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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 12 APRIL, 2023

AT 10.00AM

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

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

THE COMMISSIONER: Yes, thank you.

MS DAVIDSON: Chief Commissioner, might I commence in relation to Mr Gayed today by tendering the relevant documents of the brief relating to him.

THE COMMISSIONER: Just one minute. Yes.

10 MS DAVIDSON: So the first is volume 10.1 of the Gayed Avco brief and that would be exhibit 143.

THE COMMISSIONER: Exhibit 143.

#EXH-143 – PUBLIC INQUIRY BRIEF VOL. 10.1 GAYED - AVCO BRIEF

20 MS DAVIDSON: I tender volume 10.2 of the Gayed Avco brief.

THE COMMISSIONER: Exhibit 144.

#EXH-144 – PUBLIC INQUIRY BRIEF VOL. 10.2 GAYED – AVCO BRIEF

MS DAVIDSON: I tender volume 10.3 of the Gayed Avco brief.

30 THE COMMISSIONER: Exhibit 145.

#EXH-145 – PUBLIC INQUIRY BRIEF VOL. 10.3 GAYED – AVCO BRIEF

MS DAVIDSON: I tender volume 10.4 of the Gayed Avco brief described as the financial brief Gayed.

40 THE COMMISSIONER: 146.

**#EXH-146 – PUBLIC INQUIRY BRIEF VOL. 10.4 GAYED –
FINANCIAL BRIEF – GAYED**

MS DAVIDSON: I tender volume 10.5, the financial brief Avco Sydney trains.

THE COMMISSIONER: 147.

10

**#EXH-147 – PUBLIC INQUIRY BRIEF VOL. 10.5 FINANCIAL
BRIEF AVCO SYDNEY TRAINS**

MS DAVIDSON: I also tender, Chief Commissioner, the documents and pages of which were marked for identification yesterday and I hand up copies. This is the Downer training document supplied by Downer to the Commission entitled Standards of Business Conduct and Workplace Behaviour May 2017.

20

THE COMMISSIONER: 148.

**#EXH-148 – DOWNER INDUCTION MODULE STANDARDS OF
BUSINESS CONDUCT & WORKPLACE BEHAVIOUR**

MS DAVIDSON: I tender a document - - -

30

THE COMMISSIONER: Just a moment. Yes.

MS DAVIDSON: This relates to the training document, Chief Commissioner. I tender a document described by Downer in providing it to the Commission as Mr Gayed's learner transcript.

THE COMMISSIONER: 149.

40 **#EXH-149 – ANDREW GAYED DOWNER LEARNER TRANSCRIPT**

MS DAVIDSON: And I hand up copies of that.

THE COMMISSIONER: Yes.

MS DAVIDSON: And finally and similarly in relation to Mr Gayed's training records I tender a document supplied by Downer described as Andrew Gayed proof of learning records.

10 THE COMMISSIONER: Exhibit 150.

#EXH-150 – ANDREW GAYED DOWNER PROOF OF LEARNING RECORDS

MS DAVIDSON: Thank you. I can indicate for the record, Chief Commissioner, those documents, that is, the last two exhibits go to the date on which Mr Gayed completed various training modules including
20 relevantly the introductory module as to standards of business conduct to while I took him in evidence yesterday.

THE COMMISSIONER: Yes. Does that conclude the items for tender?

MS DAVIDSON: That concludes the tender.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Mr Gayed, you're subject to the same oath you took yesterday to say the truth. You understand?---Yes, Commissioner.

Thank you. Yes.

10 MS DAVIDSON: Mr Gayed, I'd asked you some questions yesterday afternoon in relation to invoices submitted in relation to the work that was completed on the Wollongong signalling building, including an invoice that had been sent from an Avco email address. What's your involvement in the company Avco?---At the time?

Well, at the time, initially, and then now?---At the time, initially, no involvement, just administrative.

20 Administrative. So does that mean you played a role in administering the company?---No, just office administration.

Well, "just office administration" would seem to suggest you were somehow involved in administering Avco. Can you explain that? Whose company is it?---My father's.

Right. Is that, apologies for the pronunciation, Wafaie Gayed?---Yes.

Is that spelt W-a-f-a-e-i?---A-i-e.

30 A-i-e?---Yeah.

And he's the director of Avco?---At the time, yes.

And in relation to your father's company, did you assist him with office administration at the time, that is in 2019?---In terms of sending emails, yes.

Right. Are you referring to the email that you did send in relation to the invoice for the Wollstonecraft signalling work, using an Avco email address - - -?---Yes.

40 - - - or are you suggesting that you assisted him more frequently in relation to sending emails?---No. In, in relation to that invoice shown yesterday.

All right. Do you hold a position in Avco now?---No.

Are you aware of having been the nominated supervisor in relation to Avco's construction work?---For the building licence, yes.

For the building licence?---Yes.

10 Well, when did you hold that role?---I, I couldn't remember. A couple of years ago.

Was there a period of time at which you were actively working for Avco in relation to its building licence?---Not in relation to the building licence, no.

But you were supervising in relation to work performed under that building licence, were you?---No.

20 So why was it that you were the nominated supervisor?---I, I can't recall but I think Avco has a builder's licence and, and to do that, it needed a nominated supervisor. But it didn't carry out any building work, per se.

I see. So you performed the role but the role didn't involve any work because Avco wasn't doing any building work. Is that your evidence?
---Correct.

Was your father aware that you were undertaking works, that is you, using the name of Mansion Building, were undertaking works on Sydney Trains projects?---Not that I'm aware of.

30 Was your father aware that you were using an Avco email address in relation to works on Sydney Trains projects?---I'm not too sure if he was or not. I, I don't think so.

Did you discuss it with him?---No.

Was there a reason you were using an Avco email address in submitting an invoice, at least, in relation to the Sydney Trains work?---I can't remember a specific reason, no.

40 Do you own a property in Rossmore, Mr Gayed?---Yes.

You don't need to tell us the full address, but is that in May Avenue?---Yes.

And is that the principal place of business for Avco?---Yes.

Do you receive payments from Avco in relation to that property?---Rental?

Yes.---Yeah. Have I? Yes.

And what does that relate to?---Storage areas and, mainly storage I believe.

10

Is that also a property at which you reside?---Yes.

And was that the case at the time, as well?---Yes.

Right. That is in 2019?---Yes.

And where you say it relates to storage areas, are those storage areas utilised by Avco?---Portions of it, yes.

20 And what sort of activity is conducted in those storage areas?---Storage of materials.

So building materials?---Containers and I, I don't, I don't know the specifics.

Right. What was your role in the Glenbrook project, that is, during the time that you were working at Downer?---Sorry, my role?

Yes. Were you the project manager?---Yes.

30

Yes. And who was your supervisor in relation to Glenbrook?---The, Ross Dean.

Right. And was Mr Bedwani also supervising you?---He was my line manager, yes.

Right. And did you have a financial delegation in relation to that project?---Yes.

40 And what was that?---I think from memory 5,000.

Okay. Did you suggest at some point as that project came to an end to anybody at Downer that the Rossmore property that you owned might be able to be used in relation to storing material?---Yes.

Who did you suggest that to?---Site supervisors, commercial manager.

Was that Mr Patel?---Yes.

10 And do you recall the conversation with Mr Patel in which you suggested that?---We can save money by storing material and using it for the next job.

Okay. When you say save money by storing material, do you mean instead of disposing of it, that it could have been utilised on the next job?---Yes.

Did you have any idea at that time when the next job was going to be coming up?---No.

20 All right. So did you propose to him that the material be stored at your property, that is to Mr Patel?---I proposed a property. I, I can't remember the specifics of the conversation.

Right. So you proposed a property.---Yeah.

Do you remember what you proposed?---It would have been something along the lines of, "I have a property. We can store the material."

Right. Okay. Did you say to him that you'd charge rent in relation to that? ---There were invoices submitted, yes.

30 Right. Do you remember the conversation, any conversation with Mr Patel about the level of rent that you would charge?---Not from memory, no.

All right. Did you discuss your proposal to store Downer material on your property with anybody else from Downer? I think you said a site supervisor.---Yeah.

Was that Mr Dean?---Yep.

40 Right. Do you recall the nature of the conversation with him?---Again, from memory, he thought it was a good idea, so much so that other sites stored material there as well.

When you say other sites stored material, is that other Downer sites?
---Correct.

Right, that, and was that with your involvement or with Mr Dean, Mr Dean's initiation?---I can't remember the specifics but it was, "Let's store some other material for the upcoming jobs as well."

Okay.---From other sites.

10

What sites were they? Do you remember?---Well, we only had four at the time. I think it was Hazelbrook and Kingswood.

So it was sites in relation to that tranche of TAP projects, was it?---Correct. Mr Dean was nominated as superintendent.

In relation to all of those projects.---Correct.

20 I see. Did you consider at that time whether using your property and charging rent to Downer to store materials at your property would involve a conflict of interest?---At the time, no.

Did you discuss using Avco in relation to storing the material?---I, I didn't think I needed to. The invoices were coming from Avco.

All right. Did anybody at Downer know that Avco was associated with you?---My understanding was after having done an ASIC search, that there would be a clear link to the address that was also my address.

30 So again, you were relying on others conducting ASIC searches to disclose your connection to Avco. Is that - - ?---Not a reliance, a known fact that that's what happened.

Right. You know that somebody checked that address?---I know that someone in Downer is always checking ASIC before we set up companies on the system, yes.

40 All right. So did you ask for Avco to be set up as a supplier for storage, that is, in the Downer system?---I can't recall for what reason I asked for it to be set up.

All right. Thinking about it now, using a company that was associated with you for storage and material clearly did represent a conflict of interest, didn't it?---In hindsight, yes.

Right. And you'd done the conflict of interest training or at least the conflict of interest element of the training that we took you to yesterday. Was there any, other than thinking, well, somebody will do an ASIC search and figure out this address is my address, did you pause at all in relation to your connection with Avco and the money that would be able to be derived
10 from the storage?---I think my thinking at the time was just about saving money and best, best outcome from project.

Did you obtain any quotations for storage?---No.

No. Could we have volume 10.2, page 176 brought up on the screen? 176. This is an approval from you. If we scroll down, if we could continue to scroll. You'll see at the bottom of the page there, on 179, a reference from Mr Camilleri, the site engineer, to storing Glenbrook's container and
20 materials. Could we scroll to the following page. Down the bottom of page 180 it's Mr Camilleri requesting that Avco be set up in the system as a supplier. Do you recall having a discussion with Mr Camilleri about asking that Avco be set up in the system as a supplier?---Not from memory, but - I retract that, sorry. No, not from memory, I don't.

If we could scroll to page 183. This is an email from you to Mr Camilleri saying, "Please see attached documents in relation to Avco and providing information in relation to Avco." You see there in relation to the request for further information from the storage supplier that the contact name that you gave is Ray Alfonse.---Yes.
30

Who's Ray Alfonse?---That's my father's anglicised name.

Right. Is there a reason that you gave your father's anglicised name in relation to the contact person for Avco?---No.

Was he aware that you were intending to use Avco as a means of storing material for Downer?---Yes.

Was he involved in discussions in relation to the level of rent that would be
40 charged?---No.

So it was effectively you're arranging it but using your father's name?
---Yes.

Was that an attempt by you to disguise your connection with Avco?---No.

Because a person looking at these emails wouldn't have been able to ascertain that Avco was anything other than an ordinary storage supplier, would they?---No.

10 So a person at Downer couldn't have ascertained from the information you'd supplied that it had a connection with you?---No.

That's again because you were relying on some detective work being done through the ASIC search, is that right?---No.

No?---No.

How else would the connection with you been known?---I don't think, I don't think "detective work" is accurate. I mean, the delegation of - - -
20

THE COMMISSIONER: Say that again.---Sorry, Counsel said that I'm relying on staff doing detective work and I disagreed with it and I'm trying to explain that. It's the same address. My delegation of authority was less than what the invoices are, which I presume you'll pull up, and the address is exactly the same. So I did not think that there would need to be a level of detective work, no.

MS DAVIDSON: But it would require somebody to be aware of your residential address, would it not?---Something that I haven't hidden from
30 anyone.

Right. But it would have required somebody - that is somebody within Downer - to go and cross-check the address that had been found on the ASIC search against presumably your HR records to find out that you lived at that address. That wasn't something that would ordinarily have been done in checking a supplier, would it?---It's on my monthly pay checks. It's not something that's hidden. There was - - -

Right. But did you think that in conducting an ASIC search, somebody in
40 the Commercial Team would also be checking payslip records for the addresses of Downer staff? Surely, you didn't expect that the checks would

go to that level?---No, but the ASIC check would also pull up the name of the director. Correct?

Well, but the name of the director wasn't yours, was it?---Same surname.

Well, again, was your father using his anglicised name, are you aware, in connection with his directorship?---I'm not aware what, what name or, or what he uses for his directorship.

10 Would you agree that, in any event, people who share the same surname are not necessarily related to each other?---Yeah.

I'd suggest to you that Gayed isn't such an unusual name that there are only members of the same family who share the same surname. You'd agree? ---I'd call it unusual enough to ask the question to the same person who's got the same surname.

20 So is it your evidence that you had expected that by seeing the same surname, and potentially doing a check, on looking at the address and realising that that was your address, that somebody at Downer should have recognised the connection to you?---I, I don't know how to respond to that, sorry. What was the question arising from that?

Is it your evidence that you were expecting that the connection to you would have been recognised via the fact of the same surname in the directorship and the address that was used for the supplier?---There was, there was no secret of, is, is my evidence.

30 Well, but you hadn't told anybody, had you?---A, a few people knew, yes.

A few people knew. So who had you told of the connection between Avco and you?---Anyone who wanted access to the site, which was a few people, which - - -

That was after the materials had actually been stored on the site?---And, and prior. It's, you know, we needed to organise to take the material there, call Ray, he's the contact and he'll give you access.

40 Okay. And did you also say to those people, "He's my dad"?---A couple of people, yeah.

And who were those people?---I couldn't remember from the top of my head, but - - -

Did they include Mr Patel?---No, Mr, Mr Patel was in the office. So we're talking about site people.

Right. So the site people wouldn't have had any role in approving invoices to the supplier, would they?---No.

10 And the conflict of interest statements within the standards of business conduct that I took to you yesterday clearly indicated that you shouldn't engage in work that involved a conflict of interest or that there should have been discussion of that with your manager, did it not? Do you recall that?
---Yes.

But you didn't do any of those things?---No.

20 You provided, well, I should say Avco provided a quote in relation to the storage work. Could we have volume 10.3, page 187, brought up on the screen? This is an email from an Avco, again an Avco email address, attaching a quote for the storage yard at Rossmore. And if we scroll to the following page, you'll see the attachment. Both the email and the quote are signed by Ray Alfonse. Did you prepare those documents?---I can't recall.

I think you said your father wasn't aware of, sorry, wasn't involved in making the agreements with Downer. Would that tend to suggest that you prepared these documents and sent the email?---It would suggest it, yes.

30 Would you agree that's a reasonable conclusion to draw?---Yes. But I, but I still can't recall doing it, but yes, you could draw that conclusion.

And then an invoice that was sent the same day, if we could go to the following page, page 189? Again, from the same Avco email address and to Mr Camilleri, asking for the PO number to be added once received and submitted for payment. Is that an email you sent?---I, I don't recall.

All right. Would your father have known the detail about adding the PO number for Downer once received?---No.

40 That suggests it's something that you would have sent, doesn't it?---You can draw that conclusion, yes.

Right. And then was there a process that involved your approval of this invoice, that is the \$13,000 or so invoice that had been issued?---I think from memory the approval process was made for the first level of delegation and then it moved up the chain, yes.

10 All right. So could we scroll to page 191. This is a standard requisition approval required email that seems to have been sent to you from an internal system described as JDE at Downer. Was that a purchasing approval system?---From memory, yes.

Right. And you did approve the invoice?---The first level of delegation, yes.

20 Right. If we could go to volume 10.2, page 176, there seems to also be an email sent to you from Ms Inglis, the senior project administrator, in which you indicate your approval. That's on the date that the invoice was supplied. Who else did you understand would be approving the invoice? ---I can't remember the levels of delegation, who it went through next.

Right. But did you understand that other people, if they had your approval, were likely to approve it, that is if you had provided the first level of approval?---No, I was constantly questioned on the invoices that I approved.

Right, but your first level of approval certainly provided a gateway or a threshold in relation to paying the invoice, did it not? That is, without your approval it couldn't have gone any further?---Correct.

30 Right. Did you request that the storage costs be made ongoing until the next project occurred?---I think the, if, referring back to the invoice it was for an initial three-month period. That was the understanding that it would cease.

Right, but you didn't know when the next project would be at this time, as in, at March 2020. Could we have volume 10.2, page 192 brought up on the screen. You indicate there on 13 March, so that's only two days after the invoice approval, that the following suppliers have ongoing costs. Do you see the bottom email there?---Yes.

40 Related to stored until the next project. You were using both Avco, well, both Avco and Coates in relation to storage?---Yes.

What was Coates' story?---I think that's container hire.

Right. So was that the container that was then stored on - - -?---With the contents inside of it, yes.

Right. Do you recall that there was then a further invoice that was approved for you, sorry, approved by you, at least at the initial stage, for payment in May?---I have a vague memory of it, yes.

10 All right. Can we see volume 10.2, page 195, and the invoice itself, you will see at the bottom of there on 25 May, there's storage yard invoice 2, and at the top we see an approval from you on 27 May.---Yes.

If we could scroll to page 198, that's the invoice itself. That includes a total that also adds in an end of lease clean. Do you recall creating this invoice? ---Not from memory but the same assertion can be made.

Right. So it would be reasonable to draw the same conclusion, would it? ---Yes.

20

You refer here to an end of lease clean. Is that something that in fact took place?---Yes.

Did it take place prior to the date that it was invoiced?---It took place, from memory, for a portion of, of it. So you can see there that there's been an increase in the leased space by threefold from the first invoice.

Yes.---So a portion - - -

30 So it took place in relation to a portion of it, that is a portion of it was cleaned?---Correct.

Right. And what did the increase in space relate to?---Additional containers.

Right. And were they additional containers that came from other sites? ---Yes.

40 That related to your evidence earlier about Mr Dean thinking it was a good idea to store more material?---Yes.

Right. If we could have volume 10.2, page 205 brought up. Can you see the bottom email there. This is an email from Mr Patel to you on 30 May, saying, "See below comments from Transport for NSW rejecting Avco cost." This seems to relate to the first invoice or at least potentially relates to the first invoice. It may also relate to the second. "Can you please provide justification?" And you replied, "This invoice is for storage of materials at Glenbrook since 2019, that the items would be taken to the next tranche of works." If we could scroll up to page 204. You see at the bottom there, on 31 May, Mr Patel says to you, "Hi, Andrew. Thanks, we've spent
10 28 K in storage of material, which seems very excessive. To provide further justification, can you provide a list of items that we have stored? Are we expecting any more costs in this regard?" And then sets out the costs to date from Avco. Would you agree that that email suggests that Mr Patel was not aware of any association between Avco and yourself?---No.

Sorry, it does indicate that he was aware or it doesn't indicate that he was aware?---No, I mean, I, I disagree with that comment.

Sorry, you disagree with what comment, that he was aware of the
20 connection between yourself and Avco or - - -?---Sorry, your question was "Do you agree that it appears Mr Patel was not aware?"

Yes.---And I, I, I disagree.

Right. You say that he was aware?---Yes.

All right. So he's asking you - well, would you agree this email seems to indicate that he's asking you in your capacity as project manager to explain what's been stored? He's not asking you in the context of somebody who's
30 providing invoices on behalf of Avco, is he?---It was not uncommon for Transport to ask for justification on invoices. And Mr Patel would frequently send these sort of emails requesting justification.

All right. I understand that. But what is it from this email that suggests to you that Mr Patel was aware of the connection between Avco and yourself?
---Mr Patel is just looking for a justification to send it to Transport.

Right. So there's nothing in this that indicates he realises the invoices from Avco are actually coming from you, is there?---There's nothing to indicate
40 otherwise either.

All right. Well, let's continue to look at the chain. You then provide information in relation to what's been stored at Avco's yard. Is there any reference there to materials that are not from Glenbrook?---So the two containers with hand tools and materials.

They didn't come from Glenbrook, is that - - -?---That didn't come from Glenbrook, no.

10 Right. And then Mr Patel replies to you, copying in Mr Bedwani, saying, "Hi, Andrew. It appears that we will not get paid by TfNSW and the cost will hit our bottom line. The queries that need to be addressed is have we taken approval from Transport or Downer's management prior to hire Avco? I'll arrange for the meeting between us tomorrow morning." Did you have approval from Transport for NSW or Downer's management prior to hiring Avco?---Not from Transport.

Did you understand that you required approval from Transport?---No, I did not understand that we needed their approval.

20 And what about from Downer? That is, from Downer's management as referred to here?---I can't recall.

Did a meeting between you - that is you, Mr Patel and Mr Bedwani - in relation to this take place?---I also can't recall if there was a meeting.

Right. Do you recall feeling anxious at all in relation to the Avco costs being referred to as "very excessive" by the commercial manager?---Not at all.

30 Right. Were you concerned at that point that the association between yourself and Avco might be realised by Mr Patel?---Not at all.

Because he hadn't realised it at this point, had he?---I disagree. I think he did and this was just him trying to justify it.

Right. So it was him trying to justify something that he was previously aware of.---That's, that's my understanding of it, yes.

40 Right. Why would he write emails in these terms if he had previously approved or was previously aware of either the expenditure on Avco or a connection between yourself and Avco?---I, I couldn't tell you.

It doesn't make any sense, does it, Mr Gayed?---No, it doesn't but, I mean, there's a lot of email chains like this between Mr Patel that show the same sort of logic from Mr Patel. This isn't, this isn't, outlier.

Right, but it is an outlier insofar as it's connected to you, isn't it?---My intent was to save money.

Even though Mr Patel regarded the cost as plainly excessive.---His opinion.

10

Right, but Transport also seems to have rejected the cost on the basis that it wasn't a cost that they'd approved?---It saved us money on the next tranche.

So is it your evidence that although it didn't save money at this money, it saved money prospectively in relation to Wollstonecraft or whatever the next project was going to be?---Both. My evidence is it saved money across the board, not on one tranche or the other.

20

Right, but you weren't aware of any comparative storage costs for any other storage suppliers for the equivalent materials or space, were you?---I wasn't aware of any other storage that would keep the material for as long as that material was kept for.

Right, but presumably commercial storage would have been available. You could have paid for the space, that is, Downer could have paid for the space somewhere else?---There's still containers out there now from Downer.

30

Right, so - - ?---So what, what commercial agreement could possibly take place there?

Well, presumably one that had gone on for some years but - - ?---It's - - -

In relation to the period of time that this has been queried, this is only material that had been held between March and June 2020, was it not, at this time?---At this point of time, yeah.

40

Right, so it wasn't at this point in time something where there was no, in the three-month period there was no, an issue where there was no alternative, was there?---At the time I thought that was best for the project.

Right. I suggest to you that you didn't consult with Mr Patel or obtain his approval in relation to the use of Avco for the storage? What's your response to that?---I disagree, obviously.

The next project, well, tell me if this is correct, the next Downer project in relation to which Avco provided any assistance or services or facilities was the Wollstonecraft project. Is that correct?---From memory, yes.

10 All right. Avco had already been set up as a supplier by the time of the Wollstonecraft project. Is that correct?---Yes.

And you were aware of that. Did you seek approval in relation, did you seek any fresh approval in relation to Avco's use at Wollstonecraft?---In relation to - - -

Any fresh approval from anybody at Downer?---There were conversations had.

20 Right. Well, we'll come to the specifics of what Avco did. Do you recall speaking to Mr Bedwani about Avco being used as a supplier for Downer? ---Yes.

Could we have volume 10.2, page 208 brought up on the screen. This is August 2020 and there's a subcontract proposal letter sent to Mr Bedwani but copied to you and Mr Patel. If I can scroll down. And this relates to the building works at Wollstonecraft and one of the proposals that's been, sorry, one of the companies that's referred to a subcontractor there or supplier, if you see the bottom part of the page, is Avco?---Yes.

30 Do you recall in relation to the building works at Wollstonecraft discussing with Mr Bedwani Avco potentially being a tenderer?---Not that I can recall.

All right. Are you able to explain how it made its way onto this list?---No.

Were you the project manager at Wollstonecraft in relation to this - - -?
---Yes.

- - - tendering process?---Yes.

And so the list of subcontractors or suppliers that was being identified to Transport as suitable for this project obviously involved consultation with you?---Yes.

Right. Do you recall considering who were the appropriate subcontractors in relation to the building package at Wollstonecraft?---Yes.

Right. And they included Maize. Do you recall considering them as appropriate?---Yes.

10

And ProjectHQ. That was Mr Vardanega's company. Do you recall considering them as an appropriate tenderer for the building package?---No. I, I don't recall that, no.

Right. But, presumably, you did if they made their way onto this list?---If they're on the list.

Did you prepare a draft of this letter?---Not from memory, no.

20 Right. But you had input into it, in terms of who would be the nominated subcontractors to tender?---Yes.

Right. Do you recall considering whether RJS was an appropriate subcontractor to tender for the building package?---I, I think so.

Right. And some with Ultra Building Works Pty Ltd?---Again, I think so, yes.

30 Right. So it doesn't make sense that you considered the inclusion of Maize, RJS and Ultra Building Works but not ProjectHQ or Avco, does it?---No.

Are you aware of anybody else at Downer suggesting that ProjectHQ or Avco would have been suitable for tenderers for the building package? ---Not to my knowledge, no.

Did you turn your mind to Avco, that is your father's company, tendering for the building package at Wollstonecraft?---No.

40 So how, on your evidence, does it appear in this list?---I, I can't recall.

It must have been because you suggested them, mustn't it?---It seems like it.

And the same with ProjectHQ, Mr Vardanega's company?---Yes.

Right. It seems like it. And they were, in fact, approved. If we can go to page 212 of the same volume? This is a letter that comes from Mr Wakim to Mr Bedwani, pursuant to the subcontract package for the building works in September 2020. Do you recall having any discussions with Mr Bedwani, I think your evidence was that you did, in relation to Maize - I withdraw that, we'll come to Maize, in relation to Avco providing services or being a supplier at Wollstonecraft?---I, I can't remember the specifics of the conversation.

Right. Do you remember the gist of it?---That they'd be added to the list.

That they would be added to the list of subcontractors?---I believe so, yeah.

For the building package?---Yes.

Right. And how was it that you thought it would be appropriate for a company, it was your father's company, to be tendering for the building package, the value of which was I think more than \$1 million. Is that right? ---From the evidence shown on-screen, yes.

How was it that that wouldn't have involved a conflict of interest?---In, in hindsight.

At the time, was it your intention to prepare a quote on behalf of Avco? ---No.

30 Was it your father's intention to prepare a quote on behalf of Avco?---No.

Was he aware that Avco had been approved by Transport for NSW as a tenderer in relation to a \$1 million plus building package at Wollstonecraft Station?---I don't think so.

Had Avco ever done any work, any railway project?---Not that I know of.

Right. What was the kind of construction that it generally was involved in? ---I couldn't, I don't know.

40

It was your father's company. Surely you knew what kind of work it was doing.---Building work.

Right. You have residential building work, commercial building work.
---I think it was commercial.

Are you able to say what kind of commercial building work?---Not to the best of my recollection, no.

10 I suggest to you that's unlikely too.---I'm not trying to hide facts from you.

So you say you don't think that he was aware of being an approved tenderer, but you did discuss with Mr Bedwani, including Avco. When you discussed that, did you mention any connection between you and Avco?---No.

Right. And why was the reason that you didn't mention that connection?
---As per my evidence previously, it was implied that he knew.

20 THE COMMISSIONER: Sorry?---It was implied that he knew.

MS DAVIDSON: Right. And was it implied that he knew from the same process that you'd referred to before, that when Avco provided storage invoices on Glenbrook, that somebody in the Commercial Team would have done an ASIC search and made the connections between the address and the surname and you? Is that the way that you inferred or implied that Mr Bedwani knew of the connection between Avco and you?---Yes.

That's simply incredible, I suggest to you, Mr Gayed.---Okay.

30 THE COMMISSIONER: Mr Gayed, you would accept that it would not have been straightforward for someone at Downer, such as Mr Bedwani, to identify a connection between Avco and yourself?---I accept that.

Thank you. And one of the reasons why it would not be straightforward for someone to identify such a connection is because of actions which you took. Would that be correct?---Oh, I'd accept that as well.

Thank you, yes.

40 MS DAVIDSON: You say you do recall having a discussion with Mr Bedwani. You don't recall the specifics. Can you tell us everything that

you do recall in relation to that conversation with Mr Bedwani about Avco tendering on the building package at Wollstonecraft?---My recollection of it was that we needed more people on the, on the list, even though they won't be submitting pricing.

Right. You needed more people on the list, that is more subcontractors?
---Correct.

10 And why was it that there weren't sufficient subcontractors available to be proposed for the project at Wollstonecraft?---Rail projects are notoriously difficult to get a builder on.

And why is that?---'Cause their requirements are arduous for a builder, with the amount of work being insignificant to most.

20 So was the - you said that it was understood that they wouldn't be submitting prices. Do you recall saying to him, "Well, I can just add Avco. They won't actually proceed"?---Avco and ProjectHQ, something along those lines.

Right. So it was a discussion about both Avco and ProjectHQ at the same time or - - -?---Roughly. Again, from - like, my memory's pretty vague, but something along those lines.

Okay. And what did he say?---I can't recall the exact response.

30 Right. But he said yes to it, presumably, and so far as that was included on the list subsequently, is that right? That is, the list that went to Transport for NSW, the letter we've just been looking at.---Yeah, it appears that way, yes.

Right. And did you communicate anything to your father about this?---No.

Right. And was it ever your intention that you would prepare a price on behalf of Avco?---No.

And was that because you were aware that if Avco had had the building package or been awarded the building package, that would have represented a conflict of interest?---Not a consideration at the time. Like, it wasn't - - -

40 All right. You simply didn't think about conflict of interest questions, is that right?---In regards to this, no.

Right. But you agree it would have been a massive conflict of interest, wouldn't you, if Avco had in fact been a tenderer on the building package, given that you were the project manager?---In retrospect, yes.

Right. Well, not something you thought about at the time, though?
---Looking back in hindsight - - -

Okay.--- - - - there would be.

10

Was your father - - -

THE COMMISSIONER: Sorry, what is it about looking back at it at hindsight that identifies it to you as a conflict of interest but didn't at the time? Is there something else that has come to your attention?---No, Commissioner. I suppose my thinking at the time was just - - -

I'm sorry?---My thinking at the time was - - -

20

But there's no, is there any additional information that you've come across that, in your mind, identifies it to you now as a conflict of interest but didn't then?---No. It's just on reflection.

I see.

MS DAVIDSON: Who were Ultra Building Works?---Another subcontractor.

Right. Were they somebody who you expected to put in a price?---Yes.

30

Had you discussed that with them?---Yes.

Had you previously worked with Ultra Building Works?---No.

Right. So what was, where did your knowledge of them come from?---I was catching a train one day and I saw them working for Sydney Trains. I gave them a ring and asked them if they wanted to tender.

Right. And did they subsequently?---I can't recall.

40

Do you recall participating with them in discussions about the tendering, that is the requirements for the building package at Wollstonecraft?---I can't recall.

Okay. Did you speak to Mr Bedwani in relation to Ultra Building Works? ---I can't recall.

Do you recall speaking to Mr Bedwani about Maize and RJS?---Not at, not something I can recall, no.

10

Okay. 'Cause you said that you told him, "We just need some extra names for the list," or something along those lines. Is that right?---Yes.

And the extra names that you recalled, that is, you didn't expect to put in prices, were Avco and ProjectHQ. Do you remember saying to him anything along the lines of, "Oh, but we do have three other genuine tenderers"?---Not from memory, no.

20 Okay. So did he know one way or the other based on what, sorry. Did you conversation convey to him one way or the other whether you expected Maize, RJS and Ultra Building Works, to provide prices?---Not that I can recall.

Right. Do you recall Avco obtaining quotes for the lighting towers at Wollstonecraft, Avco?---Well, one quote, not quotes.

Okay. What, can you describe how that process occurred?---Yes. So we needed lighting towers on the job.

30 When you say we, that's Downer.---The Wollstonecraft project.

Right.---Downer.

Yeah.---The project needed lighting towers.

Yeah.---We needed the lighting towers from a specific company and Downer's procurement process took weeks to set up companies so I suggested we use Avco to hire the lighting towers.

40 All right. And who did you suggest that to?---Mr Patel.

Right. And, again, did you mention to Mr Patel any connection between you and Avco?---It was implied from - - -

Was it implied by the same method that you - - -?---By the same method.

- - - referred to before?---That we've already, yes.

So there was no additional - - -?---No.

10 - - - discussion. Could we have volume 10.2, page 224 brought onto the screen, please. You'll see there that this is an email on 8 October from Access Hire to Ray using the info@avcoccm address that you'd previously been using. It's then forwarded on to you at your Downer email address. Was Access Hire the specific company that you were referring to before?
---From memory, yes.

Right. Was there a reason, well, this email was sent to the info@avcoccm address and it's addressed, "Good morning, Ray." Was your father
20 Wollstonecraft project?---I believe I, I made him aware that that's what we were doing.

Right. Do you recall when you made him aware of that?---Sometime before this email.

Right. What did you say to him?---"I need lighting towers for the Downer project. I'm going to put it through Avco."

Okay. Was it your evidence that your father then became involved in the
30 documentation and the process for invoicing Downer and obtaining, providing the quotes and obtaining approval for those?---With my assistance, yes.

With your assistance, all right. There was a - well, did you subsequently provide to Downer or prepare for Downer a quote in relation to the lighting hire?---Yes.

All right. Can we scroll down here to page 225. And then following, sorry, it must be the - so this is Access Hire's quotation and you see the price
40 there. Supposed to be \$320 per week each unit and there are seven of them, plus a transport fee. If we could continue to scroll. There's then on 13

October an email sent - well, if we could scroll to 228, the approval effectively being given by Ray to Access Hire in relation to proceeding. Do you see that?---Yes.

Did your father send those emails?---I might have assisted with them.

When you say you might have assisted, does that mean you actually sent them?---I, I can't recall. I either dictated or, or helped him send it or got the delegation to send something along those lines.

10

All right. Is there any reason you would have dictated them to him as opposed to just sending them yourself?---I think he just wanted to know quantities were correct and - - -

Why would he have been concerned about whether quantities were correct? ---So he doesn't overpay or underpay or - - -

20

All right. I think your evidence was that in relation to the storage invoices at Glenbrook you had been preparing the invoices and dealing with Downer in relation to the invoicing process.---Correct.

Accepting this is a few months afterwards, was there some process by which your father had suddenly become involved?---Not a process, just maybe again on reflection thinking again that he needed to be more involved.

Did you recall having that reflection? At the time, that is.---I, I could have.

You couldn't?---No, I could have. I - - -

30

You could have.---I have many reflections.

Are you actually able to say one way or the other whether your father performed any work in organising Avco to arrange the lighting tower hire at Wollstonecraft?---I think, like I mentioned before, yes, one way or another he, he assisted in getting it going, yes.

By typing emails that had been dictated by you?---Yes.

40

All right. Did he do anything else?---I think he prepared the invoice.

All right. Well, let's come to that. So these are - this is the approval that was given by Ray. Avco - sorry, Access Hire subsequently issued an invoice to Avco. If we could have page 231 of this volume 10.2 brought up. So this is an email - I withdraw that. An invoice. A total of \$2,249.28. Do you see that?---Yes.

10 The Avco invoice that's sent to Downer, if we could have the following page, page 232, relates - for the same, seemingly, hire of lighting towers, is \$13,200. Are you able to explain the discrepancy there?---Was there another lighting tower invoice?

No.---Because I think the total was \$4,600.

In relation to the profit that was obtained, it seems that a mark-up of between - even accepting if there was another invoice and it was \$4,600, there's still a mark-up there of approximately \$7,000, would you agree, being placed on the Avco invoice?---The invoice would suggest that but the profit was not that much, no.

20 Well, on what basis are you able to say the profit was not that much?---At the station there was a small newsagency.

THE COMMISSIONER: A small what?---Newsagency. Run by a husband-and-wife team. And when we cut off the power, the power to their store closed. I compensated them and bought all, all their frozen products and gave it to the guys onsite, by giving them cash.

30 MS DAVIDSON: So is it your evidence that from the profit that Avco had derived - - -?---Not from the profit. It was inclusive in this invoice.

Right. Where do we see on the invoice to Downer - - -?---It's not itemised.

So how was it that Downer was to know that it was paying for anything other than lighting towers?---They, they wouldn't have, no.

Right. So, effectively, you'd agree this invoice was paid to Avco?---From memory, yes.

40 Right. So is it your evidence that from the proceeds of this invoice, without telling Downer, you purchased - excuse me for a moment - you purchased frozen food from the newsagency?---Downer knew.

Downer knew?---Everyone who visited the site that weekend had ice cream from that shop.

Right. So that was the workers on the site?---And the management that visited.

Right. Do you remember discussing with management the way in which the ice cream would be paid for?---Not from memory, no.

10

All right. So Downer didn't know that you were using proceeds from the lighting tower works in relation to payment for the ice cream?---Not explicitly, no.

Right. And what was the reason that you didn't itemise that expense?---I, I couldn't tell you.

You couldn't do - - -?---I, I, I couldn't tell you, no.

20 Doesn't make much sense, does it, Mr Gayed?---Why not?

Well, presumably if this was, is the power being cut off, on your evidence, something that had occurred as a result of an accident or inadvertent process that had occurred on the site during the possession?---No. It was a planned power outage.

Right. So if it was a planned power outage, presumably, those who operated the shop had also been made aware of that?---Yes.

30 Right. And so in compensating them, that was an expense that you as project manager could have anticipated?---No.

No? Notwithstanding - - -?---No. How do, how do you anticipate how much stock is in a freezer to then - - -

Well, the fact of compensation for the power outage was something that could have been anticipated?---I disagree.

40 In any event, there's no reason why Downer should pay for it via an invoice to Avco, is there?---Not sure I understand the question?

Well, I think you said that the profit wasn't so great because effectively included in this invoice although not itemised was money you spent on paying for frozen goods. Do I understand you correctly?---It's not that the profit wasn't great. It's that there was any profit at all. So everything that I did was for the benefit of the project, not to benefit myself.

So is it your evidence that this \$13,200 invoice didn't include any profit component?---I think I included about 10% for, for overheads or, whatever.

10 And the remainder was money that you expended on frozen goods?---The owners of the shop were compensated and it included frozen goods, yes.

THE COMMISSIONER: Mr Gayed, I'm not following that aspect of your evidence. Why if the power shortage was planned was it necessary to offset the cost of spoilage of frozen goods by profits derived by Avco?---At the time, I thought it was a goodwill gesture.

I'm sorry?---At, at the time, I, I thought it was a goodwill gesture after having come out from COVID - - -

20

But what did it have to do with Avco?---It had nothing to do with Avco. It was just a, a method of, of paying the shop owners.

Well, what did it have to do with you, apart from the fact that you were the project manager?---Good relations with, with the shop owners that were on the station.

Good relations by whom? By Downer?---Downer, myself, the Site Team. It's not usual that a shop would have its power cut off when we cut off the power.

30

Well, in this instance, it was planned and, presumably, you could have done something to ameliorate that?---The alternatives were a worser outcome.

Worse to Avco?---No, worse, worse to the community, Chief Commissioner. The alternative was a generator, which would have created a lot of noise around a lot of apartments.

Yes, all right, thank you.

40

MS DAVIDSON: Do you recall the name of the shop?---Wollstonecraft Newsagency, something along those lines.

Did you obtain any records from them in relation to how much stock they had that was spoiled as a result of the power being cut off?---Yes.

Was that a document that you obtained from them and - - -?---Yep, and the receipt.

10 Right. And what did you do with that?---Scanned it and saved it on my laptop.

Right. Did you provide it to anybody else at Downer?---No.

Is that a laptop to which you still have access?---No.

You referred to those on the site during the weekend having ice cream. Did you discuss with anybody - that is anybody in Downer management on the site - how the ice cream or other frozen goods would be paid for before you
20 made the payment?---Not that I can recall.

So it was simply you exercising - or making the payment is what you regarded as a gesture of goodwill on your own behalf?---Yes.

Right. And you subsequently covered your own costs in relation to that via this Avco invoice, is that right?---I didn't think there was any costs involved or any margin made from it, no.

Well, there was costs involved in buying the ice cream, presumably.
30 ---Sorry, yes, but there was no costs involved for Avco.

Well, yes, it had nothing to do with Avco in your answer to the Chief Commissioner. But I understood your earlier evidence to be that it was this invoice - that is an Avco invoice - in relation to lighting towers by which you made sure you were compensated for the expense of the ice cream, is that right?---For paying the shop owners, yes.

Right. Although you didn't disclose that to Downer in this invoice.---Not
40 from memory, no.

Is the reason you didn't do that - - -

THE COMMISSIONER: How much was the spoilage, by the way? How much was the spoilage?---It was I think 6,000, from memory.

MS DAVIDSON: You thought your financial delegation was \$5,000 at the time?---Yes.

So you were effectively spending money above your financial delegation?
---Cash, yes.

10

Right. In cash?---Yep.

How did you come to have \$6,000 in cash on hand?---I pulled that out from the account.

From an Avco account?---From an account. I'm, I'm not too sure where from.

20 An account associated with you.---It might have been an Avco account to show where the money went, yeah.

Could we have volume 10.2, page 236 brought up. This is another email from Mr Patel to yourself in relation to the lighting tower, and Mr Patel again says, "This seems expensive," and you say, "We won't be using this option moving forward." Is that another example of Mr Patel not having been aware in advance of the use by you of Avco for the purposes of facilities on the site?---Possibly. I, I don't recall that conversation.

30 All right. You don't recall this email?---No.

Well, you say, "We won't be using this option moving forward." Do you recall why you would have said that?---I think we had set up permanent light sources at that stage.

But the invoice, that is the money that was included in the invoice, was nevertheless paid?---From memory, yes.

40 Right. And you didn't, when Mr Patel queried that it seemed expensive, say, "Well, in fact it includes \$6,000 to cover me for spoilage of ice cream."---No, I didn't say that.

Right. This would have been a logical point in time to explain the additional expense, would it not, when Mr Patel queried it?---At the time it didn't come to mind, no.

I suggest that indicates the fact that in fact it was simply profits being derived on the lighting tower hire by Avco and didn't include a component for payment for ice cream.---I disagree.

10 There's no reason that you would have wanted to hide that from Downer, is there?---I couldn't tell you in hindsight why that reasoning is but, I mean, you can go and ask the store owners if you want.

20 Well, again, it doesn't make any sense in terms of your role as project manager, making a goodwill gesture in relation to a planned cut-off of power to a store owner that was in the vicinity, wanting to maintain, as you said, good relationships with the community. All of those things were things that Downer, presumably, would have supported, that is, your interests in maintaining, you know, the reputation of the project, wouldn't they?---But I couldn't, I'm not too sure how to respond to that, like, that's - - -

Well, you understood that's what Downer wanted you to do as project manager, maintain good relations with the store owners, with the community?---I think the, you know, the motivations are different for, for everyone within Downer. I'm not too sure what theirs were.

30 Well, sure. But your role and responsibilities as project manager included, presumably, making sure that the project itself wasn't generating great concern amongst members of the local community, including the store owners who had had their power cut off. Is that not right?---Yes.

And that's one of the reasons, perhaps the only reason, that you made what you describe as a goodwill gesture in compensating them for the spoiled stock?---I think there was a number of reasons but that's one of them.

40 Right. But if that was the motivation, that is fulfilling your role as a project manager at Downer, there was no reason to hide it from Downer, that expenditure, was there?---Again, and, and this is why I'm saying I can't recall why that was, like I said.

Again, would you agree it doesn't make a lot of sense, that logic, to not include any description in the invoice by which you say you were covering yourself for the payment for the ice cream and then when you're questioned by the commercial manager, again, not to disclose it at that point, that there was a \$6,000 component in there effectively reimbursing yourself for the ice cream payment?---The, the evidence is on the laptop that was taken. I mean
- - -

10 Is it your evidence that that scanned invoice was supplied to Mr Patel or anybody in the Commercial Team at Downer, I'm sorry, the scanned document that you obtained from the store owners?---Not that I can recall.

Was it on a Downer laptop?---From memory, yes.

And was that a Downer laptop that you returned to Downer when you resigned from Downer?---No, it was the one that was taken from me prior to my resignation.

20 Taken from you by Downer or taken from you - - -?---By Downer.

Right. Chief Commissioner, might that be a convenient time?

THE COMMISSIONER: Yes. All right. We'll come back in 20 minutes or so. Adjourn.

SHORT ADJOURNMENT

[11.28am]

30 THE COMMISSIONER: Mr Gayed, you're subject to the same oath to say the truth. Do you understand?---Yes, Commissioner.

Thank you. Yes.

40 MS DAVIDSON: Mr Gayed, you were asked some questions prior to the break in relation to your father's involvement in the lighting towers. Do you recall answering questions in relation to him becoming involved in the lighting towers process, that is, communications in relation to the lighting towers?---Yes.

Chief Commissioner, I seek a variation of the section 112 order in relation to Mr Gayed's compulsory examination, the transcript page 1107, and I hand up copies.

THE COMMISSIONER: Granted.

**VARIATION OF SUPPRESSION ORDER: THE SECTION 112
ORDER IS VARIED WITH REGARD TO COMPULSORY
10 EXAMINATION TRANSCRIPT OF ANDREW GAYED DATED 22
AUGUST 2022, PAGE 1107 LINES 5 TO 25**

MS DAVIDSON: If that could be brought up on the screen.

THE COMMISSIONER: Do you wish to tender this or - - -

MS DAVIDSON: Yes, I do tender it.

20 THE COMMISSIONER: Mr Gayed's compulsory examination transcript
page 1107 of 22 August 2022, lines - - -

MS DAVIDSON: I think it's about lines 5 to 25.

THE COMMISSIONER: - - - 5 to 25 will be exhibit 151.

**#EXH-151 – COMPULSORY EXAMINATION TRANSCRIPT OF
ANDREW GAYED DATED 22 AUGUST 2022, PAGE 1107 LINES 5
30 TO 25**

MS DAVIDSON: Thank you, Chief Commissioner.

THE COMMISSIONER: Thank you.

MS DAVIDSON: Mr Gayed, you were asked in your compulsory
examination in relation to the quote from Access Hire addressed to your
father, you were asked why you were using that name, and then you were
40 specifically asked whether he engaged in negotiations with Access Hire or

was that you, and you indicate that that was you. Was that truthful evidence?---It was my recollection of it at the time.

Right. And has your recollection changed?---It's different today than what's on the screen.

THE COMMISSIONER: I'm sorry?---It's different than what was said back then, yes.

10 MS DAVIDSON: And why is that? Has something prompted additional memories on your behalf?---Well, I think I've had time to think about and reflect on, on the conversation.

Right. There's no document that you've seen that's suggested that your father was engaged in negotiations with Access Hire, is there?---Not that I can recall.

No. You were asked a subsequent question, "Why was that?" And you say, "Looking back at it, it seems like I might have wanted a degree of
20 separation." Was that a truthful answer?---At the time it was a truthful answer.

Is it not a truthful answer now, that you used your father's name because you wanted a degree of separation?---It's still truthful now.

That's still true.---Yep.

And is it true that you used your father's name in relation to those negotiations with Access Hire?---Yes.

30 Yes. So in fact to suggest that your father is involved was wrong, isn't it? ---It's all a recollection, so I'm trying to answer as best as possible.

Well, it is a recollection but you're trying to understand - - -?---Correct.

- - - which version of the two differing versions that you've given is in fact a true answer and which one is a false answer. He was or wasn't involved? ---I can't recall the specifics. I can't recall the specifics.

40 Do you recall him having any involvement in negotiations with access hire?---I, I recall some degree of conversation, yes.

And so you were not being truthful in answering questions during your compulsory examination. Is that the case?---I was being truthful to the best of my recollection at the time.

You're simply making it up as you go along, aren't you, Mr Gayed?---I disagree.

10 So you were then asked, "So you were using his name and acting on his behalf so it didn't look like you were involved in Avco. Do you accept that?" And your answer was, "Yes." You see that question and answer there?---Yes.

Was that a truthful answer?---Yes.

20 Right. So if that's the case, it would not then follow that he was involved in the negotiations with Access Hire, would it, if you were acting, using his name and acting on his behalf so it didn't look like you were involved with Avco?---I'm not following the logic. Sorry.

You were asked a series of questions in relation to his involvement.---Yes.

And you agree that it was you that was engaged in the negotiations with Access Hire.---Yes.

30 It's only today that you've suddenly said that something happened between the time at which you were involved on behalf of Avco in negotiations in relation to Glenbrook and the storage process, and your father wasn't involved in those. You said in your compulsory examination your father wasn't involved in negotiations in relation to Access Hire at Wollstonecraft. Today for the first time you've indicated a new recollection in relation to him having some involvement. Now, that's despite having answered questions, as you see in the transcript here, in relation to you wanted a degree of separation and therefore using your father's name, using his name and acting on his behalf so it didn't look like you were involved in Avco. I'm suggesting to you that the answers that you gave in relation to using his name and acting on his behalf during your compulsory examination in relation to the lighting towards at Wollstonecraft were accurate answers. Do you disagree with that now?---I don't disagree, no.

40

Right. So that's inconsistent, is it not, with your suggestion today for the first time that your father was somehow involved in relation to Wollstonecraft?---It seems that way, yeah.

Right. And you're not able to explain that inconsistency, other than you've further reflected?---Other than what I recalled at the time and what I'm trying to recall at this stage and it's all just a recollection of, of what's gone on, two or three years ago.

10 It might be submitted against you that your recent recollection in relation to your father's involvement is a fabrication. What do you say to that?---Well, I, I, I disagree but - - -

Chief Commissioner - - -

THE COMMISSIONER: So do you accept that your recollection at the time that you gave that evidence, 22 August 2022, is more likely to be accurate compared to your recollection today?---I, I'd accept that, Commissioner.

20

I'm sorry?---I, I'd accept that, yes.

Yes. All right. Thank you.

MS DAVIDSON: Chief Commissioner, I also seek a variation to the section 112 order in relation to page 1081 of the transcript of Mr Gayed's compulsory examination, lines 1 to 37 and I hand up copies of those and seek to tender them.

30 THE COMMISSIONER: Thank you. Yes. All right. Granted.

VARIATION OF SUPPRESSION ORDER: THE SECTION 112 ORDER IS VARIED WITH REGARD TO COMPULSORY EXAMINATION TRANSCRIPT OF ANDREW GAYED DATED 22 AUGUST 2022, PAGE 1081, LINES 1 TO 37.

40 THE COMMISSIONER: Second page. Page 1081 of the compulsory examination of Andrew Gayed, 22 August 2022, lines 1 to 37 will be Exhibit 152.

**#EXH-152 – COMPULSORY EXAMINATION TRANSCRIPT OF
ANDREW GAYED DATED 22 AUGUST 2022, PAGE 1081 LINES 1
TO 37**

MS DAVIDSON: If that could be brought up on the screen?

10 THE COMMISSIONER: I'll give these back.

MS DAVIDSON: Mr Gayed, you were asked some questions in your compulsory examination in relation to using aliases in relation to Avco and in what context you would have done that and you indicated that it could have been in an email to Downer. Do you see that?---Yes.

And then you were asked why you would need to use an alias when emailing Downer on behalf of Avco and you said, "Well, it depends on the context." And then you were asked a question about your father, "Just to
20 finish off on Glenbrook" is the question "you said your father was in control of Avco while it was being paid to store items for Glenbrook. Is that correct?" And you said, "Yes." And then you were clearly asked when Avco was dealing with and sending emails to Downer, who was sending those emails on behalf of Avco and you say, "I was." Was that an accurate answer?---Yes.

So, to the extent today that you've given evidence that you dictated emails to your father, that's inconsistent with the answer that you gave in your compulsory examination in relation to you sending emails on behalf of
30 Avco when dealing with Downer, is it not?---No, I, I took dictation to mean myself as, as writing.

So your answer was, well, am I right in your suggestion now being that in referring to sending emails to Downer, you intended to include dictating emails to your father on behalf of Downer - on behalf of yourself to Downer?---Yes.

There was no reason to involve your father, was there?---No.

It doesn't really make sense that you would simply use him to be the dictation person for emails if he wasn't otherwise involved in the negotiations or aware of the situation?---No.

And, in fact, you'd successfully used him to create a degree of separation, to use your language, previously on the Glenbrook project by the time you came to Wollstonecraft, hadn't you?---Yes.

10 So it really makes more sense to conclude that it was you who was writing the relevant emails, doesn't it?---The conclusion is accurate.

So, really, your father had no involvement in organising the Avco light hire at Wollstonecraft, did he?---Well, I'll still say that there was an element of dictation, if I said something over the phone for him to write or to assist in, in putting that together.

20 Chief Commissioner, I also seek variation of the section 112 order in relation to page 1102 of Mr Gayed's compulsory examination, and I hand up copies of that. This is lines 12 to 40 and I hand those up and tender the page.

THE COMMISSIONER: Yes, that application is granted.

VARIATION OF SUPPRESSION ORDER: THE SECTION 112 ORDER IS VARIED WITH REGARD TO PAGE 1102 OF MR ANDREW GAYED'S COMPULSORY EXAMINATION, 22 AUGUST 2022, LINES 12 TO 40.

30

THE COMMISSIONER: Page 1102 of Mr Andrew Gayed's compulsory examination, 22 August 2022, lines 12 to 40, will be Exhibit 153.

#EXH-153 – COMPULSORY EXAMINATION TRANSCRIPT OF ANDREW GAYED DATED 22 AUGUST 2022, PAGE 1102 LINES 12 TO 40

40 MS DAVIDSON: Thank you, Chief Commissioner. These were some questions that you were asked in your compulsory examination in relation to

the building package and companies tendering for the building package, and there's a reference - you see you were asked a question and an answer there in relation to there being a fourth company. You were informed it was ProjectHQ and then there's a reference to Maize and finally to your company, sorry, your father's company, Avco Construction, Consulting and Management Services, and you said, "I think they ended up, Avco didn't end up pricing." And you were asked, "Why would they have been listed as a tenderer for the building package at Wollstonecraft?" and you say, "I think when we went out for tender I thought it might have been a good idea to, to
10 list them and then common sense prevailed that that would have been a pretty big conflict of interest." Was that an accurate answer?---Yes.

So when asked today whether the reason they didn't proceed was an understanding on your part that it would have been a big conflict of interest, and you indicated you didn't have concerns of that kind, was your evidence untruthful this morning?---No, not untruthful. Just a, a different, a different way.

A different way?---A different way of, of looking at it.
20

Well, one is accurate in terms of what you thought at the time and one is not, presumably. You were then asked, "I see. So did you originally intend on tendering on behalf of Avco? Is that correct?" And you say, "There was an intention, yes." Was that answer truthful?---Yes.

There was an original intention in including Avco in the tender?---I mean, it was, it was truthful for, for what I answered at the time. I wasn't leading the Commission astray.

30 Well, it's one or the other, isn't it? You did or didn't originally have an intention of tendering on behalf of Avco. You've said today Avco was only put in there to pad out the list, basically.---Yeah, correct.

There was never any intention of it pricing.---Correct.

And you didn't involve your father in it and you weren't intending to prepare a quote.---No.

40 Right. And here you said, in August last year during your compulsory examination, that you did originally intend tendering on behalf of Avco. ---At, at the time of giving the evidence, I thought that that was the - - -

Well, the two are directly inconsistent. One must be correct and the other not. Do you accept that?---I do. But one was three years after the fact and today we're, we're talking about something from six months ago. So it's just given time to, to think about the, what actually occurred three and a half years ago.

All right. So your evidence now is there was never any intention of tendering on behalf of Avco?---Correct.

10

And so your subsequent answer that then later on you decided not to go through with it because of the conflict of interest and you said yes, was that also inaccurate?---No.

Well, you've just said now that it wasn't a realisation of conflict of interest at the time that stopped you going through with it.---Yep.

You didn't have such concerns at the time, is that right?---It wasn't a, a primary concern, no.

20

It wasn't a primary concern. So where you said, "Common sense prevailed, that that would have been a pretty big conflict of interest," that wasn't your thinking at the time?---It was my thinking when I was giving that response, yes.

Right. So in your thinking when giving that response, were you intending by your answers to avoid the suggestion that there was collusive tendering in relation to the Wollstonecraft building project, that is, that Avco and ProjectHQ were never intended to be genuine tenderers?---No.

30

Because that's the implication that would arise from changing your evidence, isn't it?---It's not the intent.

If these answers in your compulsory examination were inaccurate answers, I suggest to you that you were being deliberately inaccurate at the time in order to, or untruthful at the time, in order to disguise what you've indicated today that was effectively collusive tendering on the Wollstonecraft building project?---I would disagree.

40

In relation to the Wollstonecraft project, I think we've been looking at the building package letter, discussed your role in suggesting subcontractors to

be recommended for the tendering process. Do you recall those, giving those answers?---Yes.

Did you play a similar role, that is as project manager in relation to the other packages that went out to tender for Wollstonecraft?---Yes.

Do you recall when you first started working on the Wollstonecraft project, that is about what period of time?---Vaguely. It was COVID.

10 Right.---Version 2, or something like that.

Okay. So is that about mid-2020?---Sounds familiar.

Right. At that stage when you first started working on the project, do you recall having discussions with Mr Vardanega about it?---Yes.

And what was the nature of those discussions?---About using ProjectHQ.

20 About using ProjectHQ. In what sense were you discussing with him using ProjectHQ?---In one capacity or another, something.

Right. So you suggested to him that ProjectHQ might be able to work on Wollstonecraft. Is that what occurred?---I can't recall the actual conversation but it wouldn't be a far stretch to say that, no.

30 Right. Well, what services did you understand that ProjectHQ might have been able to provide in relation to Wollstonecraft?---There was a shift at Downer to try and package up subcontracts into larger packages rather than what we call trade packages, so it would have been the suggestion to use ProjectHQ to manage a package.

Right. And when you say to manage a package, is that the same as delivering a package?---They would ultimately be responsible for delivering, yes.

Right. So that would require them to tender for one of the packages.---Yes.

40 And it was your intention at that time, or your thought that ProjectHQ may be able to tender for one of the packages?---At the time, yes.

Do you recall which package or packages that was?---I think building, as we saw, comes to memory and I think maybe civil.

Building and civil, all right. Could we have volume 10.1, page 129 brought up on the screen. This is an email in May 2020 from your Gmail address to Mr Vardanega where you're sending him the architecture drawings for the Wollstonecraft project. And if we scroll to the following page, page 130, you'll see the file, that is the various architectural drawing lists that are then included. Do you recall sending Mr Vardanega the architectural drawings
10 for the Wollstonecraft project?---Vaguely.

Do you recall why you did that?---No, not off the top of my head and not sure why it went from my personal email.

Right. Were you in the habit of using your personal email to communicate in relation to Downer matters?---A few times, yes.

Were you aware of any guidance or guidelines that Downer had in relation to the use of personal email addresses?---I was not aware.
20

Right. Did you understand the architectural drawings in relation to the Wollstonecraft project to be confidential?---No.

Could we have volume 10.1, volume 128 brought up on the screen? This is a response to the email that you sent on 15 May, and Mr Vardanega sends you various things. Just give you a moment to look at that. Do you recall receiving that email from him?---Vaguely.

Do you recall what - what did you understand his purpose to be in sending you those various documents?---It seems like he's assisting with, with his knowledge of, of rail.
30

Right. Did you understand that to be in relation to him wanting to obtain work on the Wollstonecraft project?---Not, not particularly. Not, not from this email, no.

Right. So he was assisting you in relation to his knowledge of rail. This was just after - this was after the period of time that you had engaged him in his ProjectHQ capacity relating to supervision work at Glenbrook, and he had engaged Mansion - or at least what purported to be Mansion - in
40

relation to the work at Liverpool and Penrith and Wollongong, would you agree?---I'd agree that this was after that time, yes.

Were you looking for further opportunities to work together at this point?
---I can't recall but it's not unlikely.

You were friends and you maintained that friendship?---Yes.

10 You referred to his knowledge of rail. Did you regard him as having a superior knowledge of rail to you at this point in time?---At this point we were probably equals.

Okay. So do you know why he was then sending - well, were these documents, things like the system diagram, the configuration number 8, the WPPD, the section diagram, the work limits, are they documents that you would have had access to?---They're, they wouldn't have been hard to come by, no.

20 When you say they wouldn't have been hard to come by, what would have, what steps would have been required for you to get access to them?---Just an internet search.

Did you understand them to be publicly available documents, did you?
---Yes.

30 Could we have volume 18.26, page 68, brought up on the screen. This is 27 May 2020, so slightly later in time. It's another email from your Gmail address to Mr Vardanega and this attaches the TAP EASU Wollstonecraft BOQ Breakdown. Is that the bill of quantities?---Yes.

And the document itself appears in volume 10.1 at page 157. Do you recall why you sent, just while we're having that brought up, do you recall why you sent a bill of quantities document to Mr Vardanega in May 2020?---I think it was to, to show him the quantities involved.

Right. And why would you have been showing him that?---To, to give him an appreciation of the breadth of work involved.

40 Right. An appreciation of the breadth of work involved. Why would you have wanted to give him that appreciation?---So that he could get his head around it and determine whether or not he wanted to tender.

Right. So it was for the purpose of assisting ProjectHQ in relation to a tender?---Yes.

Right. Did you understand the bill of quantities to be confidential information?---No.

Was it accessible to him, that is, to Mr Vardanega, in any other capacity apart from getting it from you?---In the formal tender channels, yes.

10

Right. But you hadn't reached the formal tender channels by this point, had you?---This was, again from memory, prior to formal tender.

Right. So this is May 2020?---Yeah, so the rate and amount on the side there is what tenderers would usually put against their price.

Right. That is they would fill those things out?---Correct.

Did you send this document to any other tenderer at the time or potential tenderer?---I can't remember. Potentially, Maize.

20

I'm sorry? Potentially?---Maize.

Potentially, Maize. And was the purpose of providing it early to Maize also for the purposes of assisting with their preparation of a tender?---Yes.

Right. Just one moment. Do you recall why you would have sent it from your Gmail address to Mr Vardanega?---No.

30 Would you agree that the use of your Gmail address suggests that you wished to conceal from Downer the fact that you were sending the document to Mr Vardanega?---I, I can see how that can be perceived that way.

Right. Is that an accurate perception?---Not to my recollection.

Well, if there'd been no problem with sending it to Mr Vardanega or to Maize, you could have just done that from your Downer email address, couldn't you?---Yes.

40

You were hoping that it wouldn't be traced, weren't you?---A lot of this was - well, on perception, yes, that's, that's what it looks like.

Well, on perception or on actuality at the time, you didn't want somebody at Downer asking you why you were sending these emails to Mr Vardanega, did you?---That, that's what it looks like.

10 Right. And that was because you knew as project manager that your role was not to assist particular tenderers by giving them information that they wouldn't otherwise have had access to at the time. Isn't that correct?---I'm not sure I understand the question in its entirety?

Well, your role as project manager was not to assist any one particular tenderer, was it, to favour them over others?---No.

20 Right. So if people at Downer had been aware that before the formal tender process had opened, you were sending information to Mr Vardanega, such as this bill of quantities document, that wouldn't have been within their expectations of you performing your role, would it?---I'm not too certain.

I suggest to you they wouldn't have been happy about it, would they? ---Okay.

You knew that you were intended to be even-handed as between the tenderers?---There's a, a requirement to, yes.

Right. And you understood that at the time, surely?---Yes.

30 Right. So in sending information, certainly here to Mr Vardanega, and you've said potentially also to Maize, that is this bill of quantities document, you were favouring them over other potential tenderers, weren't you?---No.

Well, you've accepted that this is information that enables them to get their head around the work and that you sent it. Yes, you agree?---Yes.

And you sent it to them earlier than it would otherwise have been available to them?---Yes.

40 And that wasn't treatment that you afforded to anybody other than ProjectHQ or Mr Vardanega and potentially Maize. Is that right?---Yes.

So by doing that you were favouring them over other potential tenderers, were you not?---I, I wouldn't, no, I wouldn't call it favouritism.

Well, you might not have thought that it was favouritism, but you agree you were providing them an advantage in terms of information that other - - -?
---Yes.

- - - potential tenderers did not have?---Yes.

10 Right. Could we have 18.26, page 69 brought up on the screen. This is on 3 July 2020, another message from your Gmail address to Mr Vardanega. Do you see that?---Yes.

And this is attaching the procurement register.---Yes.

And the document itself appears, if this could be brought up in volume 10.1, page 168. And this document includes budget amounts in relation to the Wollstonecraft station upgrade. Do you see that?---Yes.

20 What was your reason for sending Mr Vardanega the procurement register in July?---At the time I just wanted to show him what the, the breadth of the work was.

Well, again, this tells him more than the breadth of the work, doesn't it? It tells him the budget for the work.---Yes.

That's not information that you as project manager should have been providing to any tenderer, was it?---My role was to get the cheapest possible price. It's not uncommon to tell the tenderer what the budget is.

30

That's not an answer to my question. Your role didn't include providing this budget documentation or this procurement register documentation to any potential tenderer, did it?---I'm a little bit confused by the question. So my role doesn't entail giving this document out. Is that, that the question?

It doesn't entail giving this document out to tenderers or potential tenderers, does it?---I'm not sure that I agree with that entirely.

40 This document includes a breakdown in relation to individual items of the TBE budget. What did you understand that to be?---The target budget.

Right, that was the Transport budget, the total best estimate budget.---Yeah.
Correct.

Right, but it also includes the project manager's budget.---Yes.

Is that a Downer budget?---That's the budget we needed to stick to as a PM.

Right. So that was what you were ultimately - - -?---Given.

10 What was within your scope in terms of approving.---Correct.

Ultimately expenditure for the individual items.---It was what I needed to get the packages within and then I still needed to seek approval for who I wanted to use.

Right. Well, putting aside the approval process, would you agree that giving out this document to a tenderer or potential tenderer enabled them to price in a way that gave them advantages over any other tenderer.---No, I would disagree with that because the way this was put together was by
20 going to the market and getting pricing, so there are tenderers who formed this budget.

So you're suggesting that in relation to each of - - -

THE COMMISSIONER: Mr Gayed, I'm struggling with these responses. Apologies for interrupting. Have you previously given such information out to prospective tenderers?---Yes.

When and to whom?---Glenbrook to - - -
30

Who did you give it to?---Maize.

I see. And what was the purpose of you doing so?---Trying to get the cheapest price for the job.

So why would you give it only to one tenderer, a tenderer that you were associated with?---They asked.

I'm sorry?---They asked for it.
40

Maize asked you for it.---It, it was asked and it wasn't rejected.

I'm sorry?---They asked for it and it wasn't rejected.

Does anyone else at Downer do this as well?---I'm not too sure, Chief Commissioner.

So what made you think that it was appropriate for you to do it?---Trying to get the best price for the job.

10 Was this something you had studied at university as part of your - or in your qualifications that you outlined yesterday?---No, Commissioner.

No. Do you understand how a prospective tenderer could be advantaged by having such information?---I can see, yes.

It's obvious, isn't it?---Yes.

And it was obvious to you then, wasn't it?---The intent was to get the cheapest price.

20

Yes, all right, thank you.

MS DAVIDSON: While your intent may have been to get the cheapest price, in providing the information to only one or a selected two tenderers, you would agree, would you not, that the intent was also to ensure that they won the work?---No.

30 Because they had an advantage over all of the other tenderers by having this information, did they not?---I think there's, there was potential for them to not take on the work, having seen the budget and not being able to work within it.

Well, but assuming that they did price the work, that they did want the work, having the budget gave them an advantage over any other tenderer who didn't have that information, didn't it?---Yes.

40 Right. And it was tenderers that you were associated with - that is, your friend Mr Vardanega, and we'll come to your association with Maize. Would you agree you had an association with Mr Helweh of Maize as well?---Yes.

Yes. So it was your friends that you gave this information to, wasn't it?---It was work friends, yes, people you meet throughout the job, people that you're comfortable working with that you know can deliver the job.

People who'd become your personal friends?---A lot of people became my personal friends.

And these are the - that is, Mr Vardanega and Mr Helweh in association with Maize - are the two that you gave this information to. Were there
10 others?---Not that I can recall, no.

Who was supervising you at this point in the Wollstonecraft project? That is in July 2020, when you sent out the procurement register to Mr Vardanega.---My direct manager was Andrew Bedwani throughout my whole employment at Downer.

Did you discuss with Mr Bedwani sending the bill of quantities document that you sent in May or the procurement register document that you sent in July to Mr Vardanega?---No.
20

Did he have any idea that you'd done that as far as you're aware?---I'm not too sure.

If he had known at the time, what do you think he would have said to you? ---I'm not aware what his reaction would be.

He wouldn't have been pleased, would he?---I'm not too sure what his reaction would be.

30 I suggest to you that it would have indicated to him that you were involved in collusive tendering.---Okay.

Do you agree with that?---I'm not too sure what his reaction would be.

You were aware at the time that had Downer management been aware of what you were doing in providing this information to Mr Vardanega and potentially also to Maize, that that was contrary to your responsibilities as a project manager in relation to the tendering process, weren't you?---I'm not too sure they would have been too affected, seeing as the outcome was
40 coming in under budget.

You don't think they would have minded?---That's my take on it, but I'm not sure how they would have reacted.

Was that because you were aware of this being a practice that was regularly engaged in by other project managers at Downer?---I'm not aware what the other project managers were doing.

10 What did you understand Mr Vardanega would do with the procurement register that you sent him in July?---At the time I thought he would look at it and be out of his depth and not tender.

Sorry, when you say he'd look at it and be out of his depth, what do you mean by that?---In terms of the sizing of the package.

Right. So you didn't send him a register that related only to the building package, did you?---No, I think it was - - -

It was the whole project?---I think so, yes.

20 Right. It enabled him to look at all of the packages.---Yeah, I think he had a look at them.

Right. I think you said you thought he was considering potentially also the civil package, is that right?---From memory.

Okay. And that he then, you thought he wouldn't tender?---Yes.

30 All right. But it was also your evidence earlier that you had included ProjectHQ in relation to the building tender on the list of approved subcontractors not thinking that they would tender, that is you didn't understand that they would tender?---Correct. It, it sort of came to my - - -

Right. So was there a point in time at which you thought that Mr Vardanega would tender and then that changed, that understanding changed on your part?---I'm, I'm trying to piece it all together in terms of recollections but, yes, at some stage.

40 Okay. So is it the case that initially you thought he might, that is, he might tender and at some point, that changed?---I believe so, yes.

Right. Do you recall having discussions with him about him not tendering?
---Not to my recollection.

Okay. So what caused your view to change in relation to him tendering?
---There, there must have been a conversation or, or conversations around,
around it or, or him not submitting tenders, something along those lines.

You said just a moment ago that you thought when he saw this document in
July, he would be, I think, to use your words, out of his depth?---Yeah.

10

So by that point, did you think he was in the process of changing his mind?
---I, I, I can't remember the time frames, but it would have been after that.

Do you recall discussing with him this document after you sent it to him?
---Not to, not something that I recall, no.

But your purpose in sending it to him was either to assist him with
tendering, that is, with his own tender or, otherwise, to enable him to
realise that he was out of his depth?---Yes, I think we've established that.

20

Do you recall him coming to you at some stage and saying, "I'm out of my
depth. I'm not going to tender here"?---Vaguely, something around those
lines.

Well, what do you remember about that?---Not much. Just that he, he
wasn't going to be submitting prices through ProjectHQ.

And what did he say to you about why?---I can't recall.

30

Do you recall him at that point telling you that he was going to come on
board with someone else?---It was either at that point or a bit later on, yes.

Right. And he told you that that was RJS?---Yes.

Right. And so you sent him this document, that is, a procurement register
document, at the beginning of July. Would you agree it was around that
point that you became aware of his getting on board with RJS?---I'm not too
sure, roughly, what point. I, I think it was after that stage.

Right. But was it closely after seeing this document, you think that he decided that he wasn't going to tender himself?---No, I, I thought it was a bit later as when, when, when we came to assess the tenders.

When you came to assess the tenders - - -?---Yeah, which was - - -

- - - but he didn't actually put a tender in on behalf - - -?---No.

- - - of ProjectHQ, did he?---No.

10

And by the time you were making the recommendations to Transport for the building package, which was the beginning of September, you didn't realise - sorry. You certainly knew, well, on your evidence, you didn't think by then he was going to put in a tender, did you?---No, not when we came to do the recommendations.

Right. So that wasn't in the tender process. That was, well, it was part of, preliminary to the tender process but nobody had put in a tender by then? ---No.

20

Right. So is it sometime between July and September that you came to realise his association with RJS?---That time line seems to fit.

Right. Could we have volume 1.9, page 89, brought up on the screen? This is a document that Mr Vardanega sends to Mr Cox on 20 August 2020 and it's a document attaching a pricing schedule and schedule of rates, pulling information from the WLS TBE sheet. Was this information that you, well, I accept that this was not an email sent to you. Was a pricing schedule and schedule of rates something that Mr Vardanega would have been able to put together based on information that was provided by you?---Do you have that sheet so that I can form that answer?

30

Well, the following page I think indicates that spreadsheet. Do you see there's - - -?---In, yeah, in answer to your question, looking at this, yes.

Yes. Do you recall discussing, coming back to the email you'll see there's a description of boxes being, well, the orange boxes being the summation of each category minus the project manager's budget, a direct read of the TBE being the blue column, the green column being each item read from the TBE. You'll see in some sections there is a variance, "This means that Downer team has changed scope items for original and combined trades."

40

And then there's some other notes there. Do you recall discussing those kinds of observations in relation to the spreadsheet with Mr Vardanega?
---No.

Chief Commissioner, I seek to play exhibit 126 which has already been tendered, and have the transcript brought up on the screen.

THE COMMISSIONER: Yes.

10 MS DAVIDSON: If that can be played.

AUDIO RECORDING PLAYED [12.52pm]

MS DAVIDSON: If we could continue playing the call.

20 **AUDIO RECORDING PLAYED [12.55pm]**

MS DAVIDSON: So this is 20 August, Mr Gayed. Do you recall having a conversation with Mr Vardanega in relation to the spreadsheet that he sent to Mr Cox that we've just seen on 20 August or immediately before that day?---I still don't recall that conversation.

30 All right. Do you accept that in relation to the changing of the project budgets and the amounts that were in different packages, that was information that Mr Vardanega could only have got from you?---No.

How else could he have obtained it?---Ben worked at Downer and knew that we chopped and changed the budgets.

Right. But in relation to the specific budgets for this project, he wasn't working at Downer by this stage, was he?---No.

No. So he wouldn't have known in relation to what had been excluded from one package and put into another, would he?---No.

40 No. So if we go to page 2 of the transcript, where he's explaining to Mr Cox about the piling and telling him that they've put double-ups for both,

and what was included under the piling and it had also been put in the station civils, again that's information he could only have obtained from you at this point, isn't it?---I accept that.

Right. And similarly lower down on the page where Mr Vardanega is explaining about variance of \$400,000 that had been taken out of station civils and they'd been put into different packages. Again, information that could only have come from you, correct?---Yes.

- 10 Right. And indeed, following on to page 3, the discussion in relation to the underbore pricing, and Mr Vardanega having said that to you last week, reflects a discussion between you and him in relation to the pricing of the piling package. Would you agree?---The underbore package.

Right. Was there a separate underbore package?---It was part of the civil package, I think. Not the piling package. From, again, from memory but, yes, it seems like we had that conversation.

- 20 All right. And Mr Vardanega remarks to Mr Cox about the juice in the platform FRP package and there being extra cream in that. Does that reflect a discussion he had with you?---Not that I can recall.

But you accept that his understanding of how much cream or juice there was in various packages came from his understanding of how the packages were constructed, it came from you?---Yes, I accept that.

Right. And the relevance of transferring budget, was that a discussion that he'd had with you, do you recall?---No, I don't recall.

- 30 When he says he'd spent 45 minutes discussing discrepancies in packages, including in the piling package, does that prompt any recollection on your behalf?---No, but - - -

You accept that it happened?---I accept that it, it could have happened, yes.

Well, there's no reason for Mr Vardanega to be lying about it, is there?
---Oh, that's why I'm not denying it. I'm saying I don't have a recollection of it but I accept that it could have happened.

Okay. And when he, on page 5 of the transcript, reports you having said, in discussing his understanding of the time sheet, "Now you're totally on the right track." Does that accord with something that you might have said?
---Not that I can recall.

Not that you recall saying?---But I accept - - -

Does it sound like the kind of words you would have used?---No, but it, from the discussion it seems like we had a conversation.

10

All right. Might that be a convenient time, Chief Commissioner?

THE COMMISSIONER: Adjourned.

LUNCHEON ADJOURNMENT

[1.01pm]