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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 WEDNESDAY 5 APRIL, 2023

AT 11.00AM

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, we're ready to resume. Apologies for the late start. Mr Vardanega. Is that right?

MS DAVIDSON: Yes, Chief Commissioner. The next witness is Mr Vardanega. If we might commence by tendering the corresponding volumes of the brief?

THE COMMISSIONER: Yes. Thank you.

10 MS DAVIDSON: So the first volume to be tendered is volume 13.1 of the Vardanega ProjectHQ brief which would become Exhibit 120.

THE COMMISSIONER: Yes. Exhibit 120.

**#EXH-120 – PUBLIC INQUIRY BRIEF VOL. 13.1 - VARDANEGA-PROJECT HQ BRIEF**

20 MS DAVIDSON: Volume 13.2 of the Vardanega ProjectHQ brief, I tender that.

THE COMMISSIONER: Exhibit 121.

**#EXH-121 – PUBLIC INQUIRY BRIEF VOL. 13.2 - VARDANEGA-PROJECT HQ BRIEF**

30 MS DAVIDSON: Volume 13.3, the financial brief Vardanega.

THE COMMISSIONER: Exhibit 123.

MS DAVIDSON: 122, I think?

THE COMMISSIONER: Sorry, 122, rather.

40 **#EXH-122 – PUBLIC INQUIRY BRIEF VOL. 13.3 - FINANCIAL BRIEF-VARDANEGA**

MS DAVIDSON: I tender volume 13.4, the financial brief Vardanega cash deposit.

THE COMMISSIONER: 123.

**#EXH-123 – PUBLIC INQUIRY BRIEF VOL. 13.4 - FINANCIAL BRIEF-VARDANEGA CASH DEPOSIT**

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MS DAVIDSON: I tender volume 13.5, the financial brief ProjectHQ and Downer.

THE COMMISSIONER: Exhibit 124.

**#EXH-124 – PUBLIC INQUIRY BRIEF VOL. 13.5 - FINANCIAL BRIEF-PROJECTHQ & DOWNER**

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MS DAVIDSON: I tender volume 13.6, the Vardanega ProjectHQ brief.

THE COMMISSIONER: Exhibit 125.

**#EXH-125 – PUBLIC INQUIRY BRIEF VOL. 13.5 - VARDANEGA-PROJECT HQ BRIEF**

30

MS DAVIDSON: Thank you, Chief Commissioner.

THE COMMISSIONER: Thank you.

MS DAVIDSON: All right. Mr Vardanega is present in the well of the Commission.

THE COMMISSIONER: Yes. Thank you. Mr Vardanega, would you come forward? Mr Di Michiel, do you represent him?

40

MR DI MICHIEL: Yes. Good morning, Mr Commissioner. My name's Di Michiel and I've sought leave and received leave to appear on behalf of Mr Vardanega.

THE COMMISSIONER: Thank you, Mr Di Michiel. Mr Di Michiel, have you explained the provisions of section 38 to the witness?

MR DI MICHIEL: Yes, I have.

10 THE COMMISSIONER: And does he wish to avail himself of the direction under that section?

MR DI MICHIEL: Yes, he does.

THE COMMISSIONER: Thank you. Mr Vardanega, Benjamin Vardanega, is that you?

MR VARDANEGA: Ben, yeah.

20 THE COMMISSIONER: Mr Vardanega, do you take an oath or an affirmation?

MR VARDANEGA: An oath.

THE COMMISSIONER: Yes. All right.

THE COMMISSIONER: Please take a seat. Thank you. Mr Vardanega, 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 can object to answering a question or producing an item. The effect of any objection is although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings.

The first exception is that the protection does not 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, the penalty for which can be imprisonment of up to five years. The second exception only applies to New South Wales public officials. Evidence given by a New South Wales public official 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.

Mr Di Michiel tells me that he's explained to you the provisions of section 38 of the ICAC Act. Under that section, 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. This means you don't have to object with respect to each answer or the production of each item. Do you understand what I've just said?---Yes.

And do you wish me to make that declaration?---Yes.

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

10

THE COMMISSIONER: Thank you. All right, yes, thank you, Ms Davidson. We will sit through till 1 o'clock.

MS DAVIDSON: Yes, I'd anticipated that, Chief Commissioner.

THE COMMISSIONER: Thank you.

MS DAVIDSON: Mr Vardanega, can you tell the Chief Commissioner your full name?---Benjamin Joseph Louis Vardanega.

20

Do you hold a Bachelor of Engineering qualification?---Correct.

And when did you obtain that?---2010.

And from what university was that obtained?---UNSW.

And do you also hold a Diploma of Project Management?---Correct.

30 And did you obtain that subsequently to your Bachelor of Engineering or at the same time?---2019.

Who is your current employer?---Acciona.

Acciona. And what's your role there?---Interface adviser.

And what does that involve?---Sort of helping out on the projects with the management of multiple stakeholders for a large infrastructure project.

40 Does it involve rail projects?---It's a tunnelling project.

A tunnelling project.

THE COMMISSIONER: Sorry, say it again?---Tunnelling.

MS DAVIDSON: Rail tunnelling?---Yes.

When did you first work for Transport for NSW?---2011. March 2011.

10 And what was your role when you joined them?---I started out with TCA,  
which is Transport Construction Authority, a government organisation, as a  
graduate engineer.

So that was your first job out of university?---Correct.

And how long did you stay working for Transport for NSW - - -?  
---Approximately - - -

- - - in that stint?---Approximately two and a half years.

20 So until around 2013, is that right?---Correct.

And what - - -?---Give or take.

- - - what projects did you work on over the course of that?---The South  
West Rail Link project.

Was that part of the Glenfield Transport, or did the Glenfield Transport  
Interchange form a part of that?---Yes.

30 And what was your role? You started as a graduate engineer. Did your role  
change over that two and a half year period?---I think after six or nine  
months it turned into a site engineering role.

And did your responsibilities change at that time?---Yeah, only slightly.

And subsequent to that did you remain as a site engineer through the  
remainder of your time in that stint with Transport for NSW?---Correct.

Did you have responsibilities for procurement in those roles?---No.

Did you then go to work for Rail Planning Services?---No. I went to go work at a, it was called Halcrow, which is now called CH2M Hill, as an overhead wiring designer.

Right. And what period did that occur?---As soon as I left the South West Rail Link project for a period of about one year.

And then you went to Rail Planning Services, is that right?---Correct.

10 And who are they? What does Rail Planning Services' business involve?  
---Rail Planning Services are a consultancy. So they do a lot of constructability and methodology planning for infrastructure projects.

And what was the period that you worked for them?---2014, I don't know the month, till about I would say April 2018, just before I started with Downer. Sorry, that's a lie. August 2018.

20 August 2018. What was your role while you were with Rail Planning Services?---Constructability adviser. Had varied roles for constructability engagements. I was an adviser. There was secondment roles within Transport for NSW, DSS coordinator, and then a project manager role at Penrith Station.

Was the project manager role at Penrith Station the last one you had - - -?  
---Correct.

- - - while you were working for - and had you also worked on the Sydney Metro?---Sorry, yeah, I was going to say second to last, Penrith Station was, and then went over to Sydney Metro for a short stint.

30 Right. And you moved to Downer, I think you said, in August or September 2018?---Commenced in October 2018.

Right. And what was your role when you commenced at Downer?---A senior project engineer.

All right. And how long did you stay there?---Five to six months.

40 That wasn't very long?---No.



Are you able to say why that was?---Yeah, I, I started out there. The first day, I, they had no recollection that I'd actually joined the company. After that, they had no copy of my contract. Everyone that had interviewed me at that stage had already left the business and that, that's basically it. It, it didn't start off the, the best way - - -

THE COMMISSIONER: Sorry? What did you say?---Everyone that interviewed me in the, in the job, for the job, had already left the business at that stage.

10

MS DAVIDSON: During the period that you worked with Downer, who was your supervisor?---Andrew Gayed.

And did you report through him to anybody else?---Above him would have been I think Kevin Brady for a, for a brief stint, and then Andrew Bedwani.

Sat above Mr Brady?---Andrew Bedwani and then Kevin Brady above him.

20 Right. What were the projects that you were working on during the short period that you were at Downer?---Glenbrook Station.

And was that part of the TAP - - -?---Correct.

- - - or part of a tranche of TAP projects?---Correct.

Were you working on all of those TAP projects or - - -?---No, just Glenbrook, primarily.

30 Okay. So that was tranche 3 of the TAP projects. Is that correct?---I believe so.

Right. And so what was your role in the Glenbrook Station project? ---Given it was only a brief stint, it was really to prepare the project for the first possession, which I believe was February 2019. So we had to work through some procurement. My responsibility was for the LV package, sorry, low voltage package electrical package, sorry, we, we have plenty of acronyms, and the substation, padmount substation.

40 And where you say you were working through the procurement for those, were you managing procurement processes for Downer in relation to those?

---It was really just you have a budget and then see what prices come in and, and review it. It was probably first time, so trying to learn on the job.

And were you working closely with Mr Gayed in relation to that project?

---Correct.

After you finished at Downer, you did some work for Downer as a supervisor. Is that correct?---As a SPE supervisor, yes.

10 So where you say SPE, can you explain what that's an acronym for?

---Sorry. Senior project engineer. So the role that I had when I worked for them was a senior project engineer, and it was just continuing that for possessions, primarily.

Right. So the supervisory work related to possessions - - -?---Purely - - -

- - - on the Glenbrook project?---Correct. Just possessions.

20 And did you work on other projects as a supervisory project engineer?---For Downer, no.

Right. And when you say just for possessions, can you explain what you mean by that?---So a possession weekend, 48 hour shutdown on the rail corridor. The way that the TAP 3 package was given to Downer, they had Hazelbrook, Glenbrook and Kingswood. So they are all located on a config 7 possession weekend. So all your resources are all working on that, those three stations at the same time. So because of that, you can't rotate your staff to cover your 48 hour shutdown. You've only got your, your Site Team - - -

30

THE COMMISSIONER: Sorry? Say that again?---From the top? So, so the, the TAP 3 package was Hazelbrook, Glenbrook and Kingswood and they're all on a config 7, which is, it, it goes from, I, I think from Strathfield all the way out to the Blue Mountains. So with Downer's package that they had to deliver for the, the possession weekend, they had three stations and four Site Teams. The fourth would have been North Strathfield. So in terms of managing resources, your, you can only do a 12 hour shift on a, on a, on a Saturday and a Sunday. So you need people to cover at night and, and that sort of thing in, in terms of supervision.

40

MS DAVIDSON: So were you providing an additional resource, to your understanding, because of your previous involvement in the project?

---Correct. Yeah. So, yeah. Yes.

And in the course of that work, well, firstly, how long did that work continue for?---I think I did it for the May possession and the September possession?

10 And in that role, did you continue to work with Mr Gayed?---In terms of - -  
-

Well, as a supervisor and project engineer working on those possessions, were you continuing to report to Mr Gayed?---Oh, yes. Yeah, yeah, so I just, I'd help out on site, do my shift and then go home, basically.

Right. By that time you'd formed ProjectHQ, is that correct?---Yes.

20 We'll come back to ProjectHQ in some more detail, but did ProjectHQ, was ProjectHQ the mechanism by which you did supervisory work - - -?  
---Correct.

- - - on the Glenbrook possessions?---Correct.

And was there other work on the Glenbrook project that you hoped to be involved in in your ProjectHQ capacity?---I wouldn't say hoped to be involved in but there was some other work, correct.

30 There was some other work that you did? Or other work that others were doing?---Not me personally but ProjectHQ.  
Some other work that ProjectHQ did?---Correct.

Did that involve others providing assistance with possessions?---Both possession and non-possession, so Monday to Friday.

Right. So are you able to explain what that was?---Yeah, so the, when I left Downer there was one resource short on the project and Andrew, after I did the possession in May, he needed a resource and - - -

40 So where you say "he needed a resource", does that mean he needed a person or - - -?---He needed a person, yes, correct.

Right.---So he needed an engineer or someone to do onsite work, help out in planning, QA and that sort of thing.

And by this stage you had a full-time role with Sydney Trains, is that right?  
---Correct.

So you couldn't be that onsite person except on nights or weekends?  
---Correct. And also the role was a little bit more junior so that's why we  
10 proposed to put someone more junior forward.

All right, so where you say "we proposed to put someone more junior forward" - - -?---Sorry.

- - - did he approach you in relation to filling that role or ask you to find someone else or what occurred?---He, he approached me to say that he knew some very junior engineers that could be put forward on the project.

Right. So how did you come to be involved if it was he who knew the very  
20 junior engineers?---I was going to mentor them through, through the project.

Right. Were they very junior engineers who worked at Downer or - - -?  
---They were undergrads. So they were studying and they were looking for onsite experience to, so that when they finished their degree they had something on the resumé.

All right. Do you know how he knew them?---I believe family friends.

Right. So he came to you and said, "I know these people, Ben."---Yep.  
30

"Will you mentor them?" What occurred next?---So I sat down with them, interviewed them, sounded them out as to what their aspiration was, got them trained up for rail safety, white card, onsite stuff, all that sort of thing.

Those are the requirements for being on a rail site?---To, to going out onsite, yep. And then just walked them through general site safety, what you need to do in the corridor, and then they were, they were based onsite, so they would go out onsite every day and - sorry, it's not every single day but it's working around their university studies and that sort of thing. And then I  
40 just, if they had any issues or questions, answer the call and, and help them through.

Were they employed by ProjectHQ?---Correct.

And did you, in reaching an arrangement with Downer in relation to this, add a margin or a management fee on top of what you were paying them?  
---Yes, yep.

Did you know what the procurement process was that Mr Gayed had gone through in order to make that arrangement?---No.

10

Did you sign a contract with him in relation to that?---No. I think it was an offer of service and then, following that, it was - actually, I can't remember to be honest.

Right. Do you know how long that went on for?---I believe it went from - I can't remember the start date, but it would have went to maybe October-November 2019.

20 It was around the same period of time that you were working on the possessions or it extended past that?---Oh, it, it overlapped with that. So when we were on possession, I could obviously walk them through what was going on.

Right. Do you know why Mr Gayed chose to do it through ProjectHQ, through you, rather than directly employing them at Downer?---I believe that he actually wasn't allowed to directly employ at Downer.

Right.---That was the basis for it.

30 Did he convey that, did he explain that to you in one of your discussions?  
---Yes.

I think your next role, that is your full-time role at the time that you were working on the possessions, you indicated was at Sydney Trains.---Correct.

What was the position that you held there?---Project manager.

So that started in April 2019?---Correct.

40 And how long did that continue for?---Until December 2020.

Did you fulfil different roles within Sydney Trains over that period?---No.

All right. Was there a period of time that you were working full-time for Sydney Trains that then became a part-time role?---Yes.

So over what period of time were you working full-time?---I can't recall when I transitioned to part-time but I believe it would have been - we delivered the first two projects and then I sat down with my seniors and, and said that there wasn't enough to warrant a five-day working week out of it.

10

Right. And was it at that point that your work for Sydney Trains started to overlap with doing contract projects for other entities?---Yeah, I believe I informed them that there wasn't enough for five days' worth of work and I would go and explore other opportunities while managing the projects.

If we could have the Vardanega slide brought up on the screen. I'll hand you a copy, Chief Commissioner, and the witness will be able to see it on his screen. I might have this marked for identification, Chief Commissioner. It will be number 14 of the MFI list.

20

THE COMMISSIONER: MFI 14.

MS DAVIDSON: Thank you.

#### **#MFI-014 – VARDANEGA EMPLOYMENT CHART**

MS DAVIDSON: This is the document that's been prepared by the Commission.---Ah hmm.

30

Attempting to graphically depict the overlap, just because things get a bit complicated in terms of who you're working for and when.---Yes.

So I'll give you an opportunity to have a look at it.---Yep.

40

You'll see we've covered the period that you were working for Downer, and the supervisory work that then went on through ProjectHQ, you see at the top, and then we have you as a project manager for Sydney Trains. Were you directly employed by them or was it via a contract via ProjectHQ?---It was a recruitment contract.

And ProjectHQ was involved or it was you directly?---I worked through ProjectHQ with the recruiter, yep.

Okay. And was there a period of time at which that came to no longer be the case, that is that you were directly employed? Or was it through ProjectHQ the whole time you were with Sydney Trains, so far as you know?---My entire, I can try and field this question, so the entire engagement with Sydney Trains was through a recruiter, and that recruiter  
10 you can either go as ABN or you can go as a PAYG. So I went ABN through ProjectHQ.

Okay.---Yep.

So there wasn't a period of time where you were PAYG, to use your language?---No, yeah.

Okay.---So just on the supervisor role, that only applied for the May possession and the September possession.  
20

All right, so - - -?---It wasn't a continual block of - - -

It wasn't continuing - - -?---No.

- - - work that you were doing?---No.

However, during that intervening period between the May possession and the September possession, you were employing the graduate engineers who were working on the project, is that right?---Undergraduate, yes.  
30

I'm sorry.---Yep.

All right. So to your understanding, looking at the red box in the middle of the page there, the legend is at the bottom. Red is direct periods of employment and blue being through ProjectHQ.---Ah hmm.

Was it your understanding that effectively it should be all blue after the period at Downer?---Correct.

40 Okay.---Yep.

And I think you said you'd said to your supervisors at Sydney Trains that there wasn't enough work on the project you were working on. What was the project that you were working on - - -?---So - - -

- - - at that time? That is, when you first started and were working full-time at Sydney Trains?---Yep, sorry, I'm jumping at you. The Security Officer Facilities Program. So it was installing preconstructed buildings in the rail corridor and just doing civil works to support it. So concrete slabs, electrical services, plumbing, that's basically it.

10

So you were managing the project - - -?---Yes.

- - - to do all of those, the multiple locations? Was it split up into stages or - - -?---Yeah. They, they had the strategy of doing, so I started in April 2019 and they had the strategy of doing two per financial year, yeah.

Right. And so what were the two that you were working on in that financial year?---Penrith and Liverpool.

20 Okay. And at some point prior to June 2019, you had a discussion in relation to working part-time for them?---Around that time. I can't remember, yeah.

Sure. Well, could you describe what the nature of that discussion was? ---Yeah. So the, from, from the April to June 2019, it was very intense in sort of delivering those two locations at Penrith and Liverpool - - -

30 Is that because they had to be delivered before the end of the financial year?---Correct. If they don't get delivered before the end of the financial year, they lose budget, yeah.

Right. So was there usually a rush to deliver projects in that period just before the end of the financial year?---I would to say usual but I, it was my first time, so I was, yeah.

Right. Had you understood that to be the case from things that other people told you?---Correct.

40 Right. And so you said it was very busy in those first two months. Did you understand that it was about to become less busy?---Correct.



Okay. And so you took that to your supervisors, did you, or did they approach you and say things are quietening down now?---Yeah, I, I, I took it to them and just said that there, there wasn't much, much in it for me. I was not being utilised for a 40 hour week, let's put it that way.

Right. And so did you suggest to them that you would continue in the same role but in a part-time capacity?---Correct.

And they agreed to that?---Correct.

10

Did you discuss with them the kind of other work that you might do during the remainder of the time that you had?---Yeah, I, I'd made it very known that I had set up the business ProjectHQ and I was looking to find contracts, do business development and get that started. So that was very known.

Okay. So when you say it was very known to them, was this part of the discussion you had with them?---Correct.

20 Had you done any projects for ProjectHQ by this time, other than the Downer work?---No.

Right. Did you discuss with them the kind of projects that you wanted to work on?---Potentially, I, I'm not too sure.

All right. Did you have an agreement in relation to what part-time hours you would do for Sydney Trains?---Yes. It was approximately three to three and a half days a week, managing the projects, yeah.

30 Okay. And that was to be done in normal working hours or - - -?---No. It was to be done ad-lib, when it was required, weekend work, after hours, that sort of thing on the proviso that I could still attend meetings that were required for other Sydney Trains people that were working a regular 40 hour week.

Right. So when you say it was ad-lib, was that at your discretion as to when you worked those hours?---Yeah. It was, it was do the work when it was required, yeah.

40 And did they require you to keep time sheets or - - -?---Correct.

Okay. And, well, firstly, who did you have that discussion with at Sydney Trains?---Mark Edmonds and David Signorio.

And were they your supervisors at the time?---It's, you probably couldn't put it on a, on a chart like this, but it was very strange. So Mark Edmonds was the person responsible for the security of the facilities. He, he's the person that wanted the project - - -

10 So were you reporting to him in relation to the delivery of the project?---But I wasn't reporting to him, so David Signorio at the time is the person that was managing that.

Right. And so do you know why Mr Edmonds was involved in the discussion about changing your working arrangements?---He, he was my day-to-day, so when I would walk through what we're doing this week on the project or something like that, I would contact him.

All right. Even though he wasn't your manager in any - - -?---Yes.

20 - - - well, you said wouldn't put it on paper as your manager?---No.

Okay. Did you consider at that point, that is at the time of making those arrangements for part-time employment, whether you would need to declare secondary employment to Sydney Trains?---No. I, I was thinking that by having those discussions that was enough to warrant any conflict or anything like that.

30 Did you make any inquiries in relation to if you were changing into a part-time arrangement whether you would need to make any declarations about secondary employment?---I didn't. I, I, yeah, first time sort of thing.

Apart from that conversation with the two of them did you, at any point, declare any secondary employment to Sydney Trains?---They, they were aware, like for instance, in the Glenbrook possession, they were aware that I was going to help them out on that weekend just in terms of fatigue management and that of thing.

They were aware that you were going to help Downer out that weekend?  
---Correct, correct.

40

So when you say they, again - - -?---Sorry. Mark or, or David.

Do you recall whether those were written discussions or communications or oral?---Verbal, yeah.

And similarly when you say it was very known that you had set up ProjectHQ and you were looking for other work, was that also a verbal discussion?---Yes, yeah.

10 Do you remember having communication with HR about your change to part-time work arrangements?---There is, there is no HR with ABN contractors. So, like, Sydney Trains HR Department wouldn't have been the person to just talk to about that sort of thing.

So at that point, that is mid-2019, you start doing some work for ARCH Artifex, is that correct?---Correct.

And what was the role that you had for them?---Yeah. As you got it on the screen there, the investigation works manager.

20 And what did that involve?---Parramatta Light Rail Stage 2. It was in a design/development sort of phase and they had site investigation works. So bore holes, CTP testing, geotechnical testing, all that sort of thing. They needed someone to oversee that.

Was that a full-time role?---Correct.

30 So was it the case that during the period that you were working as the investigation works manager you were managing your Sydney Trains responsibilities out of hours except where required to go to meetings, as you said?---Correct.

And then you shifted role within ARCH Artifex in about August, is that correct?---Yep. I, I will take your dates as - yes.

Well, please do let us know if there's any inaccuracies. You can have some time to look at this document but, please, if there is anything you need to correct do let the Commission know.---Yep, yep. No, absolutely.

40 THE COMMISSIONER: Just so I'm clear, the work you were doing as a project manager part-time, that was through ProjectHQ, was it?---So Sydney

Trains goes down to Randstad and then Randstad, which is a recruiter, contracted me through ProjectHQ.

And at the same time you were working as the investigations work manager for ARCH Artifex?---Correct.

As part of ProjectHQ?---Correct.

All right. Okay, thank you. Yes.

10

MS DAVIDSON: I think I just asked you a question in relation to your shift in roles within ARCH Artifex.---Yep.

What did that - into be a constructability manager or at least that from the documents seems to be what your title was, is that right?---Yeah. So the, the investigation works manager role was wrapping up. It was a very short-term contract and conversations had with ARCH Artifex, given the experience that I had previously with rail planning services in the constructability space, was to help out in constructability for the Sydney Metro City and Southwest, Bankstown Line upgrade.

20

Is ARCH Artifex also a consultant?---Correct.

And did they provide services to Sydney Trains as well as in relation to the - I think you said you'd been working on the Metro or the light rail.---So, not Sydney Trains directly to Sydney Metro. Sorry. Not to Sydney Metro to a design house, which was Arcadis and MacDonald, I believe, yeah.

And so you started working on constructability. Well, there was then a period of time where, in late 2019, you started working for Transport for NSW, is that right?---Correct.

30

So was there some shift over from Sydney Trains to Transport for NSW or there was an overlap where you were working for both entities? What occurred there?---So the December 2019, if you were to go down on the bar chart - - -

Yep, yep.--- - - - those three, I think, from what I can recall, Sydney Trains was, was a part-time engagement. The constructability for ARCH Artifex was wrapping up 'cause I had just been advised that I had, I was successful

40

on a tender through eTendering to work on the NIF project, which is that - -  
-

All right, so that was the tender from Transport for NSW?---Correct.

Okay.---So it was managing, you know, ramping down, doing three days a week and taking this one on to do two days a week because we were at the end of 2019 and I was about to have a couple of months off, so - - -

10 Okay. So where you say taking this one on to do two days a week, was that the Transport for NSW one?---Correct.

And did that continue as a two-day-a-week role?---So, no, it went into five days a week from about March 2021.

All right. So you said you started off and then you took a few months off? ---Correct.

20 Okay. And then from March 2021, what did that role on the NIF project involve?---That was five days a week as an interface manager.

Okay. So where there's a reference to you being Director Infrastructure Delivery - - -?---No.

- - - on this chart, is that an incorrect title or - - -?---Correct.

Okay. So what did you understand your title to be?---Interface manager.

30 Interface manager.---And the project was SSEW, which is signalling stations enabling works, or station signalling enabling works.

And NIF is the New Intercity Fleet?---Correct.

40 And what did that role involve once you've commenced it in a full-time basis?---That role was interface management, so you're doing station upgrades. The New Intercity Fleet was ten-car trains instead of the standard eight-car train, so because of the extra two cars, you needed longer platforms. Because of the longer platforms, you sometimes needed to relocate signalling equipment in the rail corridor. So for all of the stations that they were doing, the interface manager's role was to coordinate it with

Sydney Trains, Transport for NSW, all the, the signalling infrastructure, councils, that sort of thing, so.

Were you involved in managing procurement in that role?---No.

Did you have any financial delegation in that role?---No.

I think you said that that was a contract or you'd won a tender through ProjectHQ to do that.---Correct.

10

Did that remain the nature, through the time that you were employed with Transport for NSW, which I think was into early 2021, is that correct?  
---Correct.

Did that continue to be on the same contract basis or was the contract, did it come to an end and be renewed at some period of time?---At the time of award I believe it was an 18-month contract.

I see.---Yep.

20

Do you remember when you set up ProjectHQ?---Yep. October 2018.

Okay. And the shareholder in that company is another company called Vardanega Family Investments?---Yep.

Are you the sole director and shareholder of Vardanega Family Investments?---I believe so.

And are you also a director of ProjectHQ?---Correct.

30

Other than the undergraduate engineers that you referred to working for Downer, has ProjectHQ had any other employees?---I employed my wife for a period of time.

In relation to rail consulting work or other things?---No, just administration, setting up the business in terms of new hire packs, policies and that sort of thing.

40 Right. When you started at Transport - well, when you started in the role at Transport for NSW, having secured the tender, do you recall at that point having discussions with anybody from Transport for NSW about what else

ProjectHQ might be doing?---I did make it clear that I was doing Sydney Trains work part-time. That, that was pretty much it. There was, there was, as you can see from the chart, there wasn't much else work that was going at the moment.

Did you understand your role as NIF interface manager to be a full-time role?---Correct.

10 And did you, over that period of time, think that - well, at the time of commencing with Transport for NSW did you think that ProjectHQ would be looking to get involved in other projects at the time that you were also working as the interface manager?---Looking for other work?

Yes.---Yeah. So, the, when I set up ProjectHQ it was to win work and then deliver the work and then after a period of time start looking for your next engagement just to keep that ticking through.

20 So you wanted to keep the company active, not effectively just as a mechanism for contracting your employment but also executing other projects?---To build. Yes. To build.

Was there a kind of project work that you wanted to become involved in?  
---No. I was, I was pretty open to just, I thought within the first two years of your business just say yes and see where it takes you.

Do what you can.---Yeah.

30 Do you recall providing anything information to Transport for NSW about past projects that ProjectHQ had worked on?---In the form of resumés and a tender submission potentially?

Well, any form, really.---I, I couldn't tell you without - - -

In the tender submission did you describe previous projects that you had worked on?---I, I believe the, the, one of the main reasons for winning that tender was because of the experience that I had at Sydney Trains, yep.

40 When you were working at Transport for NSW, who was supervising you?  
---The project manager was Colin Muir and then there was a deputy director and a director.

And I think you noted in your Sydney Trains full-time role, that is during the brief period in 2019 that you were working full-time for them, you weren't really - you were working full-time intensely for a period and then there was a period where it clearly wasn't a full-time role.---Yep.

Did your role as NIF interface manager have similar characteristics? That is were you able to do it in less than a full-time, you know, in less than your full-time hours?---The NIF role?

10 Yeah.---Yes.

And did that therefore free up your time to be looking to get involved in other projects or to be looking to get ProjectHQ involved in other projects? ---Yeah. I think, I think through that whole COVID period there was a, a lot less requirements. You weren't travelling into an office and that sort of thing.

Had you initially started off in the role travelling into an office?---Correct.

20 Going back to your period at Sydney Trains, you, I think, indicated that you were involved in security officer, effectively facilities for security officers. ---Yep.

What kind of pre-fabricated buildings were they?---They were, they were basically a kitchenette, toilet and a seating area. It was to provide security officers with a, a meal room and a break room while guarding trains.

Was that to comply with some kind of OH&S requirement?---Correct, yep.

30 And what was involved in actually building them? I think you said there was plumbing required.---Yeah. So they were prefabricated buildings. So there was nothing to manage and that sort of thing and that was just a, a procurement with a preselected or an already approved supplier and then - -  
-

That is the building part of it that was to be - - -?---Yeah, the actual building itself.

40 Right, okay. Yep.---And then there was the, the project delivery side of it was concrete slab to have the building sit on, services, delivery, that sort of thing.



And all of those had to be procured by you?---Correct.

And were you given any guidance in relation to who you were to procure those from?---So on, within the first week that I started, for Penrith and Liverpool they went out to market and I think the market returned prices of anywhere between 150 and 200,000.

10 So when you say they went out to market, was that somebody else or was that a process that you managed?---Sydney Trains, so - sorry. I'm cutting you off. The previous project manager.

And so the prices came back during your period of time or you were aware that they had come back by the time you started?---When I had started they had already, already come in.

20 You ultimately ended up procuring at least some of the services on - well, not via those quotes that had come back, is that correct?---Yeah. So I, when I started, the problem was that they had these prices at anywhere between 150 and \$200,000 and they didn't have the budget for it.

Right. What was the budget, do you remember, in relation to these projects?---I, I don't remember. Yeah.

But you knew that - - -?---It was, it was a - - -

- - - \$150,000 was not it?---Correct.

30 Okay.---Yeah.

So what was your response to that?---So given the limited experience at Downer, the, one of their procurement sort of ways of delivering their projects for the stations was to, instead of having a managing contractor, so someone that does everything, you use smaller companies or smaller builders to, to deliver works and then the, me as the project manager would manage all the trades. So a lot more hands-on.

40 So you're familiar with that as a means used at Downer. And was the purpose of that to save money?---Correct.

Right. And so did you suggest that to somebody at Sydney Trains as an alternative to the \$150,000 quotes - - -?---Yeah.

- - - that had come in?---Yes.

And what was the response to that?---Look in to it, yeah.

10 What did you understand in your project manager capacity to be the procurement threshold, effectively, in relation to when you needed to go to market or not?---To go to market was, I think you needed, I think you needed three prices if it was over 30,000 but I could be incorrect on that. And I knew that you needed to go to open tender if it was more than 250,000.

Right. So if it was under 30,000, you could go to a sole source?---Correct.

20 And did you, as part of your discussions in proposing this alternative, also talk to people at Sydney Trains about using sole source procurement? ---Yeah. So I, I think, I didn't know about sole source. I was informed of sole source. And given that the prices had already been returned from the market at 150 to 200 K, that was enough justification to do a sole source if it, if it would work.

All right. So how did you then, having just started with them, know who to approach in relation to sole sourcing of any of this?---I, I - sorry? I'm going to ask you to repeat - - -

30 THE COMMISSIONER: Just, I'm not clear. You said before that if it went over 30,000, you had to get three prices, so - - -?---Yeah, something around that. Yeah. If it was above \$30,000.

40 Yeah. And you said that under that, you could go to a sole source and then you said, given the prices that you received of 150 to 200,000, when you assume responsibility for this, you felt you could go to a sole source. Is that - - -?---So we already went out - sorry. Predecessor already had gone out to market and four prices came back and those prices were 150 to \$200,000. So it was on a spreadsheet - oops, sorry. And I think I've tendered that to you guys? And then, yeah, you can, so if you go and get another price, then you have justification for that sole source as to why you can use the contract - - -

As long as you're under the 150?---Well, as long as you're under the 30.

As long as you're under the 30.---But you have even - - -

So you're talking about the individual trades. Is that what you're talking about?---Correct.

I see. Okay.

10 MS DAVIDSON: Just to clarify, and I should have clarified the question before. This relates to the Liverpool and Penrith - - -?---Correct.

- - - projects, which I think you said were the first ones that you worked on - - -?---Yeah.

- - - as part of the Security Officer Facilities works. Is that correct?---Yes.

So we're talking about the mid period in 2019 when you're working full-time as a project manager for Sydney Trains?---Correct.

20

Okay. So I think you said you had sufficient justification to go to a sole source. My question was how did you know who as a sole source you were going to approach?---Yeah. The, the requirement, the basis of going and finding another contractor to deliver the work was they have to be a builder.

Right. And do you know why that was?---I, I can only assume because we're building a building.

30 And so you were told, well, were you given any more guidance than that, it has to be a builder?---Pretty much that's it.

Did you ask whether there was an approved supplier list for builders who you could approach or - - -?---So the, I believe that the four prices that came back were from builders already pre-approved.

40 Right. So what did you understand, if they had come back from builders, were you given instructions to go and see if you could find a cheaper builder? Did you take the initiative in thinking about who you would approach? How do you take that forward?---Yeah, so I - when I saw those prices for what was actually being delivered, it was a rip-off and it was just way too much. And I think the, the thing that happens with this is, as we

discussed before, when you're leading into the end of a financial year, if someone's going out to market and it needs to be delivered, they know that there's really not much space there, so they can probably add a bit to the price.

So you think the builders might have been aware that Sydney Trains had this kind of budgeting constraint or - - -?---Correct, yep.

10 - - - period of time that the price is right. So - - -?---So I, from that sat down with Mark and, and said, "Look, we can definitely do this a lot cheaper by sort of subcontracting or getting smaller people to, to actually deliver the work." I informed him that I'd just come off from that Downer project.

That was Glenbrook?---From Glenbrook, yeah, and, and knew people that could easily deliver the works.

Okay. So you said that you knew people.---Correct.

20 Did he give you some instruction to approach those people? Was it your initiative to - - -?---Yeah, so he said to look into it further and come back with, with something.

Okay. And what did you understand that to mean, look into it further?---Go get some quotes.

Okay. And is that what you then did?---Correct.

30 And in relation to the Liverpool and Penrith projects, did you approach Mr Gayed?---Correct.

How was it - I think you said Mr Gayed had been your supervisor at Downer. Did you understand him still to be working at Downer at that period of time?---Correct.

40 So how was it that he had the capacity to be also contracting for Sydney Trains?---I think it, you can do this through weekend work and that sort of thing. I, and I definitely informed Mark of that as well. It wouldn't be something that the, the, the project didn't require you to be onsite for four weeks' straight. It was rock up, do a slab, go home, take the delivery. You know, you could - - -

So it wasn't going to take a long time to do.---You could pad it out, yes.

So where you say you could pad it out, what do you mean by that?---Sorry, you could, you could deliver it over a, a bit of time.

Stage it, in other words, is that right?---Yeah, stage it, yeah.

Okay. And did you know during your time at Downer that Mr Gayed had a building licence?---Correct.

10

And did you understand his building company to be active at that time that you were working at Downer?---Correct.

So he was working on other projects at the time?---I don't know if he was - -

To your knowledge.--- - - - working on other projects. I knew that he was a builder.

20 Okay.---That, that, that's the extent.

All right. Did you know what other work he'd done as a builder prior to working at Downer?---Prior to working at Downer, no.

And it sounds like you didn't specifically know what he was doing at Downer either. That is you didn't - sorry, I should clarify that question. You didn't know what building projects he was working on while he was working at Downer.---No, I didn't.

30 So did you know anything about the quality of his building work?---No.

So is it fair to say that you approached him on the basis of the relationship you'd formed with him at Downer?---Correct.

What was that working relationship like during your time at Downer?---We, we had a very good working relationship.

Would you describe yourself as friends?---Yep, yep.

40 And did that continue after the period where you left Downer?---Yes.

So you were effectively approaching him because he was a friend, is that right?---Yes. Yep. Just, just to add to that, it's a concrete slab. Like, the requirements of being a builder and pouring a concrete slab are vastly different. But, yes.

Sorry, the requirements are vastly different. Can you explain to the Commissioner what you mean by that?---It's, it's, there's, there's not much effort in required to deliver a concrete slab in regard, in, in contrast to building a house or something like that.

10

Right, so is it your evidence that the requirement that Sydney Trains had imposed that somebody be a builder was over and above what was required to, the skill level required to lay a concrete slab?---Oh, I would just say that, I didn't understand the basis of needing a builder.

I see.---Yep.

I see. Is there a particular trade that you would have expected to be able to approach to lay a concrete slab?---Not really.

20

Okay. So you did approach Mr Gayed in relation to providing a quote? ---Correct.

And I think you said in an answer a little while ago that you had discussed knowing people at Sydney Trains. Did you tell them how - and I think you said in relation to a conversation with Mark that you said it was something you had known from a Downer project where you had just come off a Downer project.---Yep.

30 Did you tell him who you intended to approach?---Yeah.

That is that you intended to approach Mr Gayed?---Correct.

And did you tell him what your relationship was with Mr Gayed?---Correct.

And what was his response to that?---I, I don't think he thought too much of it to be honest.

40 Did you consider at that time whether you had any conflict of interest in approaching Mr Gayed?---No, I didn't.

Had you had any conflict of interest training during your period with Sydney Trains or when you started at Transport for NSW?---There was conflict of interest training. I don't know when it was completed.

So we're talking about at the moment for the period you where you were at Sydney Trains. What do you remember about that conflict of interest training?---I honestly think that this all happened in the first week that I started with Sydney Trains. It was pretty quick.

- 10 When you say this all happened, this is approaching Mr Gayed and getting the quote from him?---Correct.

Do you think you'd done any training at the time that you started at Sydney Trains as part of your induction?---I don't believe so. I, but I, I cannot recall.

Do you have a memory of completing some conflict of interest training later?---Yes.

- 20 And what do you remember about that?---I remember it being a slideshow presentation and probably about four or five questions.

So when you say it was a slideshow presentation was that something you had to physically in person attend or was it something that you did online? ---It was purely online.

And four or five questions, did that take you very long to do?---No. Not at all.

- 30 And do you remember what, if anything, you learned as a result of that training?---No.

Did you regard it as a bit of a tick-a-box exercise?---I would agree with that, yes.

Do you know whether anybody ever checked whether you'd done it or not? ---No. I can't recall that but I, I think they, they have a, I don't know, a, an intranet or something like that that sent a reminder about training.

- 40 So you did it because of some internal reason?---Correct.

You approached Mr Gayed to provide a quote. Could we have volume 10.2, page 33 brought up on the screen? Was that in relation to both Liverpool and Penrith that you asked him to provide a quote?---Correct.

Were they always packaged together?---Correct.

This is a business justification form completed by you.---Yep.

10 If we can scroll down and go to the second page. Is that your signature that appears there?---Correct.

There's then an approval given by Mr Powell, the senior business category manager. Is that somebody that also supervised you at Sydney Trains?--- You sent it off to an email and this is what bounces back.

20 You declared that you had no conflict of interest in relation to this justification request. Do you see that in the "Please check as appropriate" above your signature?---Correct. Just on that, I, the page before has me sort of stating that I'd worked previously with them and that sort of thing as well.

So, if we could scroll back up to the previous page.---So point 1.

Which part of that are you referring to? The point 1 that's under the supplier qualification?---Correct.

30 It says there, "Mansion Building are being sole sources as the new Sydney Trains project manager as previously used the contractor to deliver works on other projects within the rail corridor." Is that an accurate statement?---I, I had worked with them, yes.

But you had never actually worked with Mr Gayed as a contractor, had you?---Correct.

He had always been your supervisor at Downer?---Yep.

And you didn't have any familiarity with the quality of his work as a contractor one way or the other, did you?---No.



Okay. Do you recall why you put the description that way?---I think it was from experience of it was Andrew and, and Ross, Ross Dean. So a lot of the experience came out of Ross Deal in delivering the project.

But does that provide an explanation for why you referred to them being “sole sourced as the new Sydney Trains project manager has previously used the contractor to deliver works on other projects within the rail corridor”?---Yeah, the sentence doesn’t justify what I was trying to say. Correct.

10

Had you worked with Ross Dean as a contractor before?---Not as a contractor, no.

Was Ross Dean also somebody you’d worked with at Downer?---Correct.

And what was his role at Downer relative to yours?---I believe a site supervisor.

20 So did you supervise him, did he supervise you?---Oh, no, he supervised the site. So purely construction management, day-to-day.

But was he senior to you, equivalent, just a different role?---Different role.

So would you agree this supplier qualification description here appears to have been written by you as a further justification for bringing Mr Gayed onboard but didn’t accurately describe your previous relationship with him?---Correct.

30 Or indeed your ongoing friendship with him?---Correct.

So, at the time did you have any pause or hesitation in relation to giving work to Andrew Gayed, given your friendship with him?---Oh, I think at the time it was just deliver the project in the timeframe that we had. That was the focus.

Do you understand, or did you understand at the time, that a conflict of interest included both an actual and a perceived conflict of interest?---I do now.

40 Did you at the time?---Probably not.

THE COMMISSIONER: Just pausing there for a moment. You said that at the time you thought that the aim was to deliver the project in the timeframe available. How do you rationalise that with you approaching Mr Gayed who you knew had another job and would have to work on weekends to bring this about?---It, it didn't, the, the project didn't require a, a continual, you know, four- to six-week block of, of time. So by using people that worked in the railways previously and had the experience and could get around, if we planned it out well enough it would, it would be a little bit of, you know, extra work for them, weekend work.

10

But the experience that they had wasn't experience pertinent to what was required for this job, was it? I mean, this was, this person that you approached, Mr Gayed, I think you've conceded, was not someone you had previously used - - -?---Yeah, but I had worked - - -

- - - for this particular purpose.---Correct, as a contractor, no. I hadn't, I hadn't used as a contractor but I knew the - - -

20 So you didn't have an experience that person as a contractor and in addition the person had other commitments that would occupy his time, except on weekend yet you favoured that person in recommending them for this position.---Based on price.

Based on your previous relationship with that person and presumably also your friendship with that person?---Yep.

Would that be accurate?---Yeah, I, I, the way that I wanted to do the project was we had the prices at 150 to \$190,000. I wanted to have, try doing it for 30.

30

I see. All right, yes.

MS DAVIDSON: I think you indicated in an earlier answer that you understood now that a conflict of interest included a perceived conflict of interest. Would you agree there was certainly a perceived conflict of interest in relation to you approaching Mr Gayed on a sole-source basis to provide this work?---In hindsight?

Yes.---Absolutely.

40

Did you turn your mind at the time - I think you'd said you were keen for ProjectHQ to say yes to work. Did you consider at the time whether ProjectHQ could deliver these works?---No. ProjectHQ was primarily set up as a consultancy.

Did you ever discuss with Mr Gayed using Project - I withdraw that. Using his company, that is Mansion, to perform work that ProjectHQ could not?  
---Sorry, go again.

10 Did you ever discuss with Mr Gayed using his company, that is Mansion in this instance, to perform work because ProjectHQ couldn't because you were contracting with Sydney Trains?---I, I, it all comes back to the builder requirement. So using Mansion, I believe it's called, using Mansion Building. ProjectHQ was not set up to deliver construction work.

Right. Because you did end up doing some of the labouring work - - -?  
---Correct.

- - - on this project, did you not?---Correct.

20

Did you understand what kind of building or contractor licence Mansion had?---I believe it's on the quote.

Did you yourself hold any form of contractor licence?---Did I hold any contractor licence?

Yeah.---In, in terms of - - -

Or ProjectHQ.--- - - - delivering trades? No.

30

In terms of delivering trades.---No.

Did you discuss at the time of recommending Mr Gayed for the work with Mr Gayed the idea that you would perform some of the work on the project?---I can't recall any of the conversations that were had back then, but I will say that I wanted this project to be delivered. So if it was a case of jumping on tools, then I was prepared to do that.

And you did end up jumping on the tools?---Correct.

40

Did Mr Gayed work on the tools for any - well, there was this project. Did you also award him work in relation to the Wollongong signals building?  
---Correct.

That is, when I say “him” I mean Mansion.---Correct.

And was that on a similar basis in terms of approaching him because of your friendship with him?---So given the, the building works and the experience that he’d had, yeah, I, I asked him to go quote the job.

10

Okay. So it’s the different types of building works on the Wollongong project?---Yeah, Wollongong refurbishment was, there was, it was originally priced at half a million dollars for the, for new toilets to go in on the second level, or first level, sorry. We went down there, as in I, Sydney Trains. I can’t remember, I think the signalling building manager. We noticed that there were unused toilets on the ground floor and it was, it was an opex project, so again it comes back to we’re coming to the end of a budget, where do we throw some money at a project? And there was a - we put together a scope and the work that Mansion did was the refurbishment of toilets, showers and that sort of thing.

20

All right, well, sticking - we might come back to Wollongong, but sticking with the Penrith and Liverpool, you got on the tools. I think you said Mr Gayed didn’t.---I think there’s a photo that I gave to you guys that he is on the tools.

All right.---Yep.

30 Were you concerned about the progress of the project? I think your previous answer was you wanted to get the project delivered.---Yep.

And if that meant hopping on the tools, you would. What was the basis on which you started doing physical labour on the project?---I, I think Andrew wasn’t turning up to site on some of the days that we were planning to do some works.

Right.---He may have been down at Wollongong.

40 Did you become concerned about that?---Yeah, I think that Ross needed, you, you can’t just do that all on your own. You need people to help out.

Right. So it's Ross, Ross Dean?---Correct.

And he was assisting Mr Gayed in relation to these - - -?---Correct.

- - - projects, was he?---Correct.

Okay. And he couldn't lay the concrete slab by himself. Is that right?  
---Correct.

10 And did he approach you or Mr Gayed approach you? Do you remember what happened?---Approach me as to?

To come and help.---I, I, I believe I offered the help, yeah.

Because you knew he was on his own?---Yeah.

That is, Mr Dean?---Correct.

20 All right. Did you receive any or did you discuss with Mr Gayed providing you with any compensation for doing that work?---I don't, I, I can't recall discussing it. There may have been some jokes about it but I, yeah. I don't -  
- -

Was it weekends you were out there?---Yeah.

Do you remember how much time you spent on it?---I can't remember how much time.

30 Okay. More than one weekend?---I think more than one weekend, yes.

Right. Spending the whole day out there working?---Yeah.

Okay. That wasn't work that you would ordinarily have done for free for someone, was it?---No.

So you say you might have joked about it. Did you say to him, come on, Andrew, I'm out here, you're not or I'm out here more than you are or something like that?---I, I think it was, it was up to his discretion.

40 Right. Do did you say to him it's up to his discretion?---I, I, I would have assumed that it was up to, like, what I'm trying to say is, like, I just had faith

that we were going to do the project and it was up to his discretion if he wanted - - -

Did you have faith he was going to pay you?---No.

Did he pay you - - -?---He did.

- - - in relation to the project?---Correct.

10 How did that come about?

THE COMMISSIONER: So how much did he pay you?---\$5,000.

MS DAVIDSON: Was that in cash?---Correct.

When did he provide you with that cash?---Sometime in August, July of 2019, actually, I would say more August or September.

20 How did that line up with the time that the project was actually being worked on?---The project was complete, yeah.

Right. And do you recall where he gave it to you?---In Burwood.

In Burwood?---Yeah.

Where in Burwood?---Burwood Heights.

Were you in a car, in a park?---I think we, we were on Burwood Road, yeah.

30 Okay. And what did he say to you in relation to what he was doing?  
---Thanks for helping out, like, I, it's so long ago, I, I can't, if I give you something, I, I don't know - - -

Were you in the habit of receiving \$5,000 in cash from people you worked with?---It was the first time.

Right. So you have a memory of where it occurred on the road?---Yeah.

40 What did you understand it to be for?---For doing the work at Penrith and Liverpool.

Because you'd already given him or I think you'd indicated you'd approached him to give him the work - - -?---Yeah.

- - - on the basis of your friendship?---Yeah.

Did you understand a component of that to be effectively a thank you for giving him the work?---No.

10 Do you agree that there's at least the perception that arises from the timing of the payment, that it was effectively a kickback for giving him the work?  
---There could be that perception, yeah.

Did you consider, well, after you received the cash, what did you do with it?---Put it in a sunglass case at home.

Right. Did you let anybody at Sydney Trains know that you'd received it?  
---No.

20 Did you consider raising that with anybody at Sydney Trains?---No, and, I, I wanted to talk about it before but you said we'd come back to it. It was, I think, the conversation that I do remember from Burwood Road, where I received the money, was that the way in which the procurement for Penrith and Liverpool had occurred, and you could probably throw Wollongong into that, as well, it wasn't the best way. It was, it was pretty stupid in the sense that - - -

Who said that?---We, that's what our conversation was around. So I'm, I, I'm not going to give you a "he say" sort of thing - - -

30 Sure, sure. The gist of it was it was stupid. Is that right?---Yes. And we'd come to the conclusion that we weren't going to do that again. I think his availability to deliver the works was putting a strain on what I was trying to do even though we did deliver it for a lot less than other rival bidders. It just, it wasn't, it stunk. It wasn't the right thing.

And so having - - -?---And then, sorry, and then subsequently from that, I didn't really know what to do and I made the decision to try and make it right by dropping my time at Sydney Trains.

40 By dropping your time at Sydney Trains.---To a part-time basis. So the, to sort of make it right. That was, that was my attempt at making it right.

Okay. I'm a little puzzled by how dropping your time to part time would make it right?---Not charging Sydney Trains, you know, a daily rate for five days a week when you can do it in three.

Okay. So previously you were being paid a full-time salary rather than an hourly rate though, weren't you?---From Sydney Trains?

Yeah.---No, it was a daily rate.

10

Okay.---The whole way through.

Right. So is it your evidence that you thought if you were charging them less money - - -?---It would make it right.

- - - that would kind of make it right?---Correct.

Did you consider whether you should let somebody at Sydney Trains know what had happened?---I had no idea what to do at the time.

20

Okay. Do you remember being troubled by that?---I remember being troubled and then thinking that will make it right and will make amends for it, yeah.

Okay. Did you consider seeking any advice in relation to it?---No.

You were still a pretty junior employee, well, not an employee, but contractor at this point, hadn't been all that long out of university, is that right?---Eight years.

30

Yeah. There were people more senior than you who could have given you advice in relation to handling the situation around you at Sydney Trains, weren't there?---Not really. I don't believe so.

Okay. Did you understand there to be anyone at Sydney Trains who you could have approached to seek mentorship or advice in relation to what to do about this situation?---Not as a contractor, no.

40

Okay. Did you disclose to anybody at Sydney Trains that you physically did work on the projects at, was it both Liverpool and Penrith that you were on the tools or just one of them?---Both of them.



Right.---Yeah.

Did you disclose that to anybody at Sydney Trains?---No, there was no real supervision in terms of what I was doing.

Okay. Where, you said that you agreed with Mr Gayed that the process stunk, I think to use your word, did you as part of that process provide him with any information in relation to what his quote should be?---In - - -

10

As part of the process where he was providing the quote and you then recommended him at the \$29,587 level that we see here?---Yeah, so I would have informed that less than 30 grand is a sole source.

Okay.---Yeah. Correct.

And did you understand that to effectively give him a piece of information that was useful in pricing to come as close to \$30,000 as he could without exceeding it?---I believe that's, yeah - - -

20

That's what you logically take from that piece of information, isn't it? ---Yeah. Correct.

Was that a publicly available piece of information about less than \$30,000 is sole source at Sydney Trains?---I'm not aware.

Right. And was the procurement process, I think you gave a short explanation in relation to the Wollongong signals building, that was slightly later but very much in the same period of time prior to June 2019. I think your business justification form was in May. Was that the same in terms of he already understood, that is, he, Mr Gayed, already understood that the sole source procurement had to be less than \$30,000?---Yeah.

30

Was that project, that is the refurbishment of the building as a whole, a project that had a bigger budget than \$30,000?---I can't remember what the budget, I think I supplied it to you guys, but yes.

Okay. Did you think about whether you could break it down into smaller parts of less than \$30,000 each to be able to use sole source procurement for it?---Yeah, so there was no way that you could go out to it to mark it given the timeframe to have it delivered by 30 June.

40

Okay. So is it - - -?---So sole source was the only way.

So there was even more time pressure, was there, in relation to Wollongong than Liverpool and Penrith?---Yeah, there was four weeks.

Right.---Yeah.

10 So the only way it could have been done was directly engaging the trains?  
---Correct.

And did you discuss that, that is, the need to break it up using sole source with Mark or anybody at Sydney Trains?---So that, that was spearheaded by, I think his name is Cooper Lee. He was the one that managed opex-funded projects. I can't tell you - - -

Okay, so when you say "opex", operational expenditure, is that what that's an acronym for?---Your guess is better than mine.

20 I'm guessing. Okay. So opex was, what, the pot of money that was left at the end of the year?---Correct. Correct.

30 And so you were - well, were you informed that there was a certain amount of money that could be spent on this refurbishment?---Yeah, I think the process is they have a bunch of projects that are sitting on the shelf that have some sort of business, not business development, project development people manage, and that's how they got the price of 400 to \$500,000. And then I can only assume they bring them off the shelf to see how much they have. They probably have a meeting about them and work out which ones they're going to go for.

Okay. But did you discuss with Mr Lee breaking it down into sub-\$30,000 portions?---Oh, it was the only way to deliver the project, yeah.

Okay. And did you end up doing work on the Wollongong signalling refurbishment?---No.

Did you receive any money from Mr Gayed in relation to that project?---No.

Do you know whether Mr Gayed inflated the quotes that he provided to you to come close to that \$30,000 threshold?---I think for four bathrooms to be done in amongst a bunch of other stuff, it was fairly cheap.

Did you, I think you said in an answer in relation to whether you could speak to anybody about making it right or seek advice on having received the cash from Mr Gayed, that you didn't as a contractor really have anybody who was supervising what you were doing. In terms of selecting or going to sole-source procurement, to particular providers for sole-source  
10 procurement, did you understand yourself to have anybody at Sydney Trains providing supervision in relation to that? Or were you relatively free to approach who you wanted to?---From my experience of Penrith, Liverpool and Wollongong in terms of procurement, you would, you would call the procurement number and ask them for help on, you know, I've got this project, this is what's coming up. You wouldn't receive a list of who was available to be used. I remember on one phone call for Penrith and Liverpool I got told to call Laing O'Rourke, which is a major tier 1 company. From that conversation I worked out that there wasn't much help  
20 available.

Right. Was that a number - you say you called a procurement number. Did you understand that to be within Sydney Trains or - - -?---I believe it was an internal Sydney Trains number, yeah.

Okay.

THE COMMISSIONER: So this was like an advice line, was it?---Correct.

MS DAVIDSON: Did you ask Mark or anybody in relation to the  
30 Liverpool and Penrith about experience that they, that is those who were working on these projects at Sydney Trains, had had with previous contractors on other equivalent projects?---If there was someone available to do the work, I would have taken them onboard to get a quote. The fact that I didn't have anyone suggests that if there was conversations it could have happened, but nothing to sort of proceed on the basis of.

Did you know whether Sydney Trains did any checking - I realise you may not be able to answer this question, but did any checking for suppliers that were put forward on a business justification sole-source basis like the  
40 example that we've been looking at here with Mansion?---I, I couldn't tell you.

THE COMMISSIONER: Just going back to the answer that you gave a moment ago. You said that if you could get someone else to do the job in the time, you would have, is that correct?---Yep.

10 But the person you ended up selecting, you had no knowledge, really, of their capacity to deliver in the time line, and in the end they couldn't without you engaging and doing the work on a weekend basis. Is that right?---Yes, so I think from Penrith and Liverpool, if Wollongong didn't happen it probably would have been delivered, Penrith and Liverpool, and I wouldn't have had to help out.

But what I'm saying to you is, is it the case that at the time you recommended Mr Gayed you really didn't have the confidence that he would be able to deliver.---I had the confidence that he would be able to deliver.

20 On what basis?---On planning the job, how, how the job was planned out to be completed.

Yeah, but he had never done this sort of work before, had he, and he had a full-time job?---Yep.

And he would have had to do it on the weekends and there was - - -?---It was always planned to be done on weekends from, from the get-go. That was the only way to do the job. That's how you do it cheaper.

All right, thank you.

30 MS DAVIDSON: Did you, I think you had explained in relation to Wollongong, that there was - well, you made some reference to \$500,000. Had you obtained a written quote for \$500,000 for the bathroom work? ---No. It was, it was a - I, I honestly can't remember what the document is but it's like a planning document that they have. So they would have - someone from Sydney Trains Planning would have quoted it up for that amount.

40 Somebody from Sydney Trains Planning would have done that?---Yes, correct.

Had you seen that document?---I would have been provided with something like that, yes.

But you never considered going to market in relation to that, notwithstanding that the value of it was supposedly \$500,000?---Yeah. I, I think having an existing building and then extending it and re-jigging the floor plan and all that, like, doing all that work is what substantiates the half a million dollars.

10 Right. So you understood the project to involve all of those steps, did you? ---Yeah.

Not just the refurbishment of the bathroom?---Correct. From going on the site visit and working out that there was some dormant bathrooms downstairs we worked out that, well, we don't need to do all of that work.

So it was effectively changing the scope of the project, was it?---Correct.

20 Do you recall at any point discussing or having any concerns about Mansion holding appropriate insurance to work in the rail corridor?---Yeah. I believe that they had the rule of \$50 million.

Was that public liability insurance?---Yeah.

Did you ask Mr Gayed about whether he had \$50 million public liability insurance?---You, you just don't need \$50 million public liability. It's - - -

THE COMMISSIONER: Sorry?---It's, it's way above what is required.

30 MS DAVIDSON: So when you say it's way above what is required, do you mean in your view it's way above what is required or it's - - ?---Correct. you're not working on the running lines of the tracks of, of the rail corridor. You're working in spaces off to the side.

So it was a Sydney Trains requirement, was it, that he had \$50 million public liability insurance?---I believe so.

You understood it to be?---Yeah.

So how did you get around that?---By doing a risk assessment on the work, working out that we had no potential to effect operations of the corridor. You, you can reduce the amount of insurance required.

And was that something you were required to justify, that risk assessment you performed, to somebody at Sydney Trains?---I think it was just having a conversation.

10 And again, do you recall who that conversation was with?---I think it was at, at the bottom of this page.

Sorry, the following page of the document here?---Oh sorry, yeah. Page 2.

Page 2.---Yep.

That's Mr Powell's approval.---Correct.

20 Subject to him providing a \$50 million insurance or a lower value agreed with Risk and Insurance. Did you have a discussion with Risk and Insurance?---No. I had the conversation with Sang Deepal.

And what was the nature of that conversation?---“Given the works are not on the running line and you have minimal potential to affect the track, can we lower the insurance?”

And what was his response to that?---He signed it.

30 But here he said it's subject to a supplier providing a \$50 million insurance or a lower value agreed with Risk and Insurance. Had he signed something else subsequent to this?---Oh, oh, I, I, I don't know. Sorry, I thought that was him approving it. My bad.

So it seems, would you agree now, it seems not to be him approving it?  
---Yeah. Sorry, my bad. Yep.

So thinking back now, do you remember reading this and thinking, oh well, I have to check whether Andrew's got \$50 million public liability insurance?---I honestly don't know.

Okay. It would seem to be a problem, wouldn't it, this requirement, unless you did something about it? I think you said you did a risk assessment.  
---Yep.

Was it just a risk assessment in your own head?---I don't know. It fairly well could be on the server or on the laptop.

Okay.---Yeah.

10 Do you know whether anybody checked whether Mansion had the contractor licence number on the quotes, that that licence was actually valid?---I don't know.

Moving on in time to the Macdonaldtown project.---Yep.

How did you come to be aware of that project?---So in my time at Sydney Trains there was another project manager, or senior project manager I think he was, Stewart Dunlop, and his project was the Macdonaldtown ground based warning system.

20

Okay. And TCQ was the head contractor on that?---Correct.

And do you recall - you said that was his project. You were aware of that project while you were working at Sydney Trains, is that right?---Yes. I'd been approached when I dropped my hours down to part-time to actually manage that project because they wanted to end Stewart's engagement, to which I declined.

30

Okay. When did you first meet Aidan Cox?---At ARCH Artifex.

Right. So it was at the same time that you were working for Sydney Trains part-time?---Correct.

And did you work with him at ARCH Artifex? What was the - - -?---The constructability engagement.

40

Okay. And what was the capacity in which you came to know him?---The two of us were, I think there was nine stations to be upgraded and we split it four and five. Well, sorry, ARCH Artifex were like "You have five, you have four."

Right, okay, so he was doing similar work to what he you were doing but on different stations?---Locations. Correct.

Okay. And did you compare notes about the stations you were working on? How did you come in contact with each other?---It was a collaborative exercise. We were working day-to-day.

And did you form a friendship with him?---Yes.

10 If we can have volume 13.2, page 81 brought up on the screen. See this is an email, well, looking at the bottom of the page first - - -?---Yeah.

- - - sent from somebody at TCQ to Stewart Dunlop?---Correct.

That's the senior project manager you'd been referring to in your earlier answer?---Mmm.

20 And it's then passed on to you and described as a methodology from PJ O'Connor "TCQ are going" see, this is the middle email, "TCQ are going to send through their aspect later this morning. Let's sit down this afternoon to review." This is September 2019. What was the capacity in which Mr Dunlop was asking you to sit down to review Macdonaldtown methodology. Do you remember?---From what I can recall, Stewart wasn't very familiar with how to plan a job like this, so he'd ask me if I could assist.

So it's sent to you at your Transport email address there?---Correct.

30 That's on a Friday. So, "let's sit down this afternoon to review." Do you recall whether you did sit down with Mr Dunlop and review the methodology from PJ O'Connor?---I can't recall.

Then six days later on the following Thursday, you forward it to your Gmail account. You see that there?---Yeah.

And then from your Gmail account, it seems a couple of minutes later, you're forwarding it on to Mr Cox?---Yeah.

40 Why did you do that?---So Aidan had extensive experience in delivering drainage adjacent to the running track, so because we were working together, I brought up this project in terms of methodology and that sort of thing, how to, how to - - -



THE COMMISSIONER: No, no. This is not an answer to the question you were asked. Please listen to the question.---Sorry? What was - - -

MS DAVIDSON: Why did you forward it on to Mr Cox?---So we were having that discussion about the methodology. I was getting a second opinion on it.

10 Right. You'd already had the discussion, well, at least it looks like Mr Dunlop wanted to discuss with you the methodology on Friday the 20th. This is some six days later that you're sending it on to Mr Cox. Was that some ongoing discussion you were having about the methodology with Mr Dunlop?---I honestly can't remember what happened at that time, but I do know that I sought Aidan's opinion on the methodology, for sure.

Why was it that you were doing that? Why were you seeking his opinion on the methodology?---So Stewart didn't know how to build it and I didn't know how to build it. We needed to find someone that knew how to build it.

20

Did you understand Mr Cox to, well, what was the capacity in which Mr Cox was working for ARCH?---As a constructability advisor.

Right, but did you understand him to be an employee, a contractor like you were?---A contractor, yeah.

Okay. And what did you know about his other activities as a contractor?---I think me sending that email is my first knowledge of him working at RJS Projects.

30

Well, do you remember discussing RJS with him?---We would have discussed it, yeah.

Right.---That's how I would have learned about the email address.

Okay. Did you in being asked to, by Mr Dunlop to review the methodology, have some role in the procurement process for Macdonaldtown?---No.

40 So after you sent the email on to Mr Cox, did you, well, what did you understand to be Mr Cox's interest in the project at the time that you sent him on the methodology?---So when we got the methodology we reviewed

how it was going to be performed and it was quite unsafe. I think Aidan already told you about that a week or two ago. So from that I looked into TCQ and from looking at their website they had no previous brownfield rail experience. I think their only experience was shop fit-outs to the, at a railway station. So we, I've sent this on to Aidan just to get an idea of how, how is the best way to build this.

All right. Can we have volume 13.2, page 76 brought up. While that's happening, had you talked to Mr Cox about what his role was within RJS?  
10 ---I just knew that he was working with them, yes.

Did you know that his own business was called Marble Arch?---Yes, that's how he was contracting to ARCH Artifex.

Right, but you weren't sending this to him at a Marble Arch email address. You were sending it to him as RJS.---Yes.

Do you recall any explanation of why he used that email address?---No.

20 All right. You see that email that you send onto him is 26 September, do you agree that one we were previously looking at with PJ O'Connor's methodology?---Yes, yep.

Now, this is an email from the previous day from Mr Cox to you, 25 September, with a quotation for Macdonaldtown buried containment works.---Yep.

30 So it's not true to say you were just seeking a second opinion on the methodology, he had already provided a quotation for these works by this time, hadn't he?---Sorry. So if you go back to the previous one, I think the, the methodology was, would, would have happened in discussion with Stewart and then from this it was seeking, seeking a price. My bad.

But you're proving the method - can we go back to the email that's page 81, thank you? So that's a methodology that comes from PJ O'Connor.---Yeah. I, I don't even know what that means to be honest, the methodology from PJ O'Connor.

40 Well, you can see from the attachments what it was that you sent on. There's a lift study, a staging plan, a hook and high rail pick and carry. Did

you know who PJ O'Connor were?---I believe they were an electrical subcontractor.

And they were seeking to gain the work from TCQ?---Yeah. Very well could have been, yes.

So in seeking Mr Cox's opinion on work or methodology that PJ O'Connor were proposing to use at a time that you knew he was also providing a quotation for the work, you were effectively sharing a competitor's  
10 information with him, were you not?---Correct.

And you understood yourself to be doing that at the time?---At, yeah, yes. At, at the time I remember Stewart, Stewart had no, he had no benchmark for what the project, the methodology or what the price was. He'd only had TCQ. So he'd asked me to review the methodology and have a look at the price.

But the methodology that you were sending to Mr Cox wasn't a Transport or TCQ methodology, was it? It was, seemingly, as described here, PJ  
20 O'Connor's methodology.---Yep.

So you weren't just providing a Transport document or something that had been planned or something that TCQ as the head contractor wanted done, you were actually asking him or providing him with insights into what a competitor was proposing to do.---Yeah. I, I think we were, we were reviewing the mythology and, and looking at it thinking there's absolutely no way that they can do this.

But it's not just to provide advice to Mr Dunlop, is it? It's to give him, Mr  
30 Cox, an advantage in relation to his quotation, isn't that right?---Yes.

Might that be a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes. We'll resume at 2 o'clock. I'll adjourn.

**LUNCHEON ADJOURNMENT**

**[1.02pm]**