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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 4 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. Thank you. We'll resume. Mr Aziz, you're subject to the same affirmation you took at the commencement of your evidence to say the truth. Do you understand?---Yes.

Yes. Thank you. Yes.

10 MR ENGLISH: Chief Commissioner, if I might just before we recontinue the examination, just tender the volumes of the Aziz Tresca brief.

THE COMMISSIONER: Yes.

MR ENGLISH: Commencing with volume 8.1, I tender that and understand that would become exhibit 107.

THE COMMISSIONER: Yes, that's exhibit 107.

20

**#EXH-107 – PUBLIC INQUIRY BRIEF VOL. 8.1 - AZIZ-TRESCA BRIEF**

MR ENGLISH: Thank you. I tender volume 8.2 of the Aziz Tresca brief.

THE COMMISSIONER: That's exhibit 108.

30 **#EXH-108 – PUBLIC INQUIRY BRIEF VOL. 8.2 - AZIZ-TRESCA BRIEF**

MR ENGLISH: And I tender volume 8.3 of the Aziz Tresca brief.

THE COMMISSIONER: Exhibit 109.

40 **#EXH-109 – PUBLIC INQUIRY BRIEF VOL. 8.3 - AZIZ-TRESCA BRIEF**

MR ENGLISH: Thank you, Chief Commissioner. They're all the volumes.

THE COMMISSIONER: Thank you. Yes. Legal representatives for - - -

MR ENGLISH: Mr Abbas is here and Mr James is going to come. I believe he's at a farewell for a judicial officer.

THE COMMISSIONER: All right. Are you happy to proceed, Mr Abbas?

10

MR ABBAS: Yes, I am.

THE COMMISSIONER: Thank you. Yes, thank you, Mr English.

MR ENGLISH: Thank you, Chief Commissioner. So yesterday afternoon I was asking you about those JTG invoices to Downer. You recall that?

---Yes.

You can take it from me the total value of those three invoices is \$228,088 including GST.---Yep.

20

Did you receive a cut of that money?---Yes.

How much?---I, I'd have to look at the statement to see what the, what the number is.

What was the agreement, that you had received half or - - -?---Yeah.

Okay. And how, how did you receive that?---Through an invoice.

30

A Tresca invoice?---Yeah.

Okay. All right. So those invoices span the period from 15 January 2020 to 26 June 2020 and is it right to assume that you'd struck an agreement with Mr Abdi, that he would submit those invoices and you would split the money fifty-fifty sometime prior to the first invoice in 15 January 2020?

---Correct.

All right. And how did you think you could get away with Mr Abdi submitting those invoices and them being paid where there was no work performed?---I don't know. I don't really remember.

40

You must have had some confidence that you'd be able to get away with it, correct?---Yeah.

What was that due to? Was that due to a perceived lack of controls, internal controls at Downer or was there something else within Downer that gave you the impression you'd be able to get away with that?---To be honest I'm not sure. I can't pinpoint something at this point.

10 Well, it's pretty significant that you entered into an arrangement with Mr Abdi to defraud your employer of \$228,000, don't you agree?---Yes.

And it's something you'd remember, correct?---I remember doing it, yes.

Yeah, and it's not something you just thought about on a night out, did you?---Probably not.

Yeah. It involved a fair degree of planning, didn't it, 'cause you had to come up with an invoice narration that you knew you'd be able to get away with without presenting the work, correct?---Correct. It would be work that was completed, yeah.

That's right. So is that, is that why you had the confidence to get away with it, 'cause you were invoicing for work that was either completed or no longer required? Was that your thinking at the time?---I'd say so, yeah.

All right. Was this all your idea?---I think it was a joint idea.

Between you and Mr Abdi?---Correct.

30

All right. Did you have a sense of a lack of internal procedure or compliance processes at Downer that made you think you could get away with this?---Can you ask it in a different way? I'm not sure I understand what you're saying.

Yeah. Sure. I'm just, you must have thought you'd be successful in this enterprise with Mr Abdi, right, otherwise you wouldn't have embarked upon it, correct?---Yeah, correct.

40 And it entails a degree of risk.---Yeah.

Correct?---Yep.

So you must have had the confidence that you could get away with it?  
---Correct.

Okay. And what gave you that confidence? Something within Downer, was it, just, can you assist, please? Why was it that you thought you'd be able to embark on this scheme with Mr Abdi, get paid, split the money and get away with it? It must have been something within Downer?---It could  
10 be the, it could be the lack of control, yeah.

Okay. And do you mean like a compliance control within Downer?---I don't really know what to call it, but, yeah, potentially that.

THE COMMISSIONER: What level of autonomy did you have?---Fairly autonomous, yeah.

Did your supervisors play any role or, in monitoring your work?---Not, not closely, I would say, but there was the monthly catch-ups that we have,  
20 yeah.

MR ENGLISH: Right.

THE COMMISSIONER: Is that how you describe them, a catch-up?---It's the monthly board review.

MR ENGLISH: Were these invoices within your delegation to approve?  
---Yeah, I'd say so. Yeah.

30 So this is where you gave evidence yesterday saying that you didn't act in Downer's best interests in approving those invoices. Is that right?---Yeah. Correct.

Okay. Had you ever seen anyone else doing something similar within Downer that gave you the idea you might be able to get away with this?  
---Not that I recall, no.

Okay. If we can go, please--

40 THE COMMISSIONER: One moment.

MR ENGLISH: I'm sorry, Chief Commissioner.

THE COMMISSIONER: Yes.

MR ENGLISH: If we can go to volume 2.5, please. Page 1. This is a summary of the JTG Services bank account and you can see it identifies relevant debits and credits to the account. Do you see that, Mr Aziz?---Yes.

10 And you can see in the debit column the first particularised party is Tresca. Do you see that?---Yes.

And so you can see there on 25/9/2019 Tresca was paid \$207,372. Do you see that?---Yes.

And I can take you to that invoice and I will shortly. And then on 19/11/2019 Tresca was paid \$107,723. Do you see that?---Yes.

20 And then on the 30th of the third, Tresca was paid \$20,000. Do you see that?---Yes.

And then the following day, the 31st of the third, it was paid \$9,486.---Yes.

Now, those are the three invoices that I took you two. The first was dated 15 January 2020 and was for \$41,000, the second was dated 25 May 2020 and was for \$89,555, and the third was dated 26 June 2020 for \$97,160. So I'll just ask you again, are you sure you received your split of these invoices by way of an invoice from Tresca to JTG?---That, that was the agreement, but I didn't receive all of it.

30 Well, sorry, I just thought you agreed earlier in your evidence that you received 50% of those moneys on payment of an invoice from Tresca to JTG.---That was the agreement that I had with Mr Abdi.

I thought you'd said, and I might be wrong, that you'd actually received those moneys.---Not all of it, no.

Well, why not?---I, so after the first one, I had a change of heart and didn't, didn't want to be paid the rest.

40 That's your honest evidence?---It is, yes.

What brought about the change in heart?---It was just wrong. I was not comfortable with it.

So your evidence is Mr Abdi kept the lion's share of - well, I withdraw that. JTG Services kept the lion's share of these invoiced amounts that we've just been discussing?---Yeah, but later on in 2021, I think, he tried to pay it back. He wanted to pay it, he wanted to pay my share.

10 And so what was the discussion around that?---I wasn't interested, so I said I'm happy to do, if you have work on your farm that you want done and I do it, I'm happy to do that if you're, if you're concerned about the money being in your account and you want to spend that money. But I'm not going to take the money for doing nothing.

All right.---But even that wasn't the full amount. It was sort of a partial.

Well, you - according to what we see on the screen, you'd received - I withdraw that. Tresca had received \$29,486.---Yeah, correct.

20 And so, what, do you say that you said to Mr Abdi that you'd work that off on his premises, did you?---No, I said if - so he, he wanted to pay the money, right.

Yeah, but he'd already paid the 29,000, right?---That he has paid, yes, yeah.

Yep.---No, I took that.

Okay.---Yeah. And then - - -

30 COMMISSIONER: Yes. Yes, sorry. Yes.

MR ENGLISH: So, Mr Abdi, so you received the 29,000 and then what was - just specifically what did you say to Mr Abdi about the balance when he offered to pay you the balance?---I didn't want it.

Okay. And then, but then, if that's the case, why would you have then suggested to him you could do work on his property?---No, that was, that was a year or more later and, and he was insisting that that's my share and he wanted to pay it.

40

Okay. And so did you agree but do work in return, did you?---Correct, yeah.

Okay. And so how were you paid the extra money 'cause, was it by - - -?  
---Through an invoice, yeah.

Okay. It might be that this summary doesn't go that far in time. Is that right?---Correct, yeah. It doesn't go to, to the later.

10 All right. So - - -?---But I've provided some invoices to the Commission.

Sure. So further in 2021 the rest of your share of this 228,000 would appear in your, in Tresca's bank account. Is that right?---That, yeah, that would appear for the work that I did for Mr Abdi, yeah.

Yeah. All right. And in relation to those invoices that you approved pursuant to your delegation at Downer, did anyone else sign off on them?  
---I'm not too sure. It's an online system so some of the invoices will go to somebody else to sign off on, but being of these values, I don't believe they  
20 would have, but we'd have to check that. I'm not sure.

Okay. If we can go to volume 2.3, page 4. So this is the first of the Tresca invoices for \$207,342. It says, "Consulting services from March to August 2019." That's a false narration, isn't it?---Correct.

What was this money due for?---It was as a payment for either Lithgow or -  
- -

30 THE COMMISSIONER: Sorry?---Either for the Lithgow project or for the Central project. I can't remember but - - -

MR ENGLISH: Not - - -?---Not for work that I've done for JTG.

Okay. And not for, not for Victoria Street?---No.

It's dated 2019. I'm just asking you. I'm not suggesting it is.---I'm actually, I'm not sure but I, I believe it was later for, so that date is fairly date so it must be for the other two projects.

40 Okay. And if we go up, so that's dated 25 September. If we go up to page 2, please. Here's another tax invoice from Tresca, this time dated



11/11/2019, again, “Consulting services from September to November 2019 for \$107,723,” do you see that?---Yes.

Again, that’s a false narration about the description of the work.---Correct.

And do you know what this was payment for?---It would have been the same.

So Lithgow or Central?---Or both, yeah.

10

Okay. And then if we can go to volume 8.1, page 77, so this is an invoice for the amount of 29,486 that we were discussing before.---Yep.

Invoice date 27 March 2020 from Tresca to JTG. Was this in relation to those invoices that JTG issued to Downer in respect of work that was never performed?---Yeah, correct.

20

Okay. Can we go please to volume 8.1, page 67. Do you know, this is a quote from Hills Irrigation. It says “trade, sales, cash”, have you seen this before?---Yes.

What is this?---So this is part of the work that I did on Mr Abdi’s farm on 2021 and I’ve provided this to the Commission following the private hearing.

Okay. And if we go to page 69, that’s an invoice on a letterhead of CBOX Containers made out to Tresca. Do you see that?---Yep, that’s the same, yeah.

30

I’m just trying to see if it’s got an amount there? Does it, perhaps if we go to the next, down two pages, you can see an invoice from CBOX to Tresca for 4,642 including GST. Is that something that Tresca paid for, is it? ---Yeah. Correct.

40

And what was the work done on Mr Abdi’s property?---So there was, there was a split between some of the things that he will do himself and some of the things that I’ll do and supply and/or install. So part of it was the irrigation package, so that set of materials that you looked at earlier. There was the 20 foot container, as well, and there should be another one for the shed backup battery.

A battery for the shed?---Yeah.

What, solar power or something?---Yeah, that's right.

Okay. Perhaps if we go down to page 73? Is that something about the battery for the shed?---No, this is, this is something different. So this is when we were looking at the modular farm container but that didn't go ahead.

10 Okay. And what was Mr Abdi, were you in business with him here, to grow something on his property?---No. I was just providing a service.

What was Mr Abdi looking at growing, do you know?---Just vegetables and fruits and that sort of thing and herbs.

All right. So in relation to those invoices that you were subsequently doing work for that you've just given evidence about, the time they were issued by Mr Abdi to Downer, did you ever have a conversation with him about what he should say if he was ever asked any questions by someone from Downer  
20 about the work that was performed?---Yeah.

And what was that conversation?---It was basically to say that he'd done those works that were stated on the invoice, so the car marker works and just filled him in on what the scope is.

But what would have happened if someone said, "Can I please have the surveys or the plans? Where are they?" What did you tell him to say there, if anything?---We, we didn't discuss that, yeah. I, I don't think we did.

30 But that was obvious, wasn't it, from the face of the invoice that someone might ask?---Yeah, but it's, it's, like I said, it's work that's already done, so  
---

So you'd told Mr Abdi to tell people that the work, there'd been car marking work done, what, on platforms?---Yeah, yeah, specifically for the set out and survey and that sort of thing.

And that work had been done, had it?---Yeah.

40 And he was to falsely pretend that he was the person that did that work?---If he was asked, correct.

Okay. Do you know who did the actual car marking works? Was it another company?---It was self-performed within Downer.

Self-performed within Downer, was it?---Yeah.

Okay. Do you know who by?---Look, we, we had some labour hire, obviously, a couple of labourers and then it was managed internally by, by our engineers.

10

Okay. Now, am I right in thinking that you or Tresca didn't receive money from RJS Services in relation to any other project other than, well, including Sanber Group, Victoria Street, Central and Lithgow?---Correct.

Okay. If we can go to volume 8.1, page 48? This is a profit and loss statement for the year ending 30 June 2020 for Tresca. Do you see that?---Yes.

20 So it had declared sales of \$579,000. That's right, is it? At the top, sales, 579.236?---That's what it says, yeah.

Was it more or was it less?---I honestly can't remember what, what the turnover was that year.

Okay. But it seems like an accountant's been told that that's the figure or - - -?---Correct.

- - - provided with information and determined that that's the figure?  
---Yeah.

30

And then costs of goods sold are identified as \$171,000. What were the costs of goods sold that Tresca expended money on in that financial year?  
---It would have been materials.

But for what?---Whatever was sold.

But Tresca was just collecting cash, wasn't it, from rail projects?---No, no, that's not all it was doing.

40 Right.---So there would have been other projects that I would have delivered.

Okay. Well, the table we just looked at, which was volume 2.5, in that financial year identifies \$344,583 worth of credits to the Tresca account from JTG Services. So you say the balance was made up from what, from other works that Tresca was performing?---Correct.

All right. And that's - - -?---That cost would be associated with that other work rather than the JTG work.

10 Okay.---Yep.

And so that's 180 odd, sorry, more than that, some 230 odd thousand dollars of further income that, what, you obtained through consulting services through Tresca, did you?---Correct, yep.

Of which no disclosure was made to Downer that you were doing those works by way of secondary employment?---Correct. Yeah, correct.

20 Okay. All right. And you paid yourself or did you pay your wife a director's fee of \$185,000 that financial year? If we go back to volume 8.1, page 48.---Yeah.

Was it you or your wife?---It would have been to me but it, it probably got paid to her.

Okay. And we can go to the next page and see the profit before income tax of \$142,479. And if we go to page 51, please, you can see that as at 30 June 2020, Tresca had \$223,825 in the bank. That's right, is it?---I might not be looking at the right screen.

30

If you look at current assets, cash and cash equivalents, at the top, 223,825. ---Okay, yep, yep.

Yep. So that's correct, was it?---I'd assume so, yeah.

All right. Just going back in time a little bit. In 2019, so before the JTG invoices to Downer, you registered Mr Abdi's wife Jessica Tosh and a [REDACTED] with Chandler Macleod for the purposes of performing work on behalf of Downer, is that right?---Correct.

40

And again no work was performed by either Ms Tosh or Mr [REDACTED], yet they were paid money, is that right?--- Yeah, correct.

And we can go through the documents, but you set up their applications, did you, with Chandler Macleod?---I submitted the request, yeah.

All right. Perhaps if we start with Ms Tosh. If we go to volume 2.3, page 206. So here you can see 8 September 2019. You're requesting for Mr [REDACTED] and Ms Tosh to be set up as new starters. Do you see that?

10 ---Yes.

Why was it that you did this?---I guess the same reason I approved the JTG invoices with no work being done.

But what is that reason? Was it to enrich yourself?---I don't think I used this, this income on myself but, yes, that, that's the idea.

And to, to enrich your good school friend, Mr Abdi?---Yeah.

20 Okay. Were you acting in the interests of Downer when you proved payments in connection with these wage amounts?---No.

Okay. And what was this project for that they were being brought on as new starters?---On the title it says NIF so I'd say it was for that, for the NIF project.

All right. And again, how was it that you thought, you must have, when, when you made this request to have them brought on as new starters in 8 September 2019, you did that knowing they were never going to do any work, correct?---Well, it didn't start that way, but, yes, when I, before I sent that email, yes, that was the intent, but initially [REDACTED] was looking for work at Downer.

Right.---And he had reached out, I, I can't recall now, but we might have done an interview with him and then, yeah, so he had an interest in working at Downer and then, but he never left Transport.

Okay.---And it never, it never went ahead, but that's, from what I recall that's how that discussion or this idea started, is when [REDACTED] was, was looking to work for Downer.

40

Okay. If we focus on Mr [REDACTED] then perhaps to start and go to volume 4.5, page 131.

THE COMMISSIONER: Just so that I'm clear, so at the point where Mr [REDACTED] had requested or made inquiries about obtaining a job, you say that, that didn't start off that it was intended that he perform no work, but at the point that you sent a request through to Chandler Macleod, the intent was that he be placed on the payroll, so to speak, but not perform any work?---Yeah.

10

Okay. Thank you.

MR ENGLISH: So here you can see Mr [REDACTED]'s registration contract. Do you see that?---Yes.

And if we go down two pages, please. It identifies you as the referee. Do you see that?---Yes.

20 And why was it that you listed yourself as a referee there?---I think he listed me because I, I'm the one who put him forward.

Okay. So is your evidence that Mr [REDACTED] filled out this form?---Yes.

Okay. It says, "Start date for this role, 5/1/2016." Is that wrong?---Yeah, that's incorrect.

Okay. So this is an online form, is it, that you understand Mr [REDACTED] filled in himself?---Yeah, I'd say this is part of the process of registering with Chandler Macleod.

30

All right. Well, if we go to page 144, we can see here it says, "Accept, submit, accepted on 9/9/2019," do you see that?---Yeah.

By that stage do you say that Mr [REDACTED], to your understanding, was aware that he wasn't going to perform any work in connection with this role?---Yeah.

40 How did that conversation come about between either you, Mr Abdi or Mr [REDACTED] about what work he would or would not do?---I never actually spoke to [REDACTED] directly about this. It was via Nima.

Okay. And what did Nima tell you about it, about what [REDACTED] was going to do or not do?---I don't really remember anything specific.

But Nima came to you saying, "[REDACTED] wants a job at Downer." That was the first point, was it?---That was initially, yeah.

There was an interview with him.---Yeah, and then it didn't, didn't work out for whatever reason. I can't remember.

10 Okay. And then how was it that someone who genuinely wanted a job, to your understanding, was then willing to agree to be paid to do no work? Did Nima tell you anything about that?---Yeah, so he can make money. No, I don't, I don't recall a specific conversation with Nima about that but he said [REDACTED], you know, he was onboard with it.

If we go to page 175.

20 THE COMMISSIONER: Would you just reiterate for the benefit of those people who are following the matter on the livestream that there is a non-publication order which is still in force in relation to [REDACTED]

MR ENGLISH: Thank you, Chief Commissioner. You can see there this is a document that looks like it has been generated by Chandler Macleod saying congratulations to [REDACTED] "Chandler Macleod is pleased to offer you the following assignment." And then if we skip down two pages, the time sheets appear and you can see approver name is you. Do you see that?---Yes.

30 Who prepared these time sheets?---It was basically everyone. So we, if, if for whatever reason they didn't do it a week I would do it but, yeah, it was, it was everyone.

So that's [REDACTED], you and Nima Abdi, is that right?---Yeah, correct.

But you were responsible for approving them falsely, correct?---Yes.

40 And then if we go down to page 183 we can see that it identifies on 23 October 2019 that Mr [REDACTED]' gross earnings at that point was \$25,571 and his net pay was \$15,418. Did you receive any of that money?---Yes.

How was that paid to you?---It was in cash.

And what percentage of Mr [REDACTED]' wage did you receive?---It wasn't a lot because he, he would have taken out a portion to cover his tax.

Well, but it's already taken out. Do you see "Net pay"?---Yeah, okay. And then he would take out some super allowance as well. So he had, he had a - -

10 Well, there is a super allowance there as well. See "Employer super" in the right-hand column?---Yeah. So what Nima has said is that he's got a, he had a spread sheet to work out what the net payout figure was and he would deduct those things from the, from that.

And whatever [REDACTED]'s net amount was, what were you getting, 25% or something or 50%, how much?---Yeah. It would be, it would be split between me and Nima.

20 What, 50% split in two between you and Nima?---Yeah. From memory, yeah.

And [REDACTED] gets 50%?---Yeah. That's what I recall, yeah.

And if we just go in relation to - - -

THE COMMISSIONER: Sorry. You must have had some concerns about this when it was proposed, or did you not?---I did have concerns about a few things. I don't specifically remember this, but yeah.

30 MR ENGLISH: How did you have significant enough trust in - I withdraw that. How did you have enough trust in Mr [REDACTED] to cut him on this hustle?---Well, I think he was cutting us in, not the other way.

THE COMMISSIONER: Sorry?---I think he was cutting us in rather than us getting, cutting him in.

MR ENGLISH: But you're taking the risk because you're approving setting it up et cetera, et cetera, for someone you don't actually really know, is that right?---Yeah, correct.

40 So how was it that you were confident enough to be able to place your trust in Mr [REDACTED] to carry out this fraud?---I, I guess Nima trusted him.



Is that what Nima told you?---Maybe not in those words but that's how I interpreted it.

Had you seen anyone else doing something like this at Downer that gave you confidence that you would get away with it?---Seen, no.

Heard?---Yeah.

10 What had you heard?---Look, again, nothing specific. It was just people saying that there's, there's contractors getting overpaid and people getting cut in but that's just, he said, yeah. I don't have any - - -

THE COMMISSIONER: So were there any checks on you, as far as this is concerned? I mean, was this reviewed by anyone or - - -?---I'd say no.

MR ENGLISH: And this is in connection with a NIF project, isn't it? ---Looking at the date, yeah.

20 So Transport for NSW has assigned a portion of money that's gone to Downer to carry out works on the NIF project and you were able to do this with essentially is it fair to say on your evidence, little to know approval checks in relation to your financial delegations?---Look, again, the finance approval side of things sort of sat on, online system within a different area, so I'm not sure if they actually did, it get through a secondary review or approval. I wouldn't, I wasn't aware of that.

But nothing was brought to your attention about any irregularities in relation to the JTG invoices - - -?---No.

30

- - - or the Chandler Macleod invoices?---Correct.

All right. If we can go please to volume 2.3, page 187, this is Jessica Tosh's registration. Do you see that?---Yes.

Do you know who filled this out?---I would say Nima.

When you say you would say, what do you base that on?---That's just my assumption.

40

Okay. Did you ever speak to Ms Tosh in relation to her registration with Chandler Macleod - - -?---No.

- - - or the work she was purportedly going to carry out?---No, I didn't think she knew.

Okay. Again, if we scroll down a page please, you're identified as a referee. Is that something you say Nima would have entered - - -?---Yeah.

10 - - - onto this application form?---Yeah. Correct.

Does anyone have to sign these forms or is it just a tick the box online thing?---The one we're looking at now?

Yeah.---It's a Downer process so I'm not, I'm not a hundred per cent sure - I mean, it's a Chandler Macleod process so I wouldn't know.

Okay. And again if we go to page 210, you can see the timesheets.---Yes.

20 You said last time in relation to [REDACTED] that the three of you filled them out. In the case of Ms Tosh, did she ever fill out a timesheet?---I don't think so.

It was just you or Nima, was it?---Yeah. Correct.

And then if you can go down to page 218, then you can, you can see there's the year to date payment about of \$22,263, and this is at 5 February 2020, and then net pay \$12,132. Do you see that?---Yes.

30 And what if any percentage of that did you receive?---Honestly, I'm not too sure.

Well, did you have an agreement with - - -?---But it would have been the same, yeah, the same arrangement.

But this time was it 50% that you were going to get as opposed to 25% because really Ms Tosh was, to your understanding, not away of this scheme?---Yeah.

40 So you got more money from the Tosh payments than you did for the [REDACTED], is that right?---I believe so, yeah.

Okay. And was that paid in cash again to you?---Yeah. Correct.

Okay. You've said on a number of occasions when I've asked you whether you've seen or heard of anything at Downer, that you haven't seen anything specifically. Did you ever cover for Nick De Palma in any way when you worked at Downer?---What do you mean by "cover"?

Did you ever cover shifts for him or have him cover shifts for you?---Yeah, I'd say so, yeah.

10

What were those circumstances?---It'd be business as usual, it'd be, say, if I, if I need to duck out early out of a shift or I need to drive back to Sydney, for example, so I leave at 3.00, he'd stay back and watch, watch over the site and if he needs to do the same, whether he's got something for the kids to go to or whatever, I'd cover for him. It's just something you do, yeah.

All right. And what about on days that you never turned up at site, would you cover for each other?---Well, no. His, so his role is different to mine. So he's the site supervisor, so he's responsible for managing the site. I'm the project manager, but if, if he needed help covering something, I'd, I'd be there for him and he'd do the same for me. If I was, for example, I don't know, I can't think of any example, but if I have to leave something early, I'd say, "Nick, can you sort this out for me?" he'd, you know, he'd help out, as well.

20

Sure. But what about occasions when either of you didn't turn up at site, would one cover for the other, to cover a whole day?---No. How can we do that? No.

30 Okay. Do you know if Mr De Palma had any connections with any subcontractors that might have been irregular?---No.

I just want to ask you some more questions about Victoria Street now, if I can. You might recall yesterday in the context of your dealings with the financial issues at the end of the project, you said you sort of left it up to Tony and Nima to deal with Raja. Do you remember that?---Yeah.

40

And I asked you whether you'd issued any threats to Mr Sanber and you said "no". Do you recall that?---Yeah, I, I wouldn't be aware of them. I wasn't aware of any.

And if we go to volume 18.7, please, page 285? You can see these are some messages between you and Mr Nguyen and you're recorded as Abdal Nima. I know it's a little bit confusing, but that's your number ending in 341, isn't it?---Yeah, it is.

Well, you can see on 12/4/2018 at 10.12, you say, "I think we scared him straight. It doesn't look like he played with the numbers." Do you see that?---Yeah.

10 That suggests two things, one that you were dealing with Mr Abdi in relation to these financial issues. Do you agree?---Yeah, yeah. I was at that stage, yeah.

And, secondly, that you might have said something to him to scare him. Do you agree with that?---To Raja?

Yeah.---No, I don't think so. Well, you can ask him. I don't think I ever, we, we were questioning his numbers. And I know Tony was speaking to him, as well, but I've never, if that's what you're saying, I've never  
20 threatened him.

Okay. And I asked you this, transcript 1004 yesterday, "And so far as you understood it, it was Nima and Tony who went back to Mr Sanber to try to - - -" and you said, "Yeah, yeah." " - - - make sense of his doctored bank records and the like?" And you said, "That's right. Yeah. I mean, they shared some of the statements and stuff with me and so, you know, here's all we've got but I don't think I was communicating with Raja at that stage." And then I asked, "All right. And are you aware whether any threats were issued to Mr Sanber during this stage of negotiation?" And you said, "No,  
30 I'm not." Do you see that?---Yeah.

Well, it sounds like firstly you're dealing with Raja in relation to these issues as at the 12th of the fourth 2018. Would you agree with that?--- Commissioner, I can't pinpoint that exact moment when I sent that. I was speaking to Raja until a certain point and then I pulled out. So even, even when we were looking at the, the bank statements, I guess the, the person who, who took the lead on it was Tony to speak to Raja because I sort of gave up on it. I said, "Look, he's done what he's done. Let's move on." But they wanted to, to, obviously they had a share and they, you know, they  
40 wanted to pursue it with him. So at some stage, I don't know if it's the, you know, that date in April or a week after or a month after, I stepped out of it.

All right. Well, how did you and Nima scare him straight? What did you say or do to Raja to scare him straight?---I think it was, it was the discussions that Tony had with him. It's not, I don't think it's necessarily I said but we were questioning his, his numbers.

If we can go to page 288, please? This is you saying, on the 12th of the fourth again at 11.14, "I just did a spread sheet." Do you see that?---Yep.

10 And you say below, "What I got back is 241,547 is owed to us." Do you see that?---Yep.

And then if we go down to the next page there's some discussion about your numbers and then you say also he has 40 K BGs still with me".---Yeah.

What's BGs?---Bank guarantees. It's not with me, it's with Dower, yeah.

And then if we just look at that message at the bottom, "Also keep in mind Mick and Paul payments are inc GST. My numbers are wrong because I  
20 assume all ex GST." Do you see that?---Yep.

So it seems what you were doing was you were analysing the bank statement that Mr Sanber provided with his hand annotations.---Yep.

And the you were creating this spread sheet that I showed you yesterday that you sent through on Guerrilla Mail back to Raja. We'll come to you, I'll make it a bit clearer, but it seems that's what you're doing. If we go down to the next page you say, "I'll tidy up" and then you give some more figures. You say, this is at 11.22 on the 12th of the fourth, "Okay, we're owed 348  
30 inc GST. We'll see what you get in the morning." And then if we go to the next page you - - -?---Sorry, just before you move on from that.

Yeah.---So there was two spread sheets there, I remember that. Tony was doing one and I was doing on, yeah.

If we go to the next page you can see here that you sent two spread sheets by Mr Nguyen, and we'll come to those, and that's on the 13th of the fourth 2018. Do you see that? So he's sharing his spread sheets with you.---Yep.

40 And then if we go to the next page it says, "From the transaction Raj withdrew 200 K." Do you see that?---Yep.

And do you remember I showed you that spread sheet yesterday where it said, "Directors 221"?---Yes.

Do you remember that?---Yeah.

And then you say, this is on the 13th of the fourth at 7.28, "You and Hairy around this morning?" Who's Hairy?---That's Nima.

10 "We should work through this together." And then if we can go down one more page, please. This is again on the 13th of the fourth, "Okay. Let's go through it over the phone and compare notes. What I ended up with is close. I want to send the final invoice out ASAP." Do you see that?---Yes.

Who was that invoice going to go out to?---I'm not sure. It might be JTG. That's the only people I would invoice.

What about Sadco? They were issuing invoices. Did you have anything to do with sending invoices out on their behalf?---To, no. No.

20

Okay.---No, they'd go to Raja directly.

All right. And how did you come to learn of the involvement of Sadco? ---Well, I knew that's how the, that's how the cash was, well, that's what I think was happening.

Well, how did you know that? How did you think that was the case?--- Well, it's marked in the statements and even before the statements, you know, we would discuss it.

30

All right. Are you aware of a group of accountants called BANQ Accountants?---No.

Did you ever attend any accountancy offices with Raja or Nima or Tony Nguyen?---No, never.

Okay, but at some stage you must have been told that Sadco were being used to help draw cash out of Sanber Group?---Yeah. Yeah, I would say so, yeah, otherwise I wouldn't know.

40

And you said yesterday you thought Sadco might be paying 30 to 40% sort of cut or commission to facilitate this cash arrangement.---That's what we did a backward pass to work out.

But that, that can't be right, right, because the whole purpose is to reduce tax to use Sadco, right?---No, it was to hide it.

Well, to hide, to hide money.---Yeah.

10 Who from?---Just anyone.

Well, the Tax Department is probably the most logical person, correct?---I would say so, yeah.

And you wouldn't be paying more than 30 to 40% in tax, would you?--- Well, we didn't intend on that but that's what happened, I'd say, because Raja would put a figure in but what would come out is significantly less.

20 A company pays 30% tax or something, right?---Yeah.

So why would you pay someone to facilitate a cash round robin arrangement when you're paying them the same as company income tax or more? It just makes no sense, correct?---Well, yeah, when you put it that way, yeah, but it was to be anonymous. That was the consensus at the time.

All right. What was the need for the anonymity?---Well, I mean, everybody was doing second jobs and getting paid when they shouldn't be.

30 According to you though, you were just getting paid for helping?---Yeah, but that's not right either.

Okay, for helping Sanber Group. All right. If we can stick with volume 18.7 and go to page 303, please. Did your accountants have anything to do with introducing Sadco into this arrangement?---No.

If I were to say to you that your accountants shared the same PO Box as Sadco, would that come as a surprise?---Yes.

40 Okay. This is page 303. You can see there you say, "Yes," and this is on 17 April 2018, "Yes, he says he wants to discuss for farm split with you and Hairy tomorrow. I want to go have dinner and piss off to bed, et cetera.

Don't have time to argue with SDL." Now, that email that I showed you yesterday, which is at page 206 of volume 8.1, that's the Guerrilla Mail email with the spreadsheets attached.---Yep.

So that was on 17 April 2018. So that's around the same time that you're discussing this farm split issue with Mr Nguyen. Do you see this?---Yes.

10 Okay. If we can go to that, please, volume 8.1, page 207. Actually, we'll start with 206 if we can, please. So here this is your email, using Guerrilla Mail, to Mr Sanber at 23:33:08 on 17 April. And your message to Mr Nguyen, when you said you want to go to bed, was at 9.44.  
---Yep.

So there you say, "To clarify, spreadsheet 2 shows farm costs split to all three." All three, is that Nima, Tony and Raja?---It'd have to be, yeah.

It's not you included in all three, is it?---No.

20 And then spreadsheet 3 shows farm costs split between 2. Okay, so then if we go to the next page, 207, you can see costs from Raja's bank statement. Now I think you were uncertain how you might have been able to get this information, but he annotated the bank statements to let you do this, do you recall? I can have it brought up on the screen. Would you like to see it?  
---I remember that. But I, I didn't think he annotated all the, everything. I think it was just the big ticket items.

Well, let's have a look. If volume - - -?---Commissioner, this looks like I made a comment on a spreadsheet and sent it back, yeah?

30 All right. Just if volume 3.9, page 123 can be brought on the screen, please. So this is the - you've seen this before. This is what Mr Sanber provided with the annotations.---Yep.

So you can see he's got various annotations, SDL, Sadco, Sadco. RS probably for himself, Raja Sanber, right?---Yeah.

Paul. You see that name Paul down the bottom?---Yeah, I see that, yeah.

40 Yeah, next page you can see Farm at the top, SDL, RS, Farm, RS, Mick, Mick. Another name. And it continues over to the next page, which is 125. And if we go to 126 you can see the last of the Sadco payments there at



67,353. And if you take it from me, if you add up these Sadco payments, you get to 554,280 and that'll have some significance in a moment. But you can see if we just scroll through the rest of this sheet, you can see where those narrations are. If we just scroll to the next page, the next page, and just finish on page 130, please. Then if we go back to volume 8.1, 207. I think we confirmed yesterday we prepared this spreadsheet, and in the top, sorry, in the middle of the page on the right-hand side, you can see profit breakdown, AZ, which I suggest is you, \$436,492, which you've denied ever receiving. That's right, isn't it?---Yep, yeah, that's right.

10

And if we go to the left-hand side down the bottom, "Credit to AZ as of 15/4/2018." Again, I suggest that's you. "AZ, \$370,895." Again, you deny receiving that money, correct?---Yeah.

Okay, so if we go, please, to volume 8.7, page 312. You might recall that I made mention of some of those spreadsheets that were provided to you by Mr Nguyen. 8.7, page 321. 18.7, I'm sorry. I'm sorry. So this was sent to you from Mr Nguyen, as I understand it, and you can see there's the Downer payment, there's the reference to Mick, Paul, SDL, SDL remaining, business expenses and tax. Do you see that?---Yeah.

20

And it says "total to split 770" and then it says "Sadco paid to date", do you see that, 554,280?---Yeah.

Remember that figure? That was what I - - -?---Yeah.

- - - that there was, if you had tallied up the Sadco payments on the bank account? And then there's a further 216,382 owing to Sadco. Do you see that?---Yes.

30

All right. So if you add up that 554,280 and 216,382, you can take it from me, it comes to \$770,662.---Yeah.

Okay. Now, your spreadsheet, the one that we were just looking at, which is at page 207 of volume 8.1, identified your payment as \$436,492, okay? ---Right.

Now, if you then, see you see that there, 436,492?---Yeah.

40

And if we go back to 18.7, page 312, if you add to that figure of 436,492 the amount that Raja Sanber took, at least that he identified he took in that

spreadsheet of 121,000, you get to a figure of \$657,492, right? 657,492. And then if you divide that by the amount to be paid to Sadco, that's 770,662, it's about 85% which would be more, I'd suggest to you, consistent with a 15% payment to Sadco for this service they were offering of washing the cash. What do you say about that?---Look, you, you've got a better understanding of the numbers than I do, yeah. I, I think there was a lot of, there was a lot of manipulation of these spreadsheets, so I'm not even sure what to make of it, but all I can recall is what we actually got in hand, yeah.

10

Well, what it shows down the bottom is it says "partner share". See this spreadsheet on page 312 of 18.7?---Yeah.

And you're not listed as a partner?---No.

So Raja gets a third, Tony get a third and Nima gets a third?---Yeah, that's right. I'm not a partner.

20 Yeah, because you got 50% in cash paid to you through Sadco, right?---I did get paid cash. I - - -

And it was 50% of the profits, minus Sadco's 15% or whatever it was. Correct?---Yeah. Yeah. That's right.

All right. So when you told the Commissioner yesterday that you only got paid between 40 and 80 grand or 60 and 80 grand - - -?---Yeah.

30 - - - that was just a lie, wasn't it?---No, I don't agree with that. That's what I remember. That's what, that's what I ended up with. I would know if I had, if I got \$400,000 in cash.

Yeah, well, that's something you might not want to admit in this Commission but that's something you received - - -?---That's fine.

- - - wasn't it, less 15,000, 15% something like that?---I, I don't agree with that. That's a very high number. That's not what I got.

40 There's no other, I suggest to you, explanation as to why you'd include that amount in your spreadsheet if you didn't know you were receiving it. Correct?---I, I don't agree that's my spreadsheet, Commissioner. I agree that I received that and I amended it and sent it out because even if you look

at the names at the top, even Monty's name is written as Mont. That's what Tony would call Monty, not me, so - - -

Remember yesterday you said Raja was getting the lion's share of the 50% of the profits?---That's what we worked out, yeah.

Well, that's a lie to, isn't it?---No, that's not. That's what we worked out.

10 Well, you said he was getting it because took on all the liability. What was the liability that Raja took on?---It's his company.

Yeah, but what was the liability?---Commissioner, it was his job. He said, there's, "We're not going to make any money. We're breaking even." He didn't want to pay anyone anything.

You knew that wasn't the case, didn't you?---No, that's a lie, yeah.

20 Yeah, because you were fixing the variations spreadsheet saying, "It's going to be a good claim. We'll smash it," correct?---Yeah.

Yeah. And so Raja had insurance, didn't he? Sanber Group had insurance, didn't it, to carry out these works?---Yeah.

What's the liability it was taking on?---I don't know what else to tell you, Commissioner. That's - - -

30 THE COMMISSIONER: Sorry?---I'm telling you what I remember. If you look at the other spreadsheet that Tony prepared, right, which he shared with Aidan, it has a completely different figure to these, right? So why don't we look at that? You can see there's discrepancies in every single spreadsheet for the same thing, for the same station.

MR ENGLISH: All right. We've been focusing on the spreadsheet that you are identified as the author, okay. That's what we've been working off, okay.---I, I understand that, but what I'm saying is I don't remember putting that together and I believe I made some highlights regarding the farm costs and commented on them in that email which I attached the document to and it made it my document.

40 All right.---That's what I suspect.

THE COMMISSIONER: At a practical level, however, with Victoria Street, excuse me, Mr Sanber was still with Transport for NSW wasn't he? ---I believe so, yeah.

And Mr Abdi was with Transport for NSW?---Yes.

And Mr Nguyen was still at Inner West Council?---Yeah, correct.

10 And I think you told us yesterday that one of your concerns was that you had to go out on site with some frequency to Maitland to supervise what was going on there.---Yeah, correct.

Because the others couldn't. So it would be correct to say that at a grassroots level, a large part of the management for this project was something that you took responsibility for?---It would be the site coordination, yeah.

20 And I know you say Mr Sanber took on some liability, but apart from providing the shell of the company, did he actually do anything?---Yeah.

What?---Well, he would organise all the subcontracts and he would make sure they, you know, they're engaged and they have the drawings and he'd buy materials, and he was managing the project. He was just not on the ground.

Was Mr Nguyen doing anything?---No. Well, he, he did towards the end of the project where, I think he was in the background doing the paperwork, safety documentation.

30 What sort of paperwork?---I think he was doing safety and - - -

You say you think. Do you know or you - - -?---Sorry?

Do you know or are you just surmising?---Well, I know, I know he did the quality or the close-out documentation for the job and the, maybe even the SWMS, things like that, but I might be referring to messages that I've seen throughout the last two weeks, not so much what I knew back then, where it appears he has been involved in inductions and that sort of thing as well.

40 And what did Mr Abdi do?---Not a lot.

Yeah. So a large part of this project rested on your shoulders, didn't it?  
---Yeah.

And that's a point that you make to the others in your discussions, wasn't it?---That's correct, yeah.

And wouldn't it therefore follow that to the extent that there was a profit share it was reasonable that a substantial cut of that went to you?---  
Reasonably, yeah.

10

And is that what happened?---No. That, that never happened as it was planned, Commissioner. Every single job they, they've ripped us, someone has ripped someone off. I don't think anyone would, any of these guys would agree to pay somebody 50% of their profit. That, that's never occurred on the projects that I've been involved in.

Yes, all right. Thank you.

20 MR ENGLISH: I just want to ask you some questions about whether you may have been asking in the best interests of Downer at particular times. You gave thus evidence yesterday at transcript page 962. I asked you, "All right. And what about the works awarded to Sanber Group? Did you only commit expenditure in relation to that project that was in the best interests in Downer?" And you said, "I would say so, yeah." Do you remember giving that evidence?---Yeah.

30 If volume 18.13 can be brought on the screen, page 117, please. This is an email we looked at yesterday from you to Mr Sanber on 9 July 2017 where you say, "I think we should also drop our price a little and say following kick-off meeting and thorough site inspection on Friday 'Please note that we have overestimated some of the work', attach revised pricing et cetera. I think we should come down to high 700s considering it's going to be a 300 K job. I think it's a good deal." Do you see that?---Yep.

Are you acting in Downer's best interests by telling Mr Sanber he should charge high 700s for a 300 K job?---No.

40 You appeared to give evidence yesterday that you were acting in Downer's best interests by wanting to award this job to Sanber Group at Victoria Street.---Correct.

Do you recall that?---Yep.

And that's because you wanted to get that job done on time, correct?---Yep.

And you wanted it to be completed to a professional standard, correct?  
---Yes.

And that would be in Downer's interests?---Yes.

10 And you wanted to achieve those goals, notwithstanding you knew or became aware at some point that Sanber Group had no employees, correct?  
---Yeah.

And you failed to bring that knowledge to the attention of Downer, correct?  
---Correct.

All right. And then you gave this evidence at transcript page 976. You were asked a question by the Commissioner, "Well, why did you feel the need to lie?" And you said, "Well, because I don't think they presented  
20 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?" And that was you referring to Sanber Group, right?--  
-Yep.

So if you thought Downer had looked at the company properly on its merits without your intervention and not given them the work, why do you think you were acting in Downer's interests by assisting that company to get the job?---Because I believed they could do it and they did do it.

30 But you're saying if someone objectively looks at this company on a proper assessment they will decline to give them the tender.---Agreed.

And it's only through my assistance and duplicity with respect to my employer that they will be accepted to do the job. Was that what you were thinking?---I, I didn't understand your question.

Well, without you - we went through all that evidence yesterday where you were giving inside information on one hand and assisting Sanber Group and on the other hand you're not being full and frank to your employer because  
40 you're working, you've got two hats on at the same time, correct? You're not disclosing that conflict of interest.---Correct.

Is that in Downer's interests, for you to behave like that?---No.

So how could you presenting a company in that manner possibly be in Downer's interests?---At the time I thought it was.

Okay, and you knew it was public money that was being spent on these projects, correct?---Correct.

10 How could it be in the public interest for you to behave that way?---It's not.

That's the examination, Chief Commissioner.

THE COMMISSIONER: Any requests for cross-examination?

MR ABBAS: No, Chief Commissioner.

THE COMMISSIONER: Yes.

20 MR ENGLISH: Just before you might adjourn, Chief Commissioner, noting the time, yesterday some documents were brought on the screen regarding the metadata for the spreadsheets we looked at at page 207 of volume 8.1. That was made MFI 13. I now tender that. I'll hand a copy up to you, Chief Commissioner.

THE COMMISSIONER: Exhibit 108.

MR ENGLISH: I think we might be up to 110.

30 THE COMMISSIONER: I'm sorry, yes, we are. 110.

MR ENGLISH: Thank you, Chief Commissioner.

THE COMMISSIONER: MFI 13 is now Exhibit 110.

**#EXH-110 – METADATA FOR AZIZ EXCEL SPREADSHEET  
(PREVIOUSLY MFI 13)**

40

THE COMMISSIONER: Yes, all right, what's the position with Mr Abdi?

MR ENGLISH: Mr Aziz.

THE COMMISSIONER: Sorry, Mr Aziz, rather.

MR ENGLISH: I'm conscious Mr Aziz wants to assist his father overseas. It'd be preferable if we could complete Mr Abdi's evidence and perhaps get back to Mr Aziz. We can perhaps liaise with his solicitors about when he intends to travel and might have to update the Commission if that's - - -

10

THE COMMISSIONER: Mr Abdi is due to give evidence later this week, isn't he?

MR ENGLISH: He was. We understand a difficulty might have arisen there. There's a couple of things that need to be discussed, probably, with Mr Abdi's lawyers as well.

THE COMMISSIONER: I see. Well, look, at this point, Mr Aziz, I'm not able to excuse you but we are aware of your circumstances, and as soon as the position becomes clearer, lawyers will contact your solicitors and let you know what the position is.---Thank you.

20

But at the moment, however, you can step down. You're free to go.---Okay, thank you.

**THE WITNESS STOOD DOWN**

**[11.32am]**

30 THE COMMISSIONER: Yes, we'll adjourn.

**SHORT ADJOURNMENT**

**[11.32am]**

MR ENGLISH: Chief Commissioner, Mr Kalyk's here with Mr Watters.

THE COMMISSIONER: Yes.

40 MR KALYK: Thank you, Chief Commissioner.



THE COMMISSIONER: Yes, thank you, Mr Kalyk. Mr Watters, is it? Watters.

MR WATTERS: Watters.

THE COMMISSIONER: Mr Watters, would you like to come forward?

10 MR ENGLISH: While that's happening, Chief Commissioner, might I just tender the briefs. There's two briefs in relation to Mr Watters.

THE COMMISSIONER: Just take a seat if you wouldn't mind. Yes.

MR ENGLISH: There's volume 11.1 of the Kevin Watters brief. I tender that.

THE COMMISSIONER: That will be Exhibit 111.

20 **#EXH-111 – PUBLIC INQUIRY BRIEF VOL. 11.1 – KEVIN WATTERS BRIEF**

MR ENGLISH: Thank you, and volume 11.2 of the Kevin Watters brief. I tender that.

THE COMMISSIONER: Exhibit 112.

30 **#EXH-112 – PUBLIC INQUIRY BRIEF VOL. 11.2 – KEVIN WATTERS BRIEF**

MR ENGLISH: Thank you.

THE COMMISSIONER: Mr Watters, will you take an oath or an affirmation?

40 MR WATTERS: Affirmation.

THE COMMISSIONER: Please take a seat. Mr Kalyk, have you spoken to the witness about section 38?

MR KALYK: I have.

THE COMMISSIONER: Does he intend to seek a direction?

10

MR KALYK: Yes, he does, thank you, Chief Commissioner.

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

20

I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection and this means you don't have to object with respect to each answer or the production of each item. Mr Kalyk has told me that he's explained this to you.---Yes.

30

And that you're seeking for me to make that direction---Yes.

So I'll therefore make the direction. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need

40

for the witness to make objection in respect of any particular answer given or document or thing 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 THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE**  
10 **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: Thank you.

MR ENGLISH: Thank you, Chief Commissioner. Could you just state  
20 your name and age for the record, please?---Yeah, my name's Kevin Watters and I'm 35 years old.

What qualifications do you hold, Mr Watters?---I've got a master's degree in civil engineering.

Where from?---University of Strathclyde, which is in Glasgow, in Scotland.

Have you got a Diploma of Project Management as well?---I do, yes.

30 Okay. When did you come to Australia?---2014.

And when did you obtain your university degree?---2010.

Okay. And who have you worked for since coming to Australia in 2014?  
---I worked for Gartner Rose who are a construction company. I then worked for Diona, who again are a civil engineering contractor, and Downer EDI.

40 When did you join Downer?---2016.

And what was the role that you came on board when you joined Downer?  
---Initially employed at Downer as a project engineer when I first signed up with them.

Sorry, I missed the last bit.---When I first signed up with them I was a project engineer.

Okay. And you worked your way through the ranks, did you?---I did, yes.

10 You went up to a project manager, is that right?---That's right, yep.

And then a construction manager.---That's right.

And what's the difference between a construction manager and a project manager?---A construction manager often will look after, I suppose, multiple teams or multiple sites, whereas a project manager may often only look after one site or one project team.

20 Okay. All right. So focusing on the TAP projects, where did you perform the role of project manager, in relation to what stations?---Harris Park Station upgrade and North Strathfield Station upgrade.

And in relation to your duties as a construction manager, what stations were you involved in in that role?---So initially, so the first five were Banksia, Canley Vale, Birrong, Roseville and Wollstonecraft Station.

And you said the first five. Were there a further lot of five or was there any other stations?---Not in my time at TAP, no.

30 Okay. Did you have a delegation as a project manager, a financial delegation?---Yes.

Do you recall how much that was up to?---At that time I think it was up to 50,000. I'm not a hundred per cent sure. It did change a few times (not transcribable)

And what about as a construction manager? What was your delegation then?---250,000.

40 All right. When it comes to selecting subcontractors to carry out a package of works at a station, who has the authority to make that decision? When I

say “who”, I mean which roles?---Ultimately the sign-off of any contract for a subcontractor is done by the project director.

Yep. And who else contributes to the decision-making process there?

---Look, there can be contracts administrators, Commercial Team, Project Teams, project managers, construction managers can all have inputs in to the recommendations and that will inform the project director on his sign-off.

10 All right. And as a construction manager, are you reporting to the project director?---Yes.

Okay, and the project manager, from each individual site that a construction manager is responsible for, report to the construction manager, is that right?

---No, I think with the reporting lines, the project managers report to the project director.

I see.---The construction manager, I suppose, sits to one side and provides assistance across all of the, all of the sites.

20

I see. So the project director has a number of reports.---Yes.

Does the commercial manager also report to the project director?---So the commercial manager from an internal system with Downer actually reports to a commercial manager for the state. It’s almost siloed. But he naturally does report to the project director on a more day-to-day sort of basis.

30 All right. When you’re performing the role of a project manager, can you just tell the Chief Commissioner what would your day-to-day duties at a particular station be?---Yeah. So we were obviously, during the delivery of, of a project or the delivery of works there will be a, a project team that’s assigned to a station. Usually it comprises of a number of engineers, a supervisor and the project manager. The project manager’s job is really to guide that team and make sure that everything that needs to be done on a day-to-day basis is being done. He is ultimately responsible for the, the performance of, of that project and, you know, any issues or, or things that may arise, he’s obviously the first person that has to deal with resolving any sort of problems. It, it, the project managers do a little bit of everything across the jobs.

40

There's a role for a superintendent, isn't there, a site superintendent?---Yes, yep.

Was does the site superintendent do?---Well, there's, sorry, a superintendent or a supervisor?

10 Superintendent.---Superintendent. So we used the superintendent role when I was a construction manager and he, he ultimately looked after the supervisors across all of the projects and provided inputs to, you know, methodologies of work, providing coverage if there was any sort of shifts that supervisors couldn't cover. Generally just being eyes and ears on the ground to, to feedback to myself, the project director and that sort of thing.

Was your direct report always Andrew Bedwani?---Not always. He certainly was when I was the construction manager and also for a larger percentage of the time that I was at TAP as a project manager. When I was at Harris Park, which was the first project I had, the, the project director was Greg Barnes.

20 You at some point met Tony Nguyen, you know who I'm talking about there?---I do, yep.

How did you meet him?---So during the time that I was the project manager at North Strathfield we also had a project at Kingswood Station.

THE COMMISSIONER: Which station?---Kingswood Station. The project manager from Kingswood Station went on leave for I think four to five weeks.

30 MR ENGLISH: Who was that?---Vlad Stanculescu. Andrew Bedwani asked me if I could cover both sites or both projects just to, to help with the team at Kingswood and give them a, a project manager to assist them. So I met Tony Nguyen, the building works package at Kingswood had been sent out for tender and was at its final stages when I was assisting and covering the project manager role. I was called into a final tender review meeting with our commercial manager, our contract administrator and Tony in an office in North Sydney and that was the first time that I met him.

40 And he was working at some point with Aidan Cox, is that right?---Yes.

Where did you meet Aidan Cox?---I think I was introduced to him in passing at the Kingswood project. Tony introduced him as the, I suppose, the project manager that was looking after the actual works.

And did you have more dealings with Mr Nguyen when you were performing the project management role at North Strathfield?---Yes.

And what about Aidan Cox, did you have more dealings with him there?  
---Yes.

10

When you were at North Strathfield?---Yes.

You participated in a record of interview with officers of the Commission on 17 February 2022. Is that correct?---Yep.

I just might hand this up, Chief Commissioner, and tender that and take the witness to some excerpts from that.

THE COMMISSIONER: Exhibit 113.

20

**#EXH-113 – RECORD OF INTERVIEW FOR KEVIN WATTERS  
DATED 17 FEBRUARY 2022**

MR ENGLISH: And if page 1 of Exhibit 113 can be brought on the screen, please? This is a record of that interview that you participated in.---It's not, no.

30

Sorry, that's not it. Sorry, Chief Commissioner, I'm told that the version that was handed up might need to be returned and I might need to replace that with the correct version, which I've got here. Perhaps if I can just seek access to the version that was handed up to the Chief Commissioner, that might be the correct version and it might be just what was put up on the screen wasn't correct. No, exhibit 113 as you marked it, Chief Commissioner, it was correct. I'm sorry about that. And we'll have 113 brought on the screen. Okay. Have you seen that document before, Mr Watters?---Yes, I have, yeah.

Okay. So that's the record of the interview you participated in on 17 February 2022 with ICAC investigators and your legal representative, correct?---Yes. Yep.

Okay. If we can go please to page 18, you're asked a number of questions there, page 18 of 37. You can see there's lines down the side of the page, 5, 10, 15, 20.---Yeah.

10 At about line 12 you've said in answer the question, "Have you ever declared a conflict of interest with Downer in respect to any subcontractors or any guys you may be associated with? Is there?" And you said, "No, I have not had any conflicts of interest." Do you see that?---Yep.

Is that true?---Correct. Yeah.

20 And can I ask you this, had you received training at Downer in relation to conflicts of interest before 17 February 2022?---Yes, so Downer during the initial inductions, certainly have part of the online induction there's slides around conflict of interest and they have rollouts of training programs, online training programs that, that they do sporadically as they need to.

So you felt like you were well equipped with sufficient knowledge to understand what an actual or perceived conflict of interest was at the time you participated in this record of interview?---I believe so, yeah.

30 Okay. At the bottom of page 18 you can see you were asked, "Have you or other people known to you in Downer ever deviated from the procurement or tender policies or procedures?" And you've said, "No." Was that a truthful answer?---Look, given the benefit of hindsight now and seeing the evidence that's been provided, look, I, I accept that I had deviated from tender procurement policies with some of the messages and things that I had sent.

All right. So you say you've deviated from procurement policies, and did you know that at the time you gave that answer or is that something you've only realised since seeing the evidence in this inquiry?---Yeah, I think in, with the benefit of hindsight and the, going through this, I certainly recognise that now, yes.

40 Okay. And what about other people, 'cause it says, "You or other people known in Downer"?---Yep.



Were you aware then whether other people had deviated from the procurement or tender policies or procedures at Downer?---No, I don't believe so, no.

Okay. Had you ever heard, you know you mentioned before Vlad Stanculescu?---Yes.

10 Had you ever heard a rumour that he was associated with a company called Dalski?---I don't believe, not, not until the start of this Commission.

Okay. If we go down to page 19, you're asked, "Are you aware of anyone at Downer who have, who've claimed for payments submitted by contractors for works in exchange for a financial benefit?" and you said, "No." Was that correct at the time, that answer?---Yes.

20 Are you aware - well, maybe I'll ask you this. If you've learnt anything that might be different to your answer, is that only on account of what you've learnt following this public inquiry?---Yes.

Okay. You're then asked, "Oh, okay. Have you or anyone else known to you at Downer accessed or disclosed any confidential information to subcontractors who were engaged by Downer?" and you said, "Not that I'm aware of." Was that a truthful answer?---Look, again I think with the benefit of seeing some messages and things that I'm sure we're going to go through that the content of some of them could be considered as, I suppose, confidential information. So I, I recognise that now, yes.

30 And you referred to some messages. Who were those messages between that you're just referring to there?---So myself and Aidan Cox.

Okay. And then you were asked, "Okay, yeah, are you aware of anyone who has been offered any benefits or yourself been offered a benefit by subcontractors?" and you said, "No." And was that a truthful answer?---It was, yep.

Okay. Other than what you've learnt in this inquiry, is there anything else you can add to that answer?---No.

40 Okay. If we can go to page 73. I'm sorry, it's page 36, sorry. You can see in the middle of the page, line 21, you're specifically asked there, "Yeah,

okay. In the North Strathfield Station car park, were you provided cash from Aidan Cox?" and your answer is "No." And then it's asked again, "You weren't provided any money from Aidan Cox?" and your answer is "No." Are they both truthful answers?---They are, yes.

You're aware Aidan Cox has given evidence to this Commission that he gave you \$8,000 cash in the North Strathfield Station car park? You're aware of that, aren't you?---I'm aware of that, yes.

10 Okay. What do you say in response to that allegation?---I deny it.

Okay. And can you give any more details? Do you deny ever meeting Mr Cox in the car park, for example?---I, I didn't meet Aidan Cox in car parks. We certainly met around the project, on the project, at a local café for a coffee. We certainly did, as would be the normal process with any subcontractor and head contractor. I did not meet him in a car park for an exchange of money.

20 Okay. Do you have some kind of theory that Mr Watters, rather than paying you money, might have asked - - -

THE COMMISSIONER: Sorry, you said Mr Watters.

MR ENGLISH: I'm sorry, that Mr Cox, thank you, Chief Commissioner, rather than paying you money, might have told Mr Nguyen that he was going to pay you money but kept the money himself?---I, I can't say. I don't know what dealings Mr Nguyen and Mr Cox had. There's been quite a lot of things given as evidence in the last two and a half weeks that I didn't know anything about, so - - -

30

Okay.

THE COMMISSIONER: So you're adamant that you never received any money?---I did not.

Did you request any money?---I did not.

You recall seeing some text messages that are said to have been sent by you?---Yes.

40

And you still maintain - - -?---Yes.

- - - that you didn't ask for or receive any money?---Yes.

I see. All right.

MR ENGLISH: What about a request for Tony Nguyen and/or Aidan Cox to pay for a Christmas party at Downer, or involving Downer staff? Do you know anything about that?---I, I had heard that they, they were in some way involved with potentially assisting Downer with an end-of-year event, but I  
10 certainly wasn't involved with the discussion.

What did you hear in relation to Mr Nguyen or Mr Cox being involved in assisting with a party in that way?---So at the end of each year Downer normally do a, a project-type event and in speaking to the office manager who was trying to organise, she had mentioned that RJS as one of the main contractors at that time, may be able to contribute towards whatever was going to be happening.

Who was the name of the office manager?---It was Laura Inglis.  
20

And what were the circumstances by which she told you that RJS could contribute to that end-of-year party?---It was just a discussion I think we had around what, what we're going to be doing come the end of year, and that was mentioned.

And so what were you going to do that you understood in your discussions with Ms Inglis?---I don't know. I wasn't, I wasn't party to that discussion.

What was your discussion with her then? As best as you can recall, what  
30 was it?---As best I can recall it was that end of year was coming up. Normally we would have something organised. And I suppose I just in passing I asked, "Have we got anything organised yet or do we have anything booked in?" Yeah. That was what the conversation was.

Did you offer to speak to Mr Nguyen or Mr Cox to assist with arranging that function?---I don't believe so, no.

When you say you don't believe so, do you have a recollection?---Don't  
40 have a clear recollection but I don't believe I was involved in that discussion, no.

All right. And your discussions with Ms Inglis, was that an oral discussion or was it email or, can you assist that way?---Just an oral discussion.

Okay. And the function, was it at a venue, somewhere to be hired or, can you assist with anything about those details that you're aware of?---I wasn't aware of the details of that particular instance, no.

10 Okay. Was that something that you'd experience at Downer before, that subcontractors were asked to contribute to Christmas functions?---Not necessarily Christmas functions but project functions, subcontractors would obviously come along and they would be involved. They may contribute out of the their own pocket to an overall event for, for all of Downer and that contractor.

And was there an expectation on subcontractors to contribute or - - -?---I don't think - - -

20 What was your understanding?---I don't think there was an expectation. It was, it was something that was I suppose asked. I mean, sometimes even the subcontractors may offer come the end of the year, "We'll put something on," or they'll, if we run a project where you have a number of major subcontractors they may come together and chuck in a little bit each and Downer would put some money in as well and they'll have a combined event.

30 Okay. I'd just like to play you a telephone call, if I can, and I'll hand up a copy for you, Chief Commissioner. It's from 14 May 2020, volume 21.3, call 1.1. It's session number 1456. The participants are Tony Nguyen and Aidan Cox and the extract runs from 14.29.55 to 14.32.51, and I tender that.

THE COMMISSIONER: Exhibit 114.

**#EXH-114 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 1456 FROM  
TONY NGUYEN TO AIDAN COX ON 14 MAY 2020 (EXTRACT  
FROM 14.29.55 TO 14.32.51)**

40 THE COMMISSIONER: Just one moment.

MR ENGLISH: If that can be brought on the screen and then played, please.

**AUDIO RECORDING PLAYED**

**[12.35pm]**

MR ENGLISH: All right. Mr Watters, this is a call on 14 May 2020 and you can see they're discussing, is it the Wollstonecraft project, is it about  
10 that time?---Appears, appears so, yeah.

And if we can keep up page 4 of 4 on the screen, please. "So the only person we have to look after is Kevin." That's Cox, "And Kevin will take 20 grand in an envelope, you know?" And Nguyen says, "Yeah, I know and then that's him happy." And the Cox says, "He, he, he'd be a fuckin' fraction of the price of those other wankers." And then Nguyen says, "Yeah, yeah, because he knows he's a - wow, fuck, yeah." Do you see that?  
---I do. Yep.

20 They certainly were of the view, that is Mr Cox and Mr Nguyen, would you agree as at 14 May 2020, that you were happy to take money in an envelope?---That seems to be their opinion, yeah.

How would they have got that view?---I, I don't know. I can't say.

Wouldn't it have been because Mr Cox had given you 8,000 in an envelope in North Strathfield and you happily took it?---I did not, no.

30 So have you got any explanation at all as to why they might be having a conversation about you in these terms?---I, I do not, no.

Okay. The next call is from 18 May 2020, session number 2356. It's a call again between Mr Nguyen and Mr Cox, and it doesn't have a call extract. I tender that, Chief Commissioner.

THE COMMISSIONER: Exhibit 115.

40 **#EXH-115 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 2356 FROM  
TONY NGUYEN TO AIDAN COX ON 18 MAY 2020**

MR ENGLISH: Thank you, Chief Commissioner. Exhibit 115 can be brought on the screen, the transcript. And the transcripts, like all these, will be tendered with the call. And if that can be brought on the screen and then the call, if it's suitable to you, Chief Commissioner, can be played.

THE COMMISSIONER: Yes.

10 MR ENGLISH: Thank you.

**AUDIO RECORDING PLAYED**

**[12.41pm]**

MR ENGLISH: All right, Mr Watters, you see there's some discussion between Mr Nguyen and Mr Cox about maybe cutting Vlad Stanculescu in?---Yeah.

20 And there's some references to Dalksi - - -?---Yeah.

- - - in the call. Were you not aware that there was an investigation within Downer into the conduct of Mr Stanculescu and Dalksi?---I was not, no.

Okay. If we go to page 2 of the transcript, you can see there Mr Cox says just before halfway of the page, "I'm telling you, we're going to get in anyway. Kevin's going to get us in." And then Nguyen says, "Yeah, right. Kevin will get us in but then Vlad will cook it up for us." Do you accept they've got some confidence in your ability to assist them to get projects it seems from this call?---That, that seems to be Aidan Cox's opinion, yeah.

30

And then if we go to the next page - - -

THE COMMISSIONER: Do you know anything that can substantiate that confidence?---Oh, I, I had a reasonably close relationship with Mr Cox and he expressed to me on a number of occasions that he was really keen to grow that business and to be involved with Downer-type projects and that they could do the works. So if the question was asked of me, you know, "Should we approach RJS during our tender process?" I would say, "Yeah, you should. You should give them a go."

40

MR ENGLISH: All right. And then if we go to page 3 you can see Mr Cox says, "It's no secret that Ben's already told me that Kevin Watters is singing our praises." So this is 18 May 2020. Was that true? Were you singing RJS's praises as at that date internally within Downer?---I don't think I would be singing their praises, no.

Well, take away that turn of phrase.---Yep.

10 Were you speaking of them in positive terms, RJS?---Yeah, I certainly wouldn't be speaking of them in negative terms. I, again, if I was asked about RJS's desire to complete works, then again I would suggest to anybody that was looking at tender packages, that they should consider them.

Further down the page Mr Cox says, and admittedly this goes through a number of hands, "Because Andrew Gayed said to Ben that Kevin Watters is pushing RJS." Were you pushing for RJS to win packages at around this time?---Wasn't pushing, no.

20 If we can go to page 5. If you divide the transcript from one to ten, just so you know where I'm referring you to, one being the first entry and ten being the bottom. At about number 8, point 8 of the page where it says Nguyen, "No, you'll have to go for a coffee." Do you see that?---Yeah.

He says that, "No, you'll have to go for a coffee obviously. Don't do that, have a coffee, don't be like Kevin, text you, 'Oh, give me a cut'." Is that something you've ever done text some saying, "Oh, give me a cut"?---No.

30 What about after that date, had you ever texted anyone sending a message that might convey that you want a cut?---Oh, conveying that I want a cut, no.

So do you accept that the reference that I've just take you to "Kevin" is you?---I, I, I don't know.

Well, there was no other Kevins at Downer at the time, were there, working on these stations?---No.

40 And so the Kevin that Mr Nguyen is referring to must be you. Do you accept that?---I, I can't say. I, I don't know what Mr Nguyen said there. It's possible.

Well, you can read it off the page.---Yes.

And let's assume that he's referring to you. He's obviously got the view that at some stage you sent a text saying, "Oh, give me a cut".---Ah hmm.

Do you agree?---That's what he seems to be saying, yeah.

10 And your answer to that is that that's just make believe, is it?---Yeah. I, I, yeah, correct.

The next call is from 30 June 2020. It's volume 21.3, call 1.4, session number 05265 and the extract is from 08.59.40 to 09.02.13. I tender that call, Chief Commissioner.

THE COMMISSIONER: 116.

20 **#EXH-116 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 5265 FROM  
TONY NGUYEN TO AIDAN COX ON 30 JUNE 2020 (EXTRACT  
FROM 08.59.40 TO 09.02.13)**

MR ENGLISH: Thank you very much. If Exhibit 116 could be brought on the screen, and it is brought on the screen, and played, please?

30 **AUDIO RECORDING PLAYED** **[12.52pm]**

MR ENGLISH: This is a call between Mr Cox and Mr Nguyen again. If we can go to page 2, about point 4 of the page, you see, "Mr Cox, what is attributing to you, see Kevin's game is this, Kevin's game is, 'You price it, price it comfortably. Make sure you've got yourself covered and then I'll give you the work, but before I give it to you I bump the price up and then you give me my profit.' That's his fucking game. That's when I just went to, oh, that's what he's doing on North Strathfield." What if any part of that statement by Mr Cox where he attributes that game, as he calls it, to you is  
40 incorrect, Mr Watters?---Well, just going back to what he said, "Kevin's game is you price it, you price it comfortably," I think there's some truth in



that. I would normally recommend to any tenderer or contractor to, you know, don't undercut themselves. Make sure that they have all the allowances in that they require. Ultimately means that there's going to be less disputes further down the line in the duration of a project. I mean, "I'll give you the work," isn't something that I could commit to. It has to go through a strict assessment and I don't have the power to give them work. "And before I give it to you I bump the price up and you give me profit," well, that's just false. That's not true.

10 You understand that Mr Cox has come here and given that evidence before the Commission.---I do.

And you understand it's not in Mr Cox's interests to disclose that he's paid a bribe to you?---I understand, yeah.

But it's in your interest to deny receiving a bribe, correct?---Correct.

Yeah. Okay. So I'll just ask you again, are you sure on your affirmation as you sit in that witness box that you did not receive a bribe from Mr Cox in  
20 the North Strathfield car park?---I did not.

Okay. All right. The next call. This is a call on 19 August 2020, session number 09539, between Aidan Cox and Tony Nguyen, and extract from 09.30.41 to the end of the call. I tender that, Chief Commissioner.

THE COMMISSIONER: Exhibit 117.

**#EXH-117 – AUDIO AND TRANSCRIPT OF  
30 TELECOMMUNICATION INTERCEPT SESSION 9539 FROM  
AIDAN COX TO TONY NGUYEN ON 19 AUGUST 2020 (EXTRACT  
FROM 09.30.41 TO END) (DUPLICATE OF EXH-073)**

MR ENGLISH: Was that 117?

THE COMMISSIONER: Correct.

MR ENGLISH: Yeah, 117. If that could please be brought on the screen  
40 and then played.

**AUDIO RECORDING PLAYED**

**[12.58pm]**

MR ENGLISH: So, on page 1 there do you accept that Mr Cox is telling Mr Nguyen that, "Remember that eight grand I gave you last year in cash?" and he's referring to you?---That's what Aidan has said to Tony, yep.

10 And do you have any explanation about how he might have formed that impression, that he had in fact given you that eight grand last year in cash?  
---I don't know, no.

And do you accept that Mr Cox seems to be of the view that him paying you that money means he can call on you to influence things for the benefit of RJS?---That seems to be what he is saying here, yep.

20 And have you ever influenced things for the benefit of RJS?---I, I would say I have certainly helped them in, in case of where there's been recommendations come through for RJS to receive a contract. I, I certainly haven't pushed back really hard on them. I, I would accept that.

But have you ever told Mr Cox that you can influence things for the benefit of RJS?---I, I suppose I, I, yeah, I think I've, I've said it's possible for me to influence it, you know, one way or the other and I, I suppose in that I am telling him that he really needs to give me the confidence that they have the ability to do the work because if he doesn't then part of my influence is that they may not get the work.

30 So is your evidence that you've told him that you can influence things but only if he satisfies you that they're capable to carry out the job to an appropriate professional standard?---Yes, yeah.

Is that a convenient time, Chief Commissioner?

THE COMMISSIONER: Ah hmm.

40 MR ENGLISH: Just before you might adjourn, Chief Commissioner, that Exhibit 117 is the same as Exhibit 73 which was previously tendered when Mr Cox gave evidence, so I don't know if - - -

THE COMMISSIONER: You want me to retrieve it?

MR ENGLISH: Well, it's the same call and same transcript, so it's been tendered twice.

THE COMMISSIONER: I'll mark, same as 77.

MR ENGLISH: 73.

THE COMMISSIONER: Sorry, as 73.

10

MR ENGLISH: Thank you, Chief Commissioner.

THE COMMISSIONER: We'll continue at 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[1.03pm]**