#EXH-105 – DOWNER AWARENESS PRESENTATION FOR FINANCIAL DELEGATIONS AUTHORITY 2017

MR ENGLISH: That’s the Awareness Presentation For Financial
20 Delegations Authority Policy. Do you see that?---Yes.

Dated 2017. Do you recall seeing that document ever?---Not the title page but maybe if you go through it.

If we go to the next page you can see there, “This module has been designed to familiarise and highlight key areas you as an employee, contractor or subcontractor must have knowledge of around the financial delegated authorities.” Do you see that?---Yes.

30 Is that familiar to you, this module?---No.

If we go to the next page, Learning Outcomes. If you read that to yourself and then it says, “Thee will be a short self-paced assessment at the conclusion of the module”.---Okay.

Do you recall completing the module?---No.

Go to page 8 there, Expenditure. Do you see that? “Expenditure should only be committed in the best interests of the company”.---Yes.
40

“Where an item of expenditure is not budgeted the delegation holder should take all reasonable steps to ensure that the expenditure can’t be avoided through consultation with their manager and their regional finance team.”
Do you see that?---Yes.

You had the ability to commit Downer to expenditure under your delegation, correct?---Yeah, I believe so. Yeah.

10 And when you did that, did you take steps to ensure that such expenditure was only committed in the best interests of Downer?---Yes.

On all occasions?---Maybe not all.

And when would you not have committed the expenditure in the best interests of Downer? Would that have been in circumstances where your own interests were conflicting with Downer’s?---It would have been when works were awarded to JTG, which I’m sure you’ll get to.

20 All right. And what about the works awarded to Sanber Group? Did you only commit expenditure in relation to that project that were in the best interests of Downer?---I would say so, yeah.

And what about Central? Can you say the same in relation to Central?
---Yeah.

And what about Lithgow, can you say the same in relation to that project?
---Yeah, I would.

30 I’ll just move now specifically to the Victoria Street project. You never declared a conflict of interest in relation to that job, did you?---No.

And notwithstanding the evidence you gave before about you performing the de facto project manager role for Sanber Group, you never applied for secondary employment approval.---Correct.

All right. If we can, and your evidence is that your assistance, is it right, that your assistance to Sanber Group only began after the project had been awarded?---No, I said I assisted them during the tender.

40 Okay.---And for the delivery phase, yeah, it would have been into the project.

Okay. How did you assist them in the tender?---Whatever they needed, really. It was, whether it was scope or pricing or, yeah, any way they needed assistance.

And was that something you just decided to do yourself or did you receive an instruction in that regard? How was it that you came to commit yourself that way?---Well, they'd request information and I would provide it.

10 But you said you were giving them this assistance for what, essentially whatever they needed, correct?---Yeah.

Did you decide to do that? Was that your idea? "I'm going to give this company as much assistance as it needs in the tender phase."---I'm not sure what you mean but I did, I did assist them and they requested the assistance.

Was it something that Mr Abdi had asked you to do, give them as much assistance as they need so they can get the tender?---Him and others, I'd say, yeah.

20

And who were the others?---Well, all three of them, yeah. When I say RJS, it's really hard to pinpoint who said what. They would have spoken as a group.

All right. Okay. If we can go to volume 18.13, page 97, please. This is messages between you and Mr Sanber.---Yep.

Raja Sanber. And you can see there he says on 17 May 2017, "We have the mechanical drawings." Do you see that?---Yep.

30

And you said that's your number ending in 341, correct?---Yeah, correct.

And you say, "Cool." Do you see that?---Yep.

On the same day at 9.30. That's your Tresca phone, correct?---Yes.

And then you say, "Raj, bring drawings tomorrow. Let's fix this up." Do you see that?---Yeah.

40 So what stage do you say the tender was in at this point? Can you recall? It looks like a quote hasn't even been submitted yet by Sanber Group. Do you

agree?---From the language I'd say yes, but from the date I really couldn't tell you.

All right. So it looks like, do you accept that it looks like you're giving assistance to Sanber Group before it's even submitted its tender?---Yeah, correct.

All right. And you've agreed to look at the drawings and fix, fix it up with Mr Sanber. That would have taken you some time, correct?---Yeah.

10

And you had to bring your skills and expertise to be able to look at those materials and provide feedback?---I, look, I don't remember the specifics of that particular drawing or whatever the discussion was on, but I think he, he was quite capable, so I think he was raising issues with some of the design, or he did raise some issues with the design.

All right.---And this could have been a discussion about whatever problems he found or ambiguity in the drawings that we needed to work through.

20 Yeah, and when you say "we needed to work through", you needed to spend some time with Mr Sanber to work through those issues, correct?---Yeah. Yeah.

And you're not one to work for free, are you?---Well, not for something like this. But, you know, I mean, for something like this, if, if it's an hour where we need to run through some drawings together, I don't think that's a, that's a big deal.

30 Okay. So that's 17 May. If we can go, please, to volume 3.8, page 4. So this is a document back in time somewhat to 11 May, where you've requested - I withdraw that. It's a message from Mr Hidalgo at Downer to you, do you see that, copying in Mr Patel?---Yes.

And Mr Hidalgo says, "An extension of time has been updated to BD008 as per your request." Do you see that?---Yep.

"New submission date is 2pm, Friday 19 May." Do you see that?---Yes.

40 So you'd requested for the tender window to be extended, is that right, to 19 May?---It appears that way, yeah.

And then we just saw a moment ago on 17 May you're assisting, agreeing to assist Mr Sanber with the mechanical drawings?---Yes.

And then if we go to the next page, page 5. You see Mr Hidalgo tells you in another email, this time on 12 May, that Sanber Group has been added to the Victoria Street building, it says, "pack". Do you see that?---Yep.

And you were, you extended that window, did you not, just so Sanber Group could put in a quote?---Potentially, yeah.

10

Well, there's no other explanation, is there?---Well, yeah, it looks that way because if they got the building pack on 12 May, then there's no way they could have done it within two or three days, so - - -

And if we can go to page 19. And you can see this is an email between - it's an email chain between Mr Dabit and Mr Sanber. Do you see that?---Yes.

20

And if we go down one page to the email earlier in time, it's sort of, it straddles both pages but it's from Sunday 25 June, where Mr Dabit says, "They said they will award" - sorry, I withdraw that. Mr Sanber says to Mr Dabit, "They said they will award tomorrow. If we don't respond today, they will award to the other company. I have attached the responses to the clarification for a review. I don't have the latest BOQ you sent through and we need to update the attached and send through. Could you please update and send through or call me so we can catch up for an hour today to complete and send through." Do you see that?---Yeah.

30

That reference to "they said they will award tomorrow", that's information that's come from you, isn't it?---I'm not sure.

Well, there's no one else from Downer that was passing on information in relation to the Victoria Street job to anyone from Sanber Group, correct? ---Yeah, correct. But what I mean is I don't know if Raja just was putting pressure on John or if I actually, if, if that was the genuine closing date, I'm not sure.

40

Sure. If we go up to page 19, you can see that email again on 25 June, this time a bit later in time, where Mr Sanber says, "Thanks for sending through, John. I wouldn't let this one go too easily. As I understand, the other contractor has not submitted their revised price." That other contractor was Rapid, wasn't it, Mr Aziz?---Potentially, yeah.

Well, it was, wasn't it?---I think they were the only other one who was, who had put in a price.

All right. And then it says, "Also I have increased the price by almost 200 K to make it worthwhile. As I mentioned previously, I'm keen to manage this for you if it suits but I'll need some support from you as needed." Do you see that?---Yes.

10 And then he goes on, "I will need you to reply to Alex tomorrow after I find out from Abdal if a submission has been received." So you're clearly, it would seem, sending information to Raja Sanber at this stage about the tender process, correct?---Yes.

And then you can see at the top, the email at the top on the 27th, where Mr Sanber says, "John, can you send through the attached. I have further increased the price to 975 K. It's unlikely we will get it. However, we need to submit something as we are shortlisted and if we get it then I can quit work and pay myself a couple of years' wages with the increases." Do you
20 see that?---Yep.

Now, if we can go back to volume 18.13, page 71. This is Mr Sanber's downloads again and this time you can see he's talking to John Dabit.
---Yep.

And it's 25th of the sixth, so around that time we've been looking at where he says, "Don't send anything formally tonight. We have to wait until tomorrow until you get a phone call from Abdal to make the appropriate changes so we can send it to him then. Send it to my Gmail tonight. Call
30 me asap, please." Do you see that?---Yep.

So, were you calling Mr Dabit at this stage and giving him some assistance along the way as well?---I don't think so.

You would agree that's what the messages suggests you were doing?---It does, yeah. Well, I, I can't remember calling John.

If we go to the next page, page 72. Can you see at the top from Mr Sanber to Mr Dabit, "Rapid has not yet submitted. Waiting until 3pm. If still no
40 submission we can submit and should get it at the price I sent last night. He has asked that we remove some items which he will ask for later as a

variation post award. I will send you something shortly. Can you call me when you get a chance before 3pm preferably.” Do you see that?---Yes.

Now, you see that, “He has asked that we remove some items which he will ask for later as a variation post award.” Do you see that?---Yes.

That’s a reference to you, isn’t it?---Yes.

10 And do you recall doing that, saying to Mr Sanber that he should remove some items and they could be claimed for later as a variation?---Very vaguely. I think we, when we did the site walk John and Raja were pretty thorough. They went through everything and I think in the tender they might have allowed for things that were not confirmed yet or were not part of the scope, they were just seeing through and hypothesising about what would be required. So, and yeah, I, I don’t remember the specific items but it might have been a case of them assuming that we’re going to need to do some additional structural bracing or something, right, and then we would say, “Well, you don’t know that yet until we actually go and start the work.” So you’re, you’re just assuming and inflating the price but if it is a variation
20 we can deal with it then as a variation.

And how were you supplying information to Mr Sanber at this stage? Were you using other mechanisms other than phone?---Maybe emails as well. Phones and emails.

Were you using Guerrilla Mail?---I have used that, yes.

That’s an anonymous self-deleting email service, isn’t it?---Yes.

30 Why did you see a need to use that service?---Well, it, it, it’s not right that I’m assisting subcontractor in winning this work in this manner. So I would have used that to, to cover it.

Why would you have been, if you knew that at the time, why were you doing it?---We had no other choice, Commissioner. I, I already went through this. So, there was, there was no other alternative.

But that, with respect, makes absolutely zero sense, Mr Aziz, for you to say that you had to use an anonymous self-deleting email system because you
40 couldn’t find a contractor. Is that your evidence out at Victoria Street?
---Like, when you put it that way, yeah, but like I said, at the time if, if we

had good market response and a decent tender, I wouldn't have had to speak to these guys, right? So, I was giving them information which I shouldn't have been and I did in that way so that it, you know, to, to cover it.

Yeah, so you were giving him information that you shouldn't have, but, that's correct, but it's not correct to say that you were only doing that just to ensure that the tender could, the project could be awarded, is it?---Why wouldn't it be?

- 10 You had a financial interest in this, correct?---At that stage I didn't. At that stage that wasn't, that wasn't something that I thought about.

Who else have you used to communicate with using Guerrilla Mail?---No-one.

Right. What other projects have you worked on when you were at Downer other than Central, Lithgow and Victoria Street where you've received a secret commission?---None.

- 20 So isn't it really the fact that you're using that email system and engaging in such covert activity because you knew you were receiving a conflicted secret commission in relation to this job from the very start?---No.

That's truthful evidence, is it?---It is, yeah.

Okay. If we can go please to page 101 of this brief. Down the bottom you can see we're now at 3.20 on 25 June. You're saying, "No submission from others yet." Do you see that?---Yes.

- 30 And then you say at 3.45 the following day, 26 June, "Sending RJS clarification now. You may get a call from one of my engineers as well to confirm receipt. Send tomorrow with" - - -?---Sorry, I can't, I can't see that.

Sorry. We should be on the following page. I'm sorry.---Yep.

Note, page 102, there at the top, "Sending RJS clarification now." Do you see that at 345 on the 26th?---Yes. Yeah.

- 40 "You may get a call from one of my engineers as well to confirm receipt. Send tomorrow with 954K total for RJS and Dabcorp price at 973K. Can submit Dabcorp now. Include comments in Dabcorp as discussed. Were

you unsure about design, et cetera? The problem is RJS insurances.” Do you see that?---Yes.

There you’re just telling Mr Sanber how the tender process can be rigged by reference to the bids to be submitted by Sanber Group and Dabcorp, correct?---So that, that price, one of those prices was their, their price, right? They worked out a price, and then I would have provided guidance here regarding the second one which is Dabcorp.

10 You would have said make it higher so Sanber Group is better placed.
---Correct.

Why would you have done that if your only concern was getting the job filled?---Well, because Dabcorp has pulled out of it and if we put their genuine price then they’re not going to want to do it anyway, so - - -

But occasions happen where you’ve got three quoters – I withdraw that – three tenderers and one or two might pull out and you go back legitimately to Downer and say, “Hey, we put it out to three but there’s only one or two left” - - -?---Yeah, but - - -

And that will still be progressed and approved, correct?---Correct, but at the time the understanding was that we needed three tenders.

Whose understanding?---My understanding.

Okay. And then you can see the next day, 27 June 2017 at 3.16pm, you say, “Need both bids ASAP, please.” Do you see that?---Yes.

30 Then you go on to say, “We have John’s.” Do you see that?---Yes.

4 o’clock. And Mr Sanber says, “I sent my one a little while ago at 4.02.” Do you see that?---Yes.

All right. And is your evidence this is just you ensuring that the tender would be awarded because you were desperate to fill it within Downer? Is that right?---Okay.

40 Okay. If we can go to volume 3.8, page 28, please.

THE COMMISSIONER: Before we do that, did you ever tell anyone at Downer that you were having problems?---Yeah.

Who did you tell?---Oh, I think everyone knew. So the Procurement Team knew we were having issues because they're the front line, they go out to the subcontractors for pricing, and they weren't getting any positive feedback, to the point - - -

10 So there's records of this somewhere, is there?---It should be in TeamBinder because all of the requests for tenders would have been submitted formally through a TeamBinder system, I presume, and then when we continued to struggle, it, it went to the project director for a decision.

MR ENGLISH: The truth is that you also had another tenderer, Rapid, correct?---Yeah, correct.

20 You always could have gone to them and awarded the project to them, correct?---Well, that, that was the intent, but at that stage there were, I believe they were non-responsive.

No, it was never your intent, I suggest, to award the project to Rapid. That's a lie.---No, I think if, if Rapid was a viable option, it would have been awarded to them before we even gone this far.

30 Mr Aziz, I'm going to take you through the correspondence where you did everything you could to make sure that that bid didn't go to Rapid. Do you want to reflect on your answer there?---Commissioner, I think I would have, I would have given RJS that impression, but that's not true because I wasn't the one communicating with Rapid and trying to get them to engage. It was the, the Procurement Team. So if you don't believe that, you can speak to them directly and get their recollection of what actually happened in their interaction with Rapid.

No, I'm asking you, 'cause your evidence was the intention was to award the project to Rapid. That was your evidence. Do you recall giving that? ---No, no, what I said is if, if Rapid was a viable and a real option, it would have gone to them because RJS is a few hundred thousand dearer.

40 All right. If we look at the page which is page 28 of volume 3.8, you can see, this is on 27 June at 3.42. Mr Sanber sends through updated pricing and responses to the clarification request. Do you see that?---Yes, yes.

And it says, "Please note that due to the short time frame requested for this response, I have only conducted a cursory review of the drawings for obvious changes and therefore only included prices for the items listed in the BOQ." Do you see that?---Yes.

Were they the drawings that you looked at with Mr Sanber?---I, I couldn't tell you.

10 Well, and then you see Mr Hidalgo forwards it on to you. "Please find attached Sanber building price revision." Do you see that?---Yes.

And it's copied in to Mr Mathieson. Who was he?---He was an undergraduate engineer, but at the time he was working for Amit in the Procurement Team.

All right. And there's Mr Patel there as well copied in. At any stage did you tell Mr Patel and Mr Mathieson that you'd reviewed the drawings with Mr Sanber?---I couldn't tell you.

20

Well - - -?---They know we've had site, joint site inspections and things like that, but I, I don't, I wouldn't remember if I specifically told them that we reviewed a mechanical drawing. We actually reviewed the full drawing pack onsite together.

All right. If we can go back to volume 18.13, please. Page 103. So this is now the 28th of the sixth, 11.32. "Raja, can you check your email urgently. I sent you something. Don't" - it says d-o-b-t, I think that should read "don't" - "make it too obvious." Do you see that?---Yep.

30

Do you recall what was so urgent?---No.

Do you recall what you sent to Mr Sanber?---No.

You were using the service Wickr at around the same time to communicate with the people from Sanber Group, is that right?---No, I don't think it was that early, no.

40 Okay. Go down the bottom of the page, "You will be getting a response shortly. Call me before you respond to Amit." Do you see that?---Yes.

Did he ever offer that service to any other tenderers that they speak with you before they respond formally to Downer?---Yes.

In what circumstances would you offer that service?---Look, usually it's to do with variations, if I can think of an example, where we would have a, a site level discussion before it goes informally and that's something that I thought was, you know, was okay but this is a bit different, so - - -

10 Well, why is this different to the site-level discussion you just made mention of?---Well, because, because I was assisting RJS more than I would a typical subcontractor.

What was motivating you to do that?---Honestly, they didn't have it, didn't have their act together to actually get a, a, a robust bidding. They needed the help.

Well, why not go to Rapid?---I just said we tried.

20 Well, we'll come to that in the time frame but is it because - you've said it's not money. Is that right, is that still your evidence?---To me?

Yeah.---Yeah. It definitely isn't at that stage. That was not on the cards.

Was it helping out your long-time friend Nima Abdi?---Look, I think that, that would have been part of it, knowing that he's part of that company.

30 Well, if you look at page 103 you can see you write a message down the bottom of the page at 152 on the 29th of the 6th, "Need to hurry with the response. Amit is trying to get Rapid to submit a bid." Do you see that?
---Yes.

And you call him a pain in the arse.---Yeah.

It seems you're not happy that he's trying to get Rapid onboard as a competitor?---Yeah, I can't see that.

Sorry, thank you. Do you see that?---Yeah.

40 And you say, "He's a pain in the arse." Do you see that?---Yeah, I see that.

Was that because you weren't happy that Mr Amit was trying to get Rapid to submit a bid? Is that why you called him a pain in the arse?---Well, not really, no. He's not really a pain in the arse.

Well, you've called him a pain in the arse.---Well, I said that to Raja.

Is that because he's doing his job honestly and you're doing it dishonestly that he's a pain in the arse?---No. If, if - okay.

10 Why is he a pain in the arse?---Look, I don't know. It's something I said.

If you go to the next message you send on the 29th of the sixth at 3.12. You said, "Boys, get ready. They're definitely going to call references because they couldn't find your website." Do you see that?---Yes.

And then if we go to the next page, page 105, you say, "They're a little nervous. We'll see soon." Do you see that?---Yes.

20 And then on the 30th of the sixth at 10.51, "Working on it, man. Hard work. Sit tight." Do you see that?---Yes.

What was the hard work that you were engaging in when you sent that messages or that you're referring to?---I couldn't tell you.

THE COMMISSIONER: Sorry?---I, I couldn't tell you.

Is this how you normally respond in one of these situations?---In, in which situation, sorry?

30 In a tender situation, that you give running commentary to people?---No, no.

MR ENGLISH: And then if we go, please, to volume 3.8, starting with page 36. Here's an email from Mr Patel where he says, "In order to evaluate the tender" – and this is on 29 June 2017, at 9.57am in an email to Mr Sanber, "In order to evaluate your tender please provide below management system you have in place, safety, quality, environmental, COC of insurances, plant, PL, works comp, professional indemnity. Also provide CVs of key personnel, a code compliance certificate, list of the similar project that your company has completed. We will get back to you on the clarification of commercial T&C soon." Do you see that?---Yes.

40

Is this Mr Patel being a pain in the arse asking for this information?---No, I think he's asking for information that we need.

We, and when you say "we", you're meaning Downer?---Yes, correct.

Okay. And then you can see Mr Sanber responds on 29 June 2017 at 14.53, and you can see there's some documentation he refers to that's attached as well as a company profile.---Sorry, I don't think I can see that yet.

10 Oh, I'm sorry. Can we go up, please.---Yep.

I think one more down, page 35. You can see there 29 June 2017 at 14.53. ---Yes.

And you can see there's a response provided by Mr Sanber, "See attached some of the documentation requested below as well as company profile." ---Yes.

20 And then he says, "A list of similar projects undertaken are," and there's a list. Do you see that?---Yes.

And it says, "JLL - Tarek Markaboui - project manager," and there's a list of projects in four dot points. Do you see those?---Yes.

Do you know whether Sanber Group had completed those projects?---No. I, I didn't think they have.

30 Yeah. And the South West Rail Link, the name Nathan Sandrussi is provided as a project manager. And it says, "Glenfield Station – fit out of station master officer; Leppington Station - refurbishment." Did you think Sanber Group had performed those works?---No, not Sanber Group.

And then it says, "Inner West Council – Tony Nguyen," as the project manager, "Construction and commissioning of council buildings." Did you think that Sanber Group had done work of that nature for the council? ---Well, I think, I think they said they had involvement in these projects.

All right.---Same with Glenfield.

Did you feel it incumbent on yourself to say to say to any of your colleagues at Downer that, "I don't think the information supplied in relation to JLL and South West Rail Link is true"?---No.

Why didn't you do that?---I think that would have stopped the process.

All right. And why was that a problem?---Well, at the time then we wouldn't have someone to do the job.

10 Well, you had two other tenderers. You had Rapid and you had Dabcorp.
---Okay. At that stage, and I don't know how good my memory is with this, but I thought Dabcorp was out of the picture, for whatever reason. So that, that was not an option.

So - - -?---Initially it was and then they dropped out.

Okay. So either Dabcorp was still a genuine tenderer or you were progressing Dabcorp as a tenderer with the knowledge that they were going to drop out at some stage?---So they started as a genuine tenderer and they
20 were keen, and then at some stage they just, you know, for whatever reason they weren't interested.

All right. Well, if we can go up to page 35, please. There's a message from Mr Patel on 29 June, "Greg/Nathan, Abdal has spoken with them and recommended them from Vic Street building works." Do you see that?
---Yes.

That's true, correct?---Yes.

30 And then if we go up another page, on 29 June 2017 you, in a message to Greg Barnes, Mr Patel and Nathan Toomer, cc'ing a Daniel Bains, say, "Gents, I got hold of two out of the three below references and left a message for the third." Was that true?---Well, it was Nima and Raja who I spoke to. It wasn't the end client.

Well, so you didn't speak to Tony Nguyen for a reference, because apparently he was the project manager for Inner West Council work that Sanber Group had obtained?---Not that I remember, to be honest. I - - -

40 Did you speak to someone called Nathan Sandrussi about South West Rail Link work?---No.

What about Mr Markaboui from JLL. Did you speak to him?---No.

So you're just lying to your colleagues from Downer, are you, about these reference checks?---Yes.

Is that a service you offered to any other people in your time at Downer?
---No.

10 Have you ever offered a service like that to anyone else in your career?
---No.

And so your next statement, "They successfully completed a few building works, couple of train station building refurbishments south west of Sydney and Blue Mountains line and various council building jobs." That's not true, is it?---Well, look, at that stage, they said they've worked on those jobs and they, they delivered them as project managers for those jobs. It might not have been through RJS but the argument was that we delivered them and we know what to do.

20 All right. And then, "Didn't write down names. I was walking around site." Do you see that?---Yeah.

That's you deliberately trying to deceive your colleagues into believing that or being persuaded that you've actually contacted these referees. Correct?
---Well, well, yeah.

I mean, why were you going to such lengths to get Sanber Group over the line?---Commissioner, like I said, if, yeah. I, I think we've covered it
30 already.

THE COMMISSIONER: Sorry?--- It, it wouldn't, it wouldn't have gone to Sanber at all if we had a decent tenderer, that was ready to take on the job.

MR ENGLISH: Well, it wouldn't have gone to Sanber at all if you were being honest with your co-workers. Correct?---I don't know that. I, I don't know that.

40 THE COMMISSIONER: Well, why did you feel the need to lie?---Well, because I don't think they presented well, Chief Commissioner. So I think

if, if Downer was to look at that company on their merit, they would not, they probably would not have given them the work, right?

Well, that would have been their decision, wouldn't it?---Correct. Yeah.

What does that concern you if that's their decision? They're your employer. They're the ones who are expending the funds.---Well, it was my project. I, I was responsible for delivering that job.

10 Well, what incentive did you have to defy your employer's wishes as to who they were to select by engaging in this conduct? Was it the money?---It was not the money at this stage, no.

Well, what was it?---Like, like I said, we, I needed someone to do the work and - - -

Even if your employer would not have wanted them?---Well, I think - - -

20 Well, that's what you said to me a moment ago.---It, it is, but I, I said I thought if I put them forward as it is, they probably would not be comfortable going for them.

Yeah. Thank you.

MR ENGLISH: If we can go, please, to page 41? Here's that email we looked at before from Mr Sanber, identifying the similar projects but this time it's got the attachment. And do you see there's a CV for a Michael Colver, a Nathan Smith and a George Vella?---Yeah.

30 Did those people work for Sanber Group, to your knowledge?---You mean now, knowing now or back then?

No, no, no. Well, back then, on this job. Did anyone called Michael Colver, Nathan Smith or George Vella work on that job?---Not that I remember, no.

Well, it's a fact that there were no such people, were there?---Not onsite, at least, no.

Yeah. And did you know that these people didn't exist when you saw this email attaching the CVs of these purported people on 29 June 2017?---No, not at that stage, no.

Okay. But you learned at some stage during the project because you said before it was Seng who was doing it, right, it was Mr Laphai?---Yeah, but I think these are resources for RJS themselves, not their subcontractors and - -
-

10 Yeah, but you - - -?--- - - - yeah.

Sorry. I'm sorry.---Yeah.

But you knew RJS or Sanber Group had no employees, correct?---No, not at that time.

Well, when did you learn that?---Well, when no-one turned up to site from RJS.

20 And did you ever consider going back to Downer and saying, "Hey, we've been lied to. These people on the CV that we were supplied, they don't exist"?---I, I don't think that would have been best for the project.

Best for the project?---Yeah.

Do you think the possibility of exposing a company to a corruption inquiry like this is good for a project?---No, but with reference to the CVs, I mean.

30 But looking at the risk calculus, sitting in the witness box where you are right now, what was a lesser risk? Telling Downer that we've been duded by a subcontractor that has no employees and maybe we've got to go back out to tender or jumping onboard with that subcontractor, getting paid and exposing that company to a corruption inquiry?---Well, that's, that's the lesson I've learnt the hard way, Commissioner, yeah.

If we can go to volume 8.1, page 198, please. All right. It's at volume 8.1, page 198. So you can see down the bottom of the page it's on 30 June 2017, an email from Mr Patel to Michael Cociuban - do you know who that is - at Transport?---I think it's Michel.

40

Is it Michel?---Yeah. He's, he's Transport for NSW.

And he copies in Greg Barnes and yourself. Do you see that?---Yes.

And it says, “Building. Please find attached first three. (First Sanber, second Dabcorp, third Rapid.) Quotations from builders and below the recommendation.” Do you see that?---Yes.

And you can see, to three had declined there, Daracon, Perfect Engg and Talis. Do you see that?---Yes.

10

And Dabcorp, were you aware whether Dabcorp was no longer pursuing its bid by this stage, that’s 30 June?---There was sort of a, a change somewhere during the tender phase where it seemed like, because Raja knows Dabcorp and Raja would have been the one who told me that they weren’t, they weren’t interested anymore or – I, I can’t remember what, what the reason was but, yeah, they dropped off at some stage.

And you can see just if we go to the next page it goes on to talk about, “Upon Downer’s request for tendering for building works we have been responded by Sanber, Rapid and Dabcorp whilst Daracon, Perfect Engg and Talis declined. Downer have evaluated and assessed the tenders. After the first round of review Downer responded to all the tenderers who submitted the tender on clarification and requested them to respond on Downer’s queries. Whilst Rapid remain not responsive, Sanber and Dabcorp provided with the revised price and respond on Downer’s queries.” I’m just reading this as it appears. “As per tender analysis and looking to the availability, experience and pricing, Sanber Group trading as RJS Civil is deemed to be the best value.” Do you see that?---Yes.

30 And it was the case, wasn’t it, as we just saw in those messages that Dabcorp and Sanber were responsive with the revised price and responded to Downer’s queries because you were hurrying them up along the way, correct?---I was hurrying up, yeah.

Yeah, you were telling them to do that by that 3 o’clock mark, remember that? Remember those emails?---Yep.

Just in relation to the next package, Downer awards the electrical LV and comms to itself.---Yes.

40

Is that something that happened regularly?---No.

Are there any other contracts where you recall that occurring?---No.

And in this case Downer wasn't the cheapest either I see. Is that right?---It doesn't seem that way, yeah.

Yeah. If we can go to volume 8.1, page 201, please. You can see on 30/7/2017 you receive an email from Mr Patel saying, "Please find attached subcontract recommendation for your approval. I will issue them a
10 subcontract this afternoon." Do you see that?---Yep.

And you send that to your personal email.---Yes.

Why did you do that?---I don't remember but maybe it would have been to forward it to RJS. I can't remember but that's all I can think of.

Okay. Why would that have been necessary?---Just to let them know.

Okay.
20

THE COMMISSIONER: Why couldn't you do that through your other email?---I don't think we were allowed to maybe announce that until it's formally issued by, or formalised with a subcontract.

So what was your purpose in sending it?---Just an FYI.

Sorry?---As a "for your information".

To let them know of something that at that time they shouldn't have been
30 aware of.---No. No. They were going to get the award of the subcontract that afternoon so I just - - -

Yeah, but at that time they weren't to be, they weren't to - - -?---No, they weren't aware of that, yep.

MR ENGLISH: Well, you say they weren't aware of that, if we can go to volume 18.13, page 108, there was some concern, wasn't there, internally within Downer, about Sanber Group's credentials - - -?---Yeah.

40 - - - to carry out the Victoria Street job?---Yes.

Now, so this is, the email we were just looking at was 3 July. We're now looking again at commentary – I withdraw that – messages on 3 July 2017 where you tell Mr Sanber, “The commercial manager asked to do a D&B check,” is that a Dun & Bradstreet check?---I believe so, yeah.

10 “To verify financial standing. They are double-checking ‘cause you have no website and the company was created recently. You might get a call from Dun & Bradstreet to ask you about turnover, et cetera, if they don't have your details already. Fairly routine. Give me a call as I've been through this already with my company.”---Yep.

All right. So you're obviously telling Mr Sanber that. Then you say to him at 11.40 on the 3rd, “Should say your turnover is around 10 million and main clients include various builders and government agencies.”---Yep.

Why are you telling him to say that?---I was just helping him get through the process.

20 But that's not true, is it, that turnover was 10 million?---Honestly, I didn't know what their turnover was.

So - - -?---But I don't think it was that high.

Well, and then you said, “And main clients include various builders and government agencies.” Did you know whether that was true?---Well, that's what they've said, yeah.

30 All right. So you're at least insofar as the revenue figure is concerned telling them to make potentially false statements to Downer?---Yeah.

Okay. And then you say, “Hey, Raja. Sit tight. I will have some answers tomorrow. I'm going to play the program card.” What's the program card? ---It would be program.

40 Does that mean you're going to, what, potentially get close to a possession and make it difficult for Downer to, to make - - -?---Well, that was the case, yeah, so I was going to raise that with the Commercial Team to make sure they're aware of it and we don't spend two months going through commercial or financial audits.

So you're going to put a time pressure or emphasise a time pressure on Downer to make sure that this decision is made favourably for Sanber Group. Is that right?---Yeah, so Downer was under pressure to, to deliver this, yeah, to make a decision and move on and deliver, so I would have passed those concerns on to the commercial manager.

I note the time, Commissioner.

10 THE COMMISSIONER: Yes. Take a break for lunch and we'll resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00pm]