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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 2.00PM

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: Apologies for the delay. We're ready to resume. Mr Watters, you're subject to the same oath you took at the commencement of your evidence to say the truth.---Okay.

MR ENGLISH: Chief Commissioner, I'm just going to hand you up a copy of the transcript for Exhibits 75, 76, 77. It's one call divided into three - - -

10

THE COMMISSIONER: Just a moment. Was it an oath or an affirmation that he took? Sorry, affirmation. The same affirmation you took at the commencement of your evidence.---Yep, I understand, yep.

To say the truth. Thank you, sorry.

MR ENGLISH: So that was Exhibit 75, 76 and 77. There's three extracts on the one call and each extract was tendered individually. We're going to play those three extracts and the transcript - - -

20

THE COMMISSIONER: Yes, all right. You're tendering this?

MR ENGLISH: It's already an exhibit.

THE COMMISSIONER: I see.

MR ENGLISH: It's actually three exhibits.

THE COMMISSIONER: 75, 76 and 77. Okay.

30

MR ENGLISH: That's right. So each extract was a different exhibit.

THE COMMISSIONER: I follow. Thank you.

MR ENGLISH: That's just for convenience I hand you up that copy, Chief Commissioner.

THE COMMISSIONER: All right, thank you.

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MR ENGLISH: If that transcript can be brought on the screen and if Exhibit 75, which is extract 1, can please be played first.

AUDIO RECORDING PLAYED

[2.12pm]

MR ENGLISH: All right. If page 1 can be brought up, please. Mr Watters, you're there in the middle of the page saying to Mr Cox, "It's kind of between you and one other at this stage. Just making sure we've all got coverage on that." What did you mean by those words "Just making sure we've all got coverage on that"?---Well, I was aware that they were tendering for this, this package and there'd been a bit of negotiating happening between the Project Team and themselves. What I meant by that was, you know, making sure that you haven't cut so much out of this that we, we don't have coverage. We were concerned about the complexity of the project, particularly the first possession and how, how critical it was. I'm asking there, you know, make sure, you know, you're covered, and if you're covered and you've got what you need in there, then that will cover Downer as well and we won't be left looking, looking foolish after the first possession.

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All right. And then you say, "Just making sure we've all got coverage on that, and if we have, then we'll be able to get the second sort of onset tomorrow." What does that mean, "the second sort of onset tomorrow"?---I think that's actually supposed to say "if we have, then we'll be able to get the signatures onto that tomorrow".

"The signatures onto that tomorrow"?---I think that's what I said in the call, yeah.

30 We might just listen to that again.---Sure.

AUDIO RECORDING PLAYED

[2.15pm]

MR ENGLISH: So it's hard to tell, but you think, you're saying there "we'll be able to get your signature on that tomorrow", is that right?--- "We'll be able to get the signatures onto that tomorrow and hopefully get a contract out to you."

40

All right. Why would – your interpretation of the word “coverage” meaning, as you said, that they were going to be able to deliver the job, as I understood it, is that right? Is that what coverage means?---Yeah, so as long as they have, during the negotiations, that they haven’t, you know, what can happen in these instances is contractors cut their price down and down to try and win the work, and then we find that they don’t have enough, you know, within their, within their allowances to actually properly deliver. So I’m saying there, you know, make sure, you know, got all coverage that you need to deliver this critical scope, and that will actually keep Downer covered as well.

THE COMMISSIONER: Did you make a call like this to anyone else?
---I can’t recall, Commissioner. I can’t recall this phone call specifically until I’ve seen the exhibit.

I’m sorry? Is this the sort of phone call you make to people just before you’re going to make a recommendation?---Ah - - -

You ring everyone up and say, you know, “How you going?” and “I’m going to make a recommendation tomorrow” and - - -?---Yeah, I suppose to provide a little bit of context, this - - -

I’m sorry?---I said to provide some context, this call was made early September. We had a major possession, first major possession, shutdown in early October. So it was, it was quite unusual for us to not have contracts in place because we would usually expect any contractor to be really ramping up their preparations five or six weeks out from a significant possession. So in this instance I’ve given him this call to try and give him the confidence that his contractor’s coming and that would then allow him to go out and start to provisionally book in what he needs. Where, to answer your question about other contractors, where we have a shotgun start, where we’re starting very quickly, yeah, we have, I have and I know some other people in Downer are calling to a contractor that we might have an existing relationship with and say, “Hey, everything’s looking good.”

But this is more than just a call to check out that they’ve priced it correctly. This is telling them that they’re looking pretty good.---Yes, yeah, and that’s what I mean. They’re looking good and it’s likely that, you know, they’re going to get, going to get the awards which will allow them to, to start the proper planning and resourcing, et cetera.

MR ENGLISH: But if they haven't priced it properly, that's RJS's problem, right?---Well, look, ultimately, yes. However, if they haven't priced it properly and then failed to deliver and failed to perform, it's a bad reflection on Downer straight away in front of Transport for NSW.

Yeah, but you were getting paid a wage from Downer, weren't you?---Yes.

So you were going to get paid that wage no matter whether RJS delivered on the project or not, right?---Yes.

10

Okay, so just go to the next page. Mr Cox says, "You know, like, you know, you know, like, you know yourself, like, it's one man's profit is another man's risk as long as everything goes well and, do you know, we can all eat." Now, assuming he's referring to "we can all make money", "we can all eat", do you accept that's what he's saying there?---I think what he's saying there is that RJS were taking some risk here in - - -

Yeah.--- - - - doing this project and if it goes well then RJS will, will be okay.

20

Well, he's saying "we" though.---Yeah.

"We can all eat," saying, it suggests that you're included in that.---I don't read it that way. I think he's talking about "we" as in RJS.

Well, he, that is Mr Cox, doesn't seem to, would you agree, take your view that coverage meant, "Make sure you've priced the job properly." He acknowledges there's a risk in it and he won't know until the first possession whether they're going to make money or not, and he says, "Hopefully if everything goes well we can all eat." And you're saying that's just "RJS can eat", is that your interpretation?---That's my interpretation, yeah.

30

Notwithstanding he's used the word "all"?---Yep.

Okay. If exhibit 76 can be played, please, which is extract 2. I'm told there's an issue with the audio file. All right. Well, we might just have to go off the transcript here in relation to exhibit 76 for the moment, Mr Watters. You can see there it's in the same call - - -

40

THE COMMISSIONER: The - - -

THE WITNESS: What's the transcript?

THE COMMISSIONER: It's, the transcript has come off. It's now back on. Okay.

MR ENGLISH: So you can see the first part, Mr Cox says, "I can't see why we're not going to fucking knock it out of the park, to be honest with you," that's the first possession he's talking about, it seems. Would you agree?

10

THE COMMISSIONER: It's flicking on and off. Is there a problem? Thank you.

THE WITNESS: Appears to be, yeah.

MR ENGLISH: And says, "Yeah. Yeah. Well," and then you say, "No, that's fine. Yeah, just making sure I can influence, I can influence it one way or another, I suppose." What do you mean by that?---I at that stage had been sent a recommendation from the, the Project Team from Downer and had a discussion with them around them recommending RJS. I suppose that's just my, I suppose, final check in with RJS to make sure that all the things that they were really committing to were legitimate and they, they could do it, and I think there I'm saying that, you know, "If you can't give me confidence, that I'm confident that you've, you know, you've got this, got this covered, then I, I can influence it in such a way that I wouldn't, you know, endorse the recommendation that is coming through."

20

So this is you acting in the best interests of Downer, just ensuring that a subcontractor can carry out a project that it's bid for it, is it?---Yeah.

30

And then you say, "I suppose it's, like, and the recommendations come through a couple of options but obviously have to try and pitch it your way. Keep all of us, keep all of us comfy, then that's good." Why would you obviously have to try and pitch it your way to Mr Cox?---Oh, I think we've in this call been discussing, you know, the fact that it's likely that the, or more than likely at that stage that they were going to be awarded the contract and part of that was really my - - -

THE COMMISSIONER: No, no, no, that's not the answer to the question. Please listen to the question and answer it.---Yep.

40

MR ENGLISH: Why were you saying that you obviously have to try and pitch it your way, and that's Mr Cox's way?---Well, Mr, yeah, and RJS's way. Without my recommendation and my stamp of approval, I suppose, on the part of the recommendation that I was part of, then I would have to do that in order for them to win the work.

THE COMMISSIONER: I'll ask the question again. Why did you feel that you obviously had to try and pitch it to RJS?---Well, yeah, I think I'm saying that I obviously had to try and pitch it to them if they were going to be winning the work. I don't really know how else to explain it.

MR ENGLISH: Well, you started the call by saying there's "You guys are looking good. It's kind of between you and one other at this stage," you said in relation to Exhibit 75. And then now you're saying, "I can influence, I can influence it one way or another and obviously have to try and pitch it your way." What are you trying to convey there to Mr Cox?---Trying to convince, I suppose, show him you know that my recommendation as part of this is important and I will have to put you forward as part of my recommendation. I'll have to pitch it, I suppose, is the term I've used there, RJS's way.

And then you say "keep all of us comfy". What does that mean?---I think I meant keep us all, you know, comfortable. Comfortable that, you know, you've got what you need on the project and that Downer are not going to be let down by, you know, giving this contract to RJS and that we have confidence in them.

So you mean by that keep Downer comfy too, do you?---Yeah, keep all of us, so make sure that RJS are not, you know, in a bad position and also that Downer are going to have a contractor that will go out and perform.

Is this the kind of discussion you have with other subcontractors, as the Chief Commissioner asked a moment ago?---I don't think to this level of detail. I wouldn't say that that's a conversation that I would have with other contractors, no.

THE COMMISSIONER: Sorry?---I don't think that to this level of detail that I would have this sort of discussion with other contractors.

MR ENGLISH: 'Cause Mr Cox said "we can all eat" and that extract ended at 18:17:02 and then at 18:17:57, the next extract starts and you say "keep

all of us comfy". It seems like you're speaking not just - I withdraw that. It seems like you've accepted that "all" means not just RJS, "all" means you as well and Downer, on your evidence, do you accept that?---No, I don't think "we can all eat" had any reference to myself or Downer. That was an RJS comment from Aidan.

All right. If Exhibit 77, which is extract 3, can be played, please.

10 **AUDIO RECORDING PLAYED** [2.29pm]

MR ENGLISH: While that's coming up, I guess what I should suggest is that it seems like you're embracing the same language that Mr Cox is using, "we can all". What do you say about that?---In reviewing the transcript I, I don't think I am commenting on Aidan's comment "we all", I'm, I'm saying that all of us, as in RJS, the Downer site team, Downer as a business, are, are all going to be comfortable with what's been, been performed.

20 Exhibit 77 is about to be played, I think.

AUDIO RECORDING PLAYED [2.30pm]

MR ENGLISH: All right. So here you're telling Mr Cox once it comes through you can shape it because you're one of the last roadblocks for these things. What are you telling him there?---Oh, I suppose I'm saying as a roadblock, you know, without, without me giving my endorsement to any
30 recommendation then it, it cannot flow forward or it can't go through to the next process of, of, you know, the, the process of the recommendation and the approvals.

So you're saying to RJS that your approval is critical?---I'm, I'm saying, it's certainly part of it, yeah.

Or you're saying to Mr Cox that, okay. You've used the word that you're one of the roadblocks for these things. So you can stop RJS being successful in relation to Wollstonecraft. Is that what you're trying to tell Mr
40 Cox there?---Yeah. Look, if I'm, if, if he can't, I suppose, convince us and really deliver then I, I certainly could be someone who would, you know,

make it, you know, not, like I said, not endorse the recommendation if I didn't have confidence in them.

But this is before delivery. This is, you know, at the tendering stage, isn't it, that you're having this conversation?---Yes.

And then at the middle of the page you said, "I will let you come up with an idea later on of what it's worth but it's all good. We can figure that one out." What are you referring to there?---I think this part of the transcript is,
10 we were, I think we were discussing other packages that they, RJS were tendering for. They, they tendered for a number of packages at Wollstonecraft Station. Internally within Downer we had had some discussions about if we were to award, you know, a contracts to RJS whether we should seek a discount from them, you know, in, in terms of asking them for a discount on one of the packages if they were to, to win multiple. That was something that we did with a few contractors. I think there I'm, I'm saying, well, look, plant the seed because I, I don't think Mr Cox was aware that that was going to be a request at that time but it was something that then came to him later on. Where I've said, "It's all good,
20 we can figure that one out", I, I think that's me just moving the conversation on. I, I don't think there was, I've really meant to say anything there. I've just said, "Look, we'll figure that out later on." That's something I would normally say.

You wouldn't normally figure out a price, would you, with the subcontractor that they should submit?---No. Sorry, we, when we get to the, the end stages of a, a tender process with a contractor, we will go into a negotiation with them, as would be the case with any contract, around possible price reductions and that sort thing, and that's when we certainly
30 would discuss that but we would normally always ask a contractor to propose a discount or a reduction based on a same rule, "We're going to need you to do something here."

But here at the top of the page, nothing's come through yet, 'cause you say, "Well, once all that comes through I can shape it."---Yeah.

So this is just talking about future events. Do you agree?---Yes, I think at this stage they had, they had submitted tenders for following packages but the recommendation hadn't come to me at that stage from the Project Team
40 who were doing the assessments.

And what do you mean by, towards the bottom, “I’ll get my teeth on it tomorrow and try, try it, get it, get it, pushed it through the right way”? This is, and remember, this is something that hasn’t been submitted yet.---Yeah, I think, I think at that point it’s at the very end of the call. I the next day was going in to review the recommendation for the first package which was already submitted, well submitted at that point and I had to go in and do my piece on doing the approval process. I think that’s what I was referring to there, just to say, “Well, it’s, that first package that we opened the call on, that’s what I’m going to go and look at tomorrow.”

10

What about this as an interpretation, Mr Watters, tell me if you agree or disagree, “When it comes through, I can shape it. I can try and shape it. You can come up with an idea of what it’s worth and we can figure that one out later, i.e. we can figure out what you owe me for doing this.” Mr Cox says, “Okay. Have I let you down in the past?” You say, “You know the madness, yes. What we’re doing is kind of mad, isn’t it?” And then you say, “I’ll try and get my teeth on it tomorrow and I’ll try and push it your way.” Isn’t this really a discussion about, “If you pay me a bribe, I will do the things you want to get you the contract that, you being RJS, the contract at Wollstonecraft”?---No.

20

You deny that, do you?---I do, yeah.

Next call, exhibit 78, Chief Commissioner. Would you like a copy of that or do you have it at hand, the transcript? I’ll hand it up.

THE COMMISSIONER: I’ve got it.

30

MR ENGLISH: You’ve got it, Chief Commissioner? This is an SMS. You can see it brought on the screen, it’s from 11/9/2020 between, it’s a message from you to Mr Cox, “Hey, mate. Kevin Downer here (personal number). Approved the first 2.8M for you guys this morning. Have the rest in my approval queue. Good result for RJS. Make sure we’re looked after well!” with a wink. What does that mean, “Make sure we’re looked after well!” with a wink?---Make sure that Downer are looked after well. You’ve got a significant contract from us. Don’t let us down.

40

What about the wink?---Yeah, look, I think I’ve, I’ve put that there to, certainly to soften the message and, you know, not make it looks like it’s, you know, “You better look after us.” I suppose I’m also doing him a

favour here by giving him an advanced heads-up that there's a good chance he's got a contract coming to him which I really shouldn't have done.

So your evidence is, "Make sure we're looked after well," is Downer.
---Yeah.

How is Downer looked after well?---If RJS go out, deliver and do better than even they have committed to, then Downer will ultimately look good as a result because it's our project.

10

Wouldn't you just say if that was really what you intended to convey, "We look forward to working with you on the project."---Yeah, you could say that, yeah. I suppose that's quite a formal way to say it. This was more of a, I suppose, a friendly message.

Or what about, "This is a big project for us all. I hope we can all deliver it well." What about something like that?---Yeah, that could have been sent, yeah.

20

Is this how you communicate with other tenderers, "Make sure we're looked after well!" with a wink?---I don't know about in, certainly not in messages, text messages, but we certainly have a discussion with a contractor and say, "Make sure we're looked after. You know, this is a good result for you. Don't, don't let us down." That, that wouldn't be uncommon to say.

30

Why did you feel so comfortable you could use this language with Mr Cox?---I thought I'd developed a good relationship with him and I, I developed quite a lot of trust that he was - well, misplaced trust, I suppose, but trust that he was really good at what he did and could really deliver on things. And RJS I saw as an opportunity because they were a new contractor into the space that we could rely on.

THE COMMISSIONER: So let me just get this clear. You've heard the evidence about how Mr Cox operated in relation to projects of this kind.
---Yes.

And you know what he was doing and how he operated with various people that are giving out contracts.---I do now, yeah.

40

Yeah, I see, yeah.---I didn't know at the time.

But when it comes to you, it was all very clean and aboveboard? He had a completely different modus of operation, is that what - - -?---I was unaware of anything that's been raised in this, Commissioner.

So he had a completely different way of dealing with you compared to all the other people?---I, I can't say. I don't know how he dealt with other people.

10 Well, you do now, you know now.---Well, based on what has been given as evidence is all I can - - -

So this was a very surprising revelation for you, is that what you're saying? ---Yes.

Okay, thanks.---Commissioner, I admit that the content and the way that these messages read is, is not good. I'm fully aware of that. All I can give is my explanation on what I see from these messages.

20 But he never sought to take advantage of your relationship with him?---No, the only advantage I wanted to get was to, you know, really impress onto him that he needed to go out and perform for us because it'll help him out.

You've mentioned that before.---Yep.

Yes, thank you.

30 MR ENGLISH: Why did you send this from your personal number, this message?---Yeah, look, I, this type of message really shouldn't have been sent, given that it was, you know, quite early in the, the final contract review and execution. I was certainly aware of that. I didn't want to have it on my Downer phone because I was, I suppose, worried about how that might be viewed by my employer.

So you were worried about the contents of this message?---Yes.

All right. And you gave - - -

40 THE COMMISSIONER: It suggests you thought about it.---Yes, I did, yeah. To give, to give a contractor a heads-up like this is really unfair, I suppose, and I was aware of that.

MR ENGLISH: Well, what's so unfair about that? If they're going to get it tomorrow, you're just giving them a couple of hours' notice, aren't you?
---Yeah, but it's not strictly following the, the procedure or the process that Downer have.

But isn't the real reason it was what you were conveying, "Make sure we're looked after well!" with a wink, that you were concerned about conveying, and you didn't want to put that on a Downer phone?---No, no.

10 You said a moment ago you saw this as an opportunity.---Yep.

What was the opportunity?---Well, RJS is a smaller-sized new company into the rail space. It was an opportunity. We, the rail market has quite a small pool of subcontract resources that we have access to, and that ultimately means that it's quite difficult for us to get competitive pricing. Part of our thing at Downer was to try to identify new, potential contractors, so I saw RJS as someone who was keen to make a good name for themselves within the market. They were really keen to work with Downer, obviously, and, you know, they were competitive on price from what we'd seen from those
20 submissions, so I thought that it could be a good opportunity for them to become someone that we could rely on for future projects as well.

Why wouldn't you have just said that to them in the terms you've just expressed using your work mobile?---I don't know, I can't say.

The next message is Exhibit 79. Do you have that, Chief Commissioner?

THE COMMISSIONER: Yes.

30 MR ENGLISH: I'm sorry, I've missed one. There's a new item for tender. It's a message from 22 September 2020 from Mr Watters to Mr Cox, session number 6386. I tender that.

THE COMMISSIONER: Exhibit 118.

**#EXH-118 – TRANSCRIPT OF TELECOMMUNICATION
INTERCEPT SESSION 6386 FROM KEVIN WATTERS TO AIDAN
COX ON 22 SEPTEMBER 2020 (SMS)**

40

MR ENGLISH: If that can be brought on the screen, please. The message reads, "All approvals sent through the system this morning for all three packages at WLS, keep it under your hat for now until the letter is sent out" with a thumbs-up emoji. Do you see that?---Yes.

Is WLS Wollstonecraft?---Yes.

So is this giving a heads-up to Mr Cox about RJS being successful for those three packages?---Yes.

10

Is that why you're telling him to keep it under his hat for now until the letter is sent out?---Yes. I suppose we, if we ever did make this sort of call or, or message to a subcontractor we would say, you know, it's looking good but please don't go out and put it onto social media and things because the, you know, the final contracts and things still need to be executed before you can do that.

20

Chief Commissioner, the next call is Exhibit 79. Do you have the transcript for that, Chief Commissioner? I can give you a copy if you don't have it at hand.

THE COMMISSIONER: I've put all these in a folder.

MR ENGLISH: You do have that?

THE COMMISSIONER: I do. Exhibit 79, yes.

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

30

AUDIO RECORDING PLAYED

[2.47pm]

MR ENGLISH: All right. Mr Watters, I suggest this is Mr Cox telling you the possession went well at Wollstonecraft and he made a bit of money. Do you agree?---Appears to be, yep.

40

And he says, "I will look after you." And you say, "Good to hear." Do you see that?---Yep.

That's I'll look after you in a financial sense, would you agree?---Oh, not, not what I read from it, no.

How do you read it?---Looking at what he says there, you know, I will sort you out maybe at Christmastime or something.

10 Yeah.---I expect that RJS would have put on a day out, a function, a lunch something for Downer as a team, particularly given that they had, you know, been very successful through that first possession period. It was quite common around Christmastime for contractors to take us out.

Okay. So even though he says, "I will look after you", you say that should be read as "I will look after the team at Downer"?---Yeah, that's, that's how I've saw that, yeah.

And then when he says, "I'll sort you out maybe at Christmastime or something", that's "I'll sort you and your team at Downer out at Christmastime or something", is it?---Yeah.

20 That's how you read it?---Yeah. Or, or also, you know, could have been dropped of a bottle of wine or a bottle of whisky at Christmastime, that was quite common for contractors to do as well. So that's another possibility, sort you out, well, maybe he was going to drop me off a, a nice of something at Christmastime.

All right. The next SMS is Exhibit 80, Chief Commissioner. Do you have a copy of that?

30 THE COMMISSIONER: Yes.

MR ENGLISH: If that could be brought on the screen, please.

THE COMMISSIONER: Is there a problem?

40 MR ENGLISH: Okay. This is exhibit 80. It's a text message from 26 November 2020 where you say to Mr Cox, "Okay. I can almost guarantee the Birrong package now. I know Jason wants an improvement on price. Don't drop much. You don't have to. Keep it and cover you and me," with some sort of smiley face, and it looks like you're using, it's a smiley face with a wink again. Do you agree?---Yes. Yeah.

“Keep it and cover you and me.” All right. Now, just focusing on those words, “Keep it,” means don’t drop your price too much, correct?---Yeah.

“Cover you,” means RJS, yeah?---Yep. Yes. Yep.

And “me”, “me” means you, correct?---Yes.

10 All right. So in that context, how do you say this is anything other than you asking for money from Mr Cox if RJS gets the Birrong package?---So with the Birrong package RJS had expressed a, a real interest in it, and I had spoke to the project manager there to say that RJS had done building works for us before and that I could recommend them and I’m saying here that, “Cover me. Don’t leave me, you know, exposed here if you go out there and make a mess of doing this job. Keep what you need in, in your price and make sure that you do the things well and make sure that I’m not left looking, looking like a fool because I’ve, I’ve recommended you to this team and then you don’t perform.”

20 But they already had the first possession at Wollstonecraft to go off by now as to whether they were going to perform or not, correct?---Yes, generally, yes, but the scopes were very, very different. This was a completely different type of scope for works.

This is just telling you, you’re at the stage now, you’re just saying, “I can almost guarantee you the package,” this isn’t anything about delivering the works, do you agree?---Yeah, that’s, at that stage it was in the, the procurement process, yes.

30 Yeah, and you’re saying, “Keep the money, cover yourself and cover me,” with a wink. Isn’t the only rationale inference to draw from that is that you’re asking for whatever is being kept to be split between RJS and yourself?---That was my never my intent with this message, no.

You might say that in the witness box now but when you sent it back on 26/11/2020, it was, wasn’t it?---It wasn’t, no.

40 You’re making, you’re giving a lot of evidence to distance yourself from what appears to be the proper and natural inference from these messages that you’re taking bribes from Mr Cox and you wanted that to continue. What do you say to that?---That wasn’t the case and I can only give you my explanation on, on what’s in front of me now.

And if I say to you you're giving knowingly false evidence about your explanation, what do you say about that?---It's not false. These messages, I, I was not asking him for money.

The next message is Exhibit 81. Do you have that, Chief Commissioner? Have you got a copy of that, Chief Commissioner?

THE COMMISSIONER: Yes, I do.

10

MR ENGLISH: If that can be brought on the screen, please. This is a message on 26/11/2020 from Mr Cox to you. "Shit, we put a provision sum in for floor removal based on timber. It's concrete, confirmed today. We were going to increase price by 6 K. Will this knock us out of pole position?" And then if we can go to Exhibit 82. That's Exhibit 82 on the screen. It says, "Not quite but will be very, very close. If it goes up 6 K, would be good to sharpen a little elsewhere to soften the blow." That's your message back to Mr Cox on 26 November 2020. Do you see that?---Yes.

20 So this started off with the first message, which was Exhibit 80, where you were saying, in relation to Birrong, that "Jason wants an improvement on price you, but you are saying don't drop it much, you don't have to. Keep, keep it. Cover you and cover me." Remember that?---Yes.

And then Cox tells you, Exhibit 81, that in fact he needs to put up his price by 6 K and he asks you, "Will this knock us out of pole position?"---Yes.

And then you say, "Not quite but will be very, very close." Now, that tender hadn't closed yet, had it?---Correct.

30

So you were giving him information inside the tender window which was confidential?---I did, yes.

And you've said, "If it goes up by 6 K, it will be good to sharpen a little elsewhere to soften the blow," so that you're still competitive, right, that's what you're saying there?---Yes.

40 All right. And is that an example where you gave evidence earlier and you said on reflection you might not have performed all procurement processes in accordance with Downer policy?---Yes, that's right, yes.

Okay. At that stage had you seen the competitors' tender prices for Birrong?---I, I can't recall.

Well, you must have known where the range was if you were able to say that a 6 K increase will just about knock RJS out of pole position.---I was aware that the tender was close or very close in terms of the number of contractors looking at it. Here and now, I can't remember the specifics of what that was.

10 All right. You might recall I asked you some questions about the Christmas party?---Yes.

And you said before the break you'd had an oral discussion with Ms Inglis, you weren't aware of the details and you didn't help out organising anything. Do you recall that?---Yep.

And she told you that RJS could contribute to that function. Do you remember that, giving that evidence?---Yes, yep.

20 And I think you gave evidence that you were aware that normally something would be organised and you had a conversation with her about whether anything was booked, is that right?---Yep.

All right. Overnight the Commission was provided with some messages between you and Ms Inglis.---Okay.

And I wonder if they might be brought on the screen, and I'll tender this document, Chief Commissioner.

30 THE COMMISSIONER: Exhibit 119.

#EXH-119 – MESSAGES BETWEEN KEVIN WATTERS & LAURA INGLIS DATED 1 DECEMBER 2020

MR ENGLISH: If Exhibit 119 can be brought on the screen. So these are some messages between you and Laura Inglis on 1 December 2020 at around 1.50pm and shortly thereafter. It starts with a message from - I think
40 the first message is at 1.50pm from you. "Hey, just wondering if there's any

more details available for next Friday, even general location. Need to plan guy's site movements, et cetera." Do you see that?---Yes.

And then she responds, "Yeah. I just didn't know if I should be posting it in the Outlook calendar invite." And then Ms Inglis writes again "Boat party 12pm. Pickup from Lavender Bay Wharf, returns 4pm." Were you aware that that had been arranged?---Looking at this now, yes. This, this refreshes my memory, yes.

10 Why was it that you weren't able to volunteer that information when I asked you some questions about that earlier today, about a boat being picked up and returning from Lavender Bay Wharf?---Yeah. I, well, I mean, I know that there, there wasn't any sort of boat party in the end. I, I didn't recall having this conversation with Laura.

You say, "How did you manage that swing that one? All provided for or do we need to bring anything with us?" Do you see that?---Yes, yep.

And she says, "All provided for. Food and drink is included".---Yes.

20

And then it seems she says, "I have my magic ways." Do you see that at 153?---Yep, yes.

And then you say, "I would definitely get some details in there so people know what to bring and where they need to be. Thinking of sites being shut down for the day".---Yep.

And then Ms Inglis, "Okay, no worries. We're just playing catch-up with all my emails and tasks. I was away last week." Do you see that, 154?

30

---Yes.

And then, "Yeah, no rush at all. Just was on my list of things to check".
---Yes.

And you say, "Great work on your magic ways as always." Do you see that?---Yes.

40 You were aware that RJS was contributing to a boat party for Downer, weren't you?---I, I don't recall. I, I don't recall. I recall now that a boat party had been discussed. I, I recall that RJS had been approached to

contribute. I, I don't know if that's, I don't know about the link between. I can't recall if I was made aware of that.

Of the which, you can't recall if you were - - -?---If, if RJS were paying towards a boat party, I, I can't recall that.

Well, your evidence in relation to Exhibit 79 where Mr Cox said, "I'll look after you" was that that was about Mr Cox or RJS contributing to a Christmas party. Do you recall giving that evidence?---Yes, yep.

10

And now you're saying you don't know whether RJS were contributing to this party at all.---Oh, I think in Exhibit 79 when we discussed it, I was thinking at that time that it was more for the Wollstonecraft team. Each of the project teams would often have a, a smaller function. I think this conversation with Laura is about the overall Downer Christmas function, which would be a separate event.

20

And why was it, if you recall, that this boat ride from Lavender Bay didn't go ahead, do you know?---I, I don't think it got internal approval from our senior management.

What about the fact that the warrants were executed at Mr Nguyen and Mr Cox's residence on 2 December 2020? Were you made aware of that?---I was not, no.

When did you find that out?---In the last two weeks of this Commission.

30

You didn't find out before that that such activity had occurred?---Not that I recall, no.

All right. And do you remember any disappointment when at some stage you found out that the Lavender Bay cruise wasn't going ahead?---Yeah, I think it, it would obviously be disappointing. It was quite an exciting possible event.

And did you talk to anyone about the fact that the cruise was no longer going ahead?---I can't recall.

40

Did you talk to Andrew Gayed, for instance, about that at all?---I can't recall. I may have.

Well, if it was something that disappointed you at the time, why was it that you couldn't remember it when questions were asked earlier of you this morning?---As I said, this conversation that you're showing on the screen now refreshed my memory to that. I don't, don't remember the specific details of what that Christmas event was.

THE COMMISSIONER: So did any party go ahead? You said that there was on in relation to the team for Wollstonecraft that you asked RJS to contribute to.---Yeah, I don't believe there was any events - - -

10

And you say this is a separate Christmas party that was for Downer.
---That's correct, yes.

You say it was Downer's internal management that stopped this?---I believe so, yes.

MR ENGLISH: Do you recall having a Christmas function at the Greenwood?---Yeah, we could have done. That was close to where our office was in North Sydney.

20

Didn't it go like this, that Downer was going to organise a boat but COVID came or for some other reason that was cancelled?---I can't recall. I don't know.

All right. And then some other inquiries were made through Mr Cox and Mr Nguyen to see if they'd pay for a boat for the Downer staff. Do you recall that?---I don't recall that, no.

Well, it seems like you were told that something had been secured. Do you see that?---Yeah. Yeah.

30

And then this Commission executed warrants on or around 2 December 2020 at Mr Cox and Mr Nguyen's residence then that idea was cancelled and you ended up going to the Greenwood?---Okay. Yeah.

Do you remember that?---That sounds familiar, yes, yeah.

Yeah. Thank you, that's the examination, Chief Commissioner.

40 THE COMMISSIONER: Is there any request for cross-examination?

MR KALYK: Just two questions.

THE COMMISSIONER: Have you sought leave?

MR KALYK: I have not. They arose in the course of today, Chief Commissioner.

THE COMMISSIONER: Sorry?

10

MR KALYK: The questions arise from matters that were given in evidence today. I only have two questions.

THE COMMISSIONER: What are the areas you're going to ask questions about?

MR KALYK: Sorry?

THE COMMISSIONER: What are the areas?

20

MR KALYK: The first question is about a meeting in North Strathfield. The second is about exhibit 76.

THE COMMISSIONER: In where?

MR KALYK: Exhibit 76 which is the call between Mr Cox and Mr Watters. There were some questions asked about "obviously have to try and pitch it your way".

30 MR ENGLISH: That was a transcript I handed up today, Chief Commissioner, with the three extracts on it.

THE COMMISSIONER: 76?

MR ENGLISH: Yeah, that's right. There was 75, 76 and 77 on the transcript.

THE COMMISSIONER: But which transcript are you referring to, just exhibit 76?

40

MR KALYK: Just 76, Chief Commissioner.

THE COMMISSIONER: Only, all right. You can ask those questions.

MR KALYK: Mr Watters, was there ever a time after Christmas 2019 where you met with Mr Cox in the North Strathfield shopping centre car park?---After Christmas, no.

10 Next question. You were asked about exhibit 76. Do you recall the transcript? Perhaps I can refresh your memory. You were, this was a call between yourself and Mr Cox on 10 September 2020 and you were asked some questions about this line, where you said to Mr Cox, “The recommendations came through, a couple of options, and obviously have to try and pitch it your way, keep all of us, keep all of us comfy.” Do you remember that extract?---Yes. Yes.

Do you remember being asked questions about what you meant by the word “obviously”?---Yes.

20 At the time you sent this message, did you have a view as to who was the most suitable contractor based on the merits?---Yeah, based on the discussions that I had had with the project team who had made the direction and my initial review, RJS appeared to be the best option for the project.

Thank you. Those are my questions, Chief Commissioner. Thank you.

THE COMMISSIONER: Thank you. Anyone else? All right. Mr English, what’s the situation with this witness?

30 MR ENGLISH: For abundant caution, maybe that he can’t be released just yet but it can be communicated - - -

THE COMMISSIONER: All right. So, Mr Watters, you can stand down. It’s not anticipated that you will be required to come back but it may be the case if something arises that needs you to be recalled, so if that eventuates you will notified through your lawyers.---I understand, yep.

But for the time being, you can stand down.---Okay.

40 You’re not discharged, however.---Thank you.

Thank you.

THE WITNESS STOOD DOWN

[3.11pm]

THE COMMISSIONER: Yes.

MR ENGLISH: They're all the witnesses we have today.

10 THE COMMISSIONER: All right. Adjourn until tomorrow.

MR ENGLISH: And that's scheduled for 11am?

THE COMMISSIONER: Yes, we'll be starting tomorrow at 11am.

AT 3.11PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.11pm]

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