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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 19 APRIL, 2023

AT 2.00PM

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

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

THE COMMISSIONER: Yes, we'll resume. Mr Bedwani, can you see and hear me?---Yes, I can, Chief Commissioner.

All right. You're subject again to the same oath you took at the commencement of your evidence to say the truth, understand?---I understand.

10

Thank you. Yes. Yes.

MR ENGLISH: Thank you, Chief Commissioner. If we can go to volume 25.1, page 73, please. All right. So this is an email on 18 September 2020 from daniel@sydneyboathire to Laura. Take it from me that's Laura Inglis, would you?---Yes.

20

Okay. And you can see, "Hi, Laura. Thank you for reaching out to us in regards to hosting Downer's annual Xmas party on Sydney Harbour on 11 December." Do you see that?---Yes.

And then there's some discussion about COVID issues and a recommendation of particular vessels. Do you see that?---Yes.

And does that accord with your evidence that you initially started discussing this topic with Ms Inglis?---Yeah, correct. So I discussed Laura organising a Christmas event and she went and obtained the quotes with various different activities.

30

Right. Then if we can go to page 3, please. So you can't see the date there, but take it from me, and we'll scroll up shortly, that this is 12 October 2020. She's sending you a draft email, "Good afternoon, Karl and Kevin." Who's Karl and who's Kevin?---Karl McCarthy is the GM and Kevin Brady is the operations manager.

40

All right. And she's saying here, "I hope you have a great weekend. Enjoy the weather. I'm putting forward an approval request to hold a TAP Christmas end-of-year dinner," some reference to COVID and some other matters, and then in the next paragraph, "It will be a dinner in our own private function room adhering to COVID restrictions. It will be a total of \$80 per person for a three-course meal. No alcohol included as Downer

policy. The team is made up of 55 people making that a total of 4,400.” Do you see that?---Yes.

“Please advise if this is possible so I can proceed with the booking.” And so if we go up to the next page, you provide some feedback, and you can see that date 12 October, “Sounds good. Maybe just call it end-of-year celebration and omit the ref to Christmas party as this could be a sore point!” Whatever that meant. And then Ms Inglis says to you, “What about the no alcohol reference?” And if we go to the next page, you say, “You could stay silent on that.” Do you see that?---Yes.

Is that you encouraging Ms Inglis to go against Downer policy of no alcohol at staff functions?---It could be interpreted that way, yes.

Is that how you interpret it?---Yes.

All right. And is there any relevance in why you said, “Call it an end-of-year celebration rather than Christmas party”? Is that just for reasons of political correctness?---Yes.

Okay. And then in the next email Ms Inglis says to you, “Yeah, I will remove it. However, I know KB will bring it up.” Is that Kevin Brady?---It is, yes.

And then you again say, “Tell him it’s a food and beverage package!!” Do you see that?---I can see that, yes.

What are you intending to convey by that, “a food and beverage package”? ---That’s what it was.

Okay. But one minute you’re saying stay silent on alcohol and the next you’re saying, “Tell him it’s a food and beverage package!!” How were you - - -?---Yes.

- - - trying to instruct Ms Inglis?---I was telling, instructing her to tell him what it was.

All right. So you’ve shifted your position, have you, from staying silent to disclosing that it’s a food and beverage package, so there’s a bit more disclosure as to what might be involved, is that right?---Yes.

All right. Go to page 4. You can see the bottom of the page, there's an email on 13 October 2020 from john@affinitysuperyacht.com.au. "Good morning, Laura. Shady Juma of your organisation, who's copied in on this email, has inquired regarding an Xmas function onboard 100-foot luxury superyacht MY Affinity." Saying, "I've attached some information regarding this unique blue-water superyacht that has only lived in Sydney for the past year." And then saying, you know, "I'm happy to help with any inquiries you might have." And then Ms Inglis forwards that to you on 13 October, saying, "Now more importantly ...". Do you see that?---I can see that, yes.

And the subject line is "Downer Xmas party superyacht charter."---Yes.

All right. So do you recall what you said to Ms Inglis in response to this proposition, that the superyacht MY Affinity might be booked for the purposes of the Downer Christmas function?---Yes, Laura was pretty keen on, on going out on the boat and I, I told her it was not within our budget and it's not something that we can afford to do.

20 All right. Well, if we go on page 6, you can see this is the MY Affinity, the hundred-foot custom tri-deck superyacht. Do you recall receiving this information in your email from Ms Inglis?---It may have been an attachment.

It was, you can take it from me, on page 4. It was MY Affinity.pdf. And if we scroll down, you can see the specifications for the boat, and if we keep scrolling you can see there it's got a jacuzzi in it. Was that something that you were considering as a vessel that might be appropriate for Downer Christmas party in 2020?---No.

30 Okay. If we keep scrolling down, down through to page 19, you can see what's included in that attachment. And then if we go to page 21, please. You can see here, if we go down one more page, actually, sorry, page 21. Can you go down to the next page please. I'm sorry. And back up to page 21, thank you. There you can see on 13 October 2020 Ms Inglis writes to john@affinitysuperyacht saying, "Thank you for your email. The Affinity is gorgeous. We're looking to host our Christmas party on 11 December for a midday, 4pm. Do you have availability for this date? Food wise, a barbecue would be great. Do you have any drinks packages? I believe there will be roughly 40 people." Do you see that?---Yes.

And then if we go up one page, you can see John Haji writes back, “Thanks for your interest. Based on 40 people you’d be looking at 5,600 plus GST for a four-hour yacht hire, et cetera, et cetera.” And so then Ms Inglis forwards to you on 14 October 2020 saying, “So the tally without food, drink, comes to 7,300.” Do you see that?---Yes.

So you and Ms Inglis are clearly considering this as an option, aren’t you, this superyacht at this point?---No. She was providing me with the information and I said to her it’s too expensive, we’re not doing it.

10

Okay.

THE COMMISSIONER: But you said that an earlier stage, didn’t you?
---Sorry, Chief Commissioner.

You had said that to her before 14 October 2020, hadn’t you? When did you tell her that it’s too expensive, we’re not doing it?---When she provided me with the quotations and the inclusions.

20 So not at the point where she first proposed doing a boat cruise?---No, not at the point when she first proposed it because I wasn’t sure of what the cost would be and I didn’t expect it to be anything this extravagant.

Yes. Sorry.

MR ENGLISH: All right. If we can go to - - -

THE WITNESS: Sorry, Chief Commissioner.

30 MR ENGLISH: Chief Commissioner, are you content to proceed?

THE COMMISSIONER: Yeah.

MR ENGLISH: To page 25, please. Bottom of the page, it’s an email on 14 October from Manuella Tan, who’s that at Downer?---Manuella was Karl’s PA.

Okay. So Manuella says - - -?---Personal assistant.

40 I’m sorry?---She was Karl’s personal assistant.

All right. Karl McCarthy, is that?---Correct, yes.

All right, “Hi, Laura. Susan Bailey flagged to me this morning about TAP wanting to have a dinner for the TAP staff before the Christmas shutdown. I haven’t brought it up with Karl yet but I’m hoping to speak with him in the next few days. I will let you know what he says once I find out.” And then a response on 15 October from Laura Inglis to Manuella saying, “I am just waiting for Karl to give approval. Kevin Brady has already done so, however, it is getting a little more crucial since COVID restrictions are
10 easing. The Friday spots in December are booking up really quickly and ideally I would love to have the reservation finalised by tomorrow if at all possible. Let me know alternatively. I know Karl is very busy. I can try to give him a buzz.” Now, this is 15 October so the day after you’ve seen the prices for the Affinity superyacht, it doesn’t seem - correct me if I’m wrong - but it doesn’t seem like your hesitation about the price has been communicated to Ms Inglis by this stage.---I’m not sure. This may have been in relation to booking the dinner, which I had agreed to.

Okay. Well, if we go up to the next page, bottom of the page. Again, 15
20 October, “Hi, Laura.” This is from Manuella Tan. “I saw Kevin’s response to you and I did ask Karl just a few minutes ago about it. He did mention it was Kevin’s call, but as Kevin has mentioned to you, maybe not every” - it should say “everyone” - “from TAP will be going to an evening function. I just don’t want you to be in a situation where you confirm, say, 50 people and only 40 turn up and you still have to pay for 50.” And then in the following email Ms Inglis says she understands. Then at the top of the page that’s an email on the 16th from Kevin Brady saying, “Guys,” you can’t see that, but then it reads, “As you can see, if there’s no constraint for the
30 business and Projects can arrange their own party, then I have no issue with what’s proposed. That said, I suspect there’ll be a lower take-up than usual so you should canvass interest. You should ensure it can be cancelled at no cost and at short notice.” Do you see that?---Yes.

And then on the next page, if we scroll up, please, now on 19 October, you find that Laura’s told by Manuella Tan that “The Christmas party was discussed this morning at our management meeting and it was decided that Downer Infrastructure Projects will not have any Christmas functions. Instead we will buy presents/toys for children to provide organisations like Vinnie’s, Salvos and the Children’s Hospital as donations to help out those
40 that have lost their jobs. Please let me know if this is going to” - it says

“post”, it should have been “pose” - “a problem.” Do you remember that occurring, this decision by - - -?---Yes.

- - - by senior management to cancel the Christmas party for that year?---I, I recall that, yes.

All right. And then you can see that the following day Ms Inglis forwards that on to you. So was it your understanding at that point that there was to be no Christmas function in 2020 for Downer staff involved in TAP?---No, I
10 believe I responded to that email to Kevin.

Okay. And what do you believe you wrote to Kevin?---From memory I recall acknowledging that what they were doing was a good suggestion and that we would be more than happy to contribute at a personal level, but I felt that it was still, it would still be nice to give the team some sort of celebration, given what a difficult year it had been and the effort that they’d put into the job.

All right. So you said it would be good to give the team a celebration given
20 their efforts for the year. So would you have instructed Ms Inglis to keep looking for a venue, then?---Potentially concurrently.

Concurrently with what?---With seeking approval or confirming that the approval still existed.

Okay. And did you get that approval from your senior managers that you could do that at an individual level?---Yes.

Okay. And Ms Inglis, she seems like from these emails we’ve seen so far,
30 she’s fairly diligent in obtaining information and then passing it to you, would you agree?---She is, yes.

And she’s not someone to act on her own behalf in the absence of instruction from you, would you agree with that?---Not, not entirely.

All right. She’s not known, is she, Ms Inglis, to commit expenditure in the name of Downer without appropriate authorisations?---Correct.

All right. If we can go, please, to page 27. Now we’re at 26 and 27 October
40 and you can see that Ms Inglis has made some inquiries with the Verandah

Bar to host the event and noting the minimum spend there of \$4,500. Do you see that?---Yes.

Still looking at that date of 11 December in the last paragraph, do you see that?---Correct, yes.

And she forwards that to you on Tuesday, 27 October. Do you see that?---Yes. Yes.

- 10 Okay. And then if we go please to page 58, now, you can see at the bottom of this page it's 19 October 2020 and there's a message from daniel@sydneyboathire, so not Affinity but Sydney Boat Hire, the original company, saying, "Hey, Laura. I trust you had a great weekend. I just wanted to see whether you have had the chance to decide on whether your company wishes to go ahead with Karisma." Do you see that?---Yes.

And your company could only be Downer in that context. Is that right?---Correct.

- 20 And then you see Ms Inglis writes, and you don't see who this is addressed to, but she says, "Hi all, just wondering if you still had this available." This is on 6 November, "I understand I have been very annoying but with COVID I have had to ensure I had approval from upper management to allow this to move forward." Do you see that?---Yes.

So she's saying there that she's got approval from upper management to move forward with a boat party on 6 November. Would you agree?---It appears that way.

- 30 Was she referring to you?---I couldn't comment on who she was referring to, sorry.

Well, did you give her approval to move forward on 6 November with a boat party?---No, I was, I objected to the boat party.

Well, who else could she be referring to then, Mr Brady or Mr McCarthy?---I'm not sure, sorry.

- 40 Well, she's not someone prone to exaggeration, to your knowledge, is she, Ms Inglis?---No, she's not. No, she's not.

And she's not someone who, to your understanding, would make up a false statement like this, that she had approval from upper management at Downer without having it. You wouldn't accuse her of that, would you?
---No, I wouldn't.

So is it right that the only people she could be referring to there were either you, Mr Brady or Mr McCarthy?---No, she could have been referring to Mr Watters. She could have been referring to anyone else that was her senior.

10 So you say it's possible she was referring to Mr Watters in relation to this approval that she's referring to there?---I'm saying it's, it could have been anyone. I don't know. I can't say for certain who the approval would have come from from reading that email.

All right. Well, the only people that she'd been dealing with in relation to this that we've seen in the email chain up to this point is yourself, Mr McCarthy and Mr Brady, correct?---Correct.

20 She'd be on a frolic of her own if she then turned to Kevin Watters to have this approved, would you agree?---Yes, I'd agree with that.

All right. And you've agreed that she's not a person that would have done something like that. Would you agree?---Not ordinarily, no, she wouldn't.

Okay. If we go to page 35, please. Here, and I note what we saw on 6 November was at 2.55pm. We're now looking at 3.29pm in the bottom email there on 6 November. So some 34 minutes later. And she writes an email, that's Ms Inglis, to tonynguyen@rjsprojects copying in Andrew Gayed saying, "Hi, Tony, as discussed over the phone, piling contract station contract POs, et cetera. The platform civil is still awaiting approval in our account system and we will send that one over to you ASAP. As for the 'help' we discussed, I am waiting to hear back from Sydney Boat Hire as to whether the date/time we had in mind is still available. It will be the entire TAP team so roughly 40 people." So here she is raising the issue of the boat hire with Mr Nguyen, do you see that, and copying in Mr Gayed?
30
---Yes.

Now, that's not something she would have done unless she was on instruction from someone at Downer, correct?---I don't agree.
40

Well, you just said she's not someone to go on a frolic of her own on matters like this.---I, I definitely hadn't given her the approval to do that.

Well, you'd agree that someone must have, correct, within Downer?
---I would assume so.

Well, Mr Gayed obviously knew about it 'cause he's CC'd in, correct?
---Yes.

10 But he's not upper management, is he, Mr Gayed?---He's not upper management but he's still at a higher level than Laura would be.

All right. But you would have come to this event, would you not?---If it had gone ahead.

And what are you saying, you just would have boarded the yacht and said, "I thought we were at Verandah Bar"?---No, I wouldn't have, I wouldn't have allowed it to happen. I said, I've, I've maintained that the whole time. I was against the boat cruise. I'd approved a dinner. We'd, we'd sought
20 funding for the dinner. And I wasn't, I wasn't happy about any event like this happening.

All right. But can you see in the next email, on 10 November, again from Ms Inglis to Tony Nguyen with Mr Gayed copied in, "Hope you had a good weekend. Sydney Boat Hire have confirmed date and time for the charter is still available. Give me a call if you wish to discuss further. Please note, once payment for piling and station civil has been finalised, I will advise you of expected payment date." Do you see that?---Yes.

30 Would you agree it seems to suggest that payment to RJS Infrastructure in relation to work at Wollstonecraft is dependent on RJS confirming that it's going to pay for the boat hire?---Look, I don't agree. I think maybe Laura's just covering two topics in one email.

Well, she's certainly linking the two, isn't she, the two issues?---It appears that way, mmm.

THE COMMISSIONER: I know you say, Mr Bedwani, that you made it quite clear that you couldn't justify a boat cruise in terms of the cost. But
40 what Ms Inglis appears to be doing is organising a boat cruise at no direct cost to Downer, and she seems to have done it with what she describes as

the approval of upper management. Now, earlier on Counsel took you to some correspondence - I think it was from Mr Brady - about a decision that had been taken not to have the Christmas party and to donate various gifts to charitable institutions. You were the one, correct me if I'm wrong, who was still of the view that there should be a Christmas party for persons who were involved in the TAP project.---That's correct, Chief Commissioner, but I was referring - sorry.

10 So I'm just wondering how Ms Inglis could have got it all, according to you, so horribly wrong. Mr Brady, who was the other person in senior management who you say could have approved it, had already communicated that he wasn't favouring a Christmas party, he was favouring a donation or donations to charitable groups. You were the other person who could have approved it, and I think it was Mr McCarthy. I don't see any correspondence from Mr McCarthy, yet there is continued action to secure a Christmas party and somehow to approach subcontractors to fund it and you say you're all unaware of this?---I'm suggesting that I had received approval for the dinner event and I had told Laura that the cruise was not affordable and that it wasn't something that was within our budget. She
20 may have tried to do the right thing by trying to, you know, organise a Christmas party and she, you know, she was quite enthusiastic about the, the cruise, looked for an alternative way of making it more affordable.

And, what, she didn't consult you about it?---No. If I was consulted, Chief Commissioner, I should have been cc'd in on these emails.

MR ENGLISH: If we can go, please, to page 37. You can see here again with this same email chain just a bit later in time. Now she confirms on 10 November 2020 at 14.43 in an email to Mr Nguyen that, "Payment for
30 piling and station civil claims can be expected by 26/11/2020." Do you see that?---Yes.

All right. And then if we go to page 39, you can see it's 6 November at the bottom, email from daniel@sydneyboathire, "Hey Laura, thanks for getting back to me on this. According to my availability calendar it still shows it's available for a day cruise until 5.30. Are you guys wanting to proceed with this charter?" And then she forwards that on 30 November to Tony Nguyen. Do you see that? "Hi Tony, please give me a call when you are next free." Do you see that?---Yes, I do.

40

And it's again, "Annual Xmas party on Sydney Harbour 11 December 2020." Do you see that?---Yes, I do.

And despite your evidence that she's not a person to go out and commit expenditure on behalf of Downer without proper authorisation, you say she's doing this without your knowledge. Is that your evidence?---Yes, because when I found out I said, "There's absolutely no way this is happening."

10 All right. I'm sorry. We're going to jump back in time, but if exhibit 84 can be played, please. It's a telephone call between Andrew Gayed and Aidan Cox, session number 18937 on 23 November 2020. If it can be brought on the screen, please, and just, when the Chief Commissioner has got his copy of the transcript, can it be played, please. Exhibit 84. We have a spare copy if you'd like one, Chief Commissioner.

THE COMMISSIONER: Thank you.

20 MR ENGLISH: If it can be brought on the screen and be played, please.

AUDIO RECORDING PLAYED

[2.44pm]

MR ENGLISH: All right, so do you agree on page 2 you've got Mr Gayed, who was the project manager reporting to you at the time, suggesting to Mr Cox he should add ten on top of the bills charged to Downer to cover the Christmas party. Do you agree?---I heard that, yes.

30 And isn't this reflective of the culture at the time at Downer, that project managers believed they could have additions added on to bills for their own benefit, this time in the case of a Christmas party on a boat? Would you agree?---No, I think it was certain individuals behaved that way.

Okay. If we go back to volume 25.1, page 39, here it seems that some seven days later this is when Ms Inglis got back in contact with Mr Nguyen in accordance with the call we just heard that was Exhibit 84. And if we go to page 52, here we've got Ms Inglis corresponding with Sydney Boat Hire, with Mr Nguyen copied in, on 1 December, confirming that "Pick-up at
40 Lavender Bay would be fine. Please note there are no photos attached of grazing platters. Happy to add extra cheese and antipasto boxes but there is

no price for those items in the form. Can you please send me the price of those items and what they include?" Do you see that?---Yes.

She's committing, it would seem, to this party on behalf of TAP staff at Downer, this boat cruise to be funded at least in part by Tony Nguyen of RJS Projects, would you agree?---It appears that way.

10 And then if we go to page 76, you see on 2 December 2020 there's an inquiry from Ms Inglis to Tony Nguyen, "I've tried to call you a few times with no luck. Sorry, I know you're super busy. Can you please complete the card details at the bottom of the online form and send back to Daniel as soon as possible. I really appreciate it." And then a bit later that day, also 2
20 December, "Hi, Tony. Please complete the form in the email below before 7.30am tomorrow, Thursday the 3rd, morning. Daniel is unable to finalise the booking and organise catering and staffing arrangements until this is done." And do you say you were still, as at 2 December, unaware that this boat party was looking like it was going to go ahead from Lavender Bay? ---I think that was around the time that I understood that the events had progressed a lot further than I had expected them to. I can't remember exact, exactly the timing but I had found out around that time that there had been conversations with Tony and that there had been agreements made and then, shortly thereafter, I said to Laura, "Look, this isn't, this isn't right. It's not going to happen."

Is this when you mulled over whether this proposal should go ahead?---Yes.

30 But I understood your evidence before the Commissioner to be as at 13 October you dismissed this option out of hand as being too expensive.---I did.

And then so is your evidence now you found out that Tony Nguyen was going to pay for it and you needed to mull it over?---No, I found out that the, that the event had progressed significantly since then and that it looked like it had been arranged or a deposit had been paid or something had happened already by this stage, unbeknownst to me, but when I found out I, I knew it wasn't the right thing to do. I didn't know what to do about it because it progressed so far, and then I thought no, we can't allow this to happen, and then I told Laura, "Cancel it. It's not going ahead."

40 All right. Well, how long did you mull over it for?---Maybe a day or so.

All right. Well, isn't the real reason why this didn't go ahead because on 2 December 2020 warrants were executed by this Commission at Mr Nguyen and Mr Cox's residences?---I was unaware of that.

How did you tell Ms Inglis that this event wasn't going to go ahead? Was it in writing or was it orally?---I can't remember. I remember the conversation with Laura. I said to her, "Look, it's, we can't, we can't do this. We haven't got approval to do this, 'cause we just, we have to stick to the dinner that we have approval for, and that was the original plan."

10

Well, you'd agree - - -?---I can't remember whether that was in writing or if it was a verbal conversation.

Well, you'd agree it's inappropriate, Ms Inglis trying to arrange for the payment of this Christmas party by a subcontractor to Downer, correct?
---Yes.

And it's wholly inappropriate, her linking it to payment claims submitted by that subcontractor to Downer, correct?---If that was the intention then that's definitely inappropriate.

20

And you were aware she's made a reference to upper management being aware of what she's doing, correct?---She's made that reference.

And you rule that out categorically, do you, that that could have been you?
---Yes.

All right. If we can bring up volume 22.1, page 272, please. This is the framework agreement between Transport for NSW and Downer EDI Works.
You see that there?---Yes.

30

If we go to page 277, please. There's a reference there to the contract control group. Were you a member of the contract control group?---Yes, I was.

And you can see at 6.2, what the contract control group's functions include. Do you see that?---Yes.

And they were matters that you were involved in in your day-to-day job at Downer. Is that right?---Correct.

40

If we can go to page 282. This is now within schedule 1, I believe, of the framework, and you can see 11.2, conflicts of interest. Do you see that?
---Yes.

I'm sorry, we're not in schedule 1 yet. I withdraw that. But you see clause 11.2.---Yes, I can see that.

10 “(a) The proponent must disclose to the principal the full particulars of any real or apparent conflict of interest which arises or may arise in connection with this deed or the performance of the MC services immediately upon becoming aware of the conflict of interest whether that conflict concerns the proponent or any person employed or retained by the proponent for or in connection with the performance of the MC services.” Do you see that?
---Yes.

20 All right. If we can go to page 291. This time it's in schedule 1. If you just scroll up to the page before, you can see under Commitment to Principles, “The parties agree that in giving effect to this deed they will abide by the following principles of behaviour.” And you can see there's references there to, “Establishing and maintaining a culture which endeavours to promote the matters under (b).” Do you see that?---I can see that, yes.

And (g), “Notifying each other of perceived or real differences of opinion or conflicts of interest as soon as they arise so as to promote the resolution of such issues within the shortest possible timeframe.” Do you see that?---Yes.

All right. Chief Commissioner, I just need to tender a letter. I'll hand you up a hard copy.

30 THE COMMISSIONER: Is this the - should be Exhibit 186, which is a letter dated 28 January 2022.

#EXH-186 – LETTER FROM DOWNER TO TFNSW RE INTERNAL INVESTIGATION OF VLAD STANCULESCU DATED 28 JANUARY 2022

40 MR ENGLISH: Exhibit 186, thank you. If that can be brought on the screen, please.

THE COMMISSIONER: It's a letter addressed to Mr Peter Church.

MR ENGLISH: It is, under the hand of Karl McCarthy.

THE COMMISSIONER: Karl McCarthy. Yes.

MR ENGLISH: I'm hoping that will come on the screen in a moment. Okay. This is a letter on 28 January 2022 from Mr McCarthy to Peter Church of Transport. Do you see that?---Yes.

10

And he's there referring to the framework agreement between Transport for NSW and Downer. Do you see that?---Yes.

And what he's doing in the third paragraph is saying, "The purpose of this letter is to give notice to Transport for NSW under those clauses I have taken you to of the details of conduct involving one of Downer's former employees, Vlad Stanculescu, who was employed in connection with the provision of services under the TAP contract." Do you see that?---Yes.

20

And so it says in point 1 here, "By way of further explanation we note as follows. On 13 July 2021 Downer received a confidential internal complaint regarding the former employee's previous undisclosed relationship with Dalski." Do you see that?---Yes.

And then it goes on to note, "Dalski being the successful tenderer for Banksia. The former employee Mr Stanculescu was the business lead and main scorer for that tender." Do you see that?---Yes.

30

And then point 3, "Immediately upon receipt of the complaint Downer commenced an investigation into the former employee's conduct and relationship with Dalski which concluded on 3 December 2021." Do you see that?---Yes.

40

I took you to those clauses in the framework where conflicts of interest had to be "notified to each party as soon as they arise so as to promote the resolution of such issues within the shortest possible timeframe." That was clause 3.3G in schedule 1, and just to remind you the requirement in 11.2 was "to disclose to the principal for particulars of any real or apparent conflict of interest which arises or may arise in connection with the deed or the performance of the MC services immediately upon becoming aware of the conflict of interest, whether that conflict concerns the proponent or any

person employed or retained by the proponent for or in connection with the performance of the MC services.” Can I ask you this, were you aware of this letter before it was sent - I withdraw that. Were you made aware that this letter was to be sent to Mr Church in this form?---No, that’s the first time I’ve seen the letter.

Right. Okay. But you were Mr Stanculescu’s report, correct?---No. Mr Stanculescu was my report.

10 Sorry, he was reporting to you.---Correct.

So is your evidence you weren’t consulted about this communication, notwithstanding you were his direct manager, at or around the time it was sent to Peter Church?---I had no involvement with Mr Stanculescu’s internal investigation or dismissal or any correspondence relating to it. I was just made aware of the fact that it had happened.

20 All right. Well, would you agree that providing full particulars of any real or apparent conflict of interest which arises or may arise in connection with the deed immediately upon becoming aware of the conflict would require, on this time line, an earlier disclosure of those facts prior to 28 January 2022?---Sorry, I didn’t understand the question, Mr English.

Sorry. Those clauses seem to - I’ll read it again. Maybe if we can go back to volume 22.1 on the screen, please, page 282.

30 MS HEGER: Chief Commissioner, just before this line of questioning is pursued, can I just inquire as to why this witness’s evidence about whether or not certain contractual requirements were complied with is relevant? It’s obviously a matter for the Commission to decide whether or not contractual requirements were complied with or not. I’m not sure why Mr Bedwani’s views about that actually assists the Commission, especially given by this time, January 2022, he wasn’t even working on the TAP projects anymore, he finished up in October 2021.

THE COMMISSIONER: No, I’ll allow the question at this stage. I think it’s laying the groundwork for something to follow.

40 MR ENGLISH: Thank you, Chief Commissioner. If volume 22.1, just so you’re aware, you can read that clause. I’ve read it out a number of times now. “Disclose to the principal full particulars of any real or apparent

conflict of interest which arises or may arise in connection with this deed or the performance of the MC services immediately upon becoming aware of the conflict of interest.” Do you see that?---I can see that, yes.

And if we go to page 291, the requirement, you can see in (b) there’s references to “open and honest communication, timely sharing of information, transparency,” et cetera. And then (g) “notifying each other of perceived or real differences of opinion or conflicts of interest as soon as they arise, so as to promote the resolution of such issues within the shortest possible time frame.” And I just want to ask your opinion. Downer receives the complaint on 13 July. The investigation is immediately commenced on this letter. It’s concluded on 3 December 2021 and then it’s not until 28 January 2022 that Transport’s notified of these issues relating to Mr Stanculescu. Now, do you accept that there was a period of delay there that doesn’t seem to comply with what was required under these clauses I’ve taken you to?---Is this a matter of personal opinion?

Well, you’ve said today you can’t bind Downer, so it seems it can only be in that form.---I can’t - sorry, Mr English?

You said earlier today you’re not here to bind Downer, so it seems it can only be in that form.---So there appears to be a gap in the time frame, yes.

All right. And you were Mr Stanculescu’s manager, right?---Yes, I was.

But on your evidence you weren’t made aware of this investigation into Mr Stanculescu. Is that right?---That’s correct.

You were only told, I think you said earlier today, you said you weren’t made aware of the investigation findings, you were made aware that Mr Stanculescu had used his position within Downer to benefit Dalski during the tender at Banksia. Did you find that out around 3 December 2021?---I found out after his dismissal.

Well, he had been dismissed, or was dismissed, in December of 2021, wasn’t he?---I’m not sure of the exact timing but it would have been around then, yes.

Well, why was there this delay, do you know, in informing Transport for NSW about Mr Stanculescu’s conduct?---I can’t comment on that.

Was Mr Stanculescu some kind of protected specifies down at Downer?---
Of course not.

All right. Well, have you ever been involved in any other investigation involving one of your subordinates that you had been not kept in the loop of?

10 MS HEGER: Well, I object to that question. How does he know what he doesn't know?

MR ENGLISH: Well, he found out after the event here. To your knowledge - I'll ask the question again and rephrase it. To your knowledge has there ever been any investigation into one of your subordinates which you have not been aware of at the time?---I, I wouldn't know if there's been an investigation into any other subordinate if I'm unaware of it.

20 Was there ever a discussion between you and anyone at Downer that you were conflicted insofar as concerned Vlad Stanculescu?---No.

Was that a no?---That was a no.

As far as you're aware, was there ever any decision made that you were too close to him to be able to investigate his conduct?---Not that I'm aware. It's not unusual for investigations to be kept confidential.

30 You must have felt severely betrayed by Mr Stanculescu when you found out that he had been favouring Dalski in relation to the Banksia tender, is that so?---Of course I was.

And did you speak to him and take that issue up with him?---I wanted to understand why he did what he did.

So when did you speak to him about it?---After he was dismissed.

What was the context of that discussion?---I wanted to get his side of the events.

40 So how far after he had been dismissed did you have that discussion?---I can't remember.

Shortly thereafter?---Shortly thereafter, maybe a couple of weeks later.

What was his version of those events that he told you?---He acknowledged that what he did was wrong and that he was trying to get the best outcome in terms of competitive pricing.

And did that satisfy you that explanation?---I took his word for it.

10 And you've maintained closeness with him right up to today, is that correct?---We still communicate from time to time.

Well, Mr Stanculescu's evidence yesterday, he was asked these questions at transcript page 1695, "And did that continue, that closeness, throughout 2019?" That was with you and he said, "Yes." Then he was asked, "And did it continue throughout the remainder of your time at Downer?" Answer, "Yes." Then he was asked, "Does it continue today?" And he said, "Correct, yeah."

20 So accepting that evidence, would you say that Mr Stanculescu is particularly of the view that this indiscretion of his hasn't caused any harm to his friendship with you?---I was hurt and I was upset by what he did but at the end of the day people make mistakes. I'm not in a position to judge anyone.

30 But this was more than a mistake, this was Mr Stanculescu being involved in the management of the affairs of a company without declaring conflict of interest, without applying for secondary approval, in relation to a company that was bidding for jobs with Downer, correct?---Correct. I'm not denying what he did was extremely wrong. I, I'm not denying that at all. I acknowledge that what he did was wrong and he shouldn't have done it and it had consequences to himself and to Downer and to his relationships with other people.

Including you as his supervisor at the time.---Yes, including me, yes.

If we can go to volume 22.1, page 298, please.

40 THE COMMISSIONER: Before we go there, I might ask you this question, Mr Bedwani. This is a man who reported to you. Are you able to explain to me how someone who you're close to and has this reporting relationship

with you could get it so horribly wrong, as you said?---I can only speculate, Chief Commissioner.

Well, no, I'm not asking you to do that. I'm just trying to understand the culture that enabled this to happen within Downer. You have these policies. You have these procedures in place but somehow in his case that didn't have the impact that one would ordinarily think they ought to have, and I'm just wondering why that was so?---Chief Commissioner, I don't know. Vlad was always trying to help people. He was always generous with his
10 time. He was always, you know, trying to assist. He probably took that assistance - well, not probably, he took that assistance too far and he crossed the line.

All right.

MR ENGLISH: If we go please to volume 22.1, page 298. Here Compliance with Law, "The proponent must comply and ensure that the MC services and the MC offer and all work done in connection with the MC services and this deed comply with the requirements of all applicable laws
20 in the NSW Code of Practice for Procurement." Okay. Are you aware of any training within Downer on the NSW Government Code of Practice for Procurement?---Yes.

Okay. And you've received that training, have you?---Yes.

Okay. And to your knowledge was such training also delivered to project managers?---It was, yes, to my knowledge.

Okay, "(b) Without limiting clause 2B of schedule 1, the proponent must
30 not (ii) offer any incentives, gifts or other favours to any person who is in any way involved with or in a position to influence or capable of providing technical or other advice to those who are involved in any way with the evaluation of the MCC offer." Do you see that?---Yes.

Now, we might be splitting hairs here, but could you see how the payment to Mr Nguyen, when that's linked to the boat party, could potentially contravene this clause?---We would need to establish that that was in fact the case, yes.

All right. If we can go to volume 22.13, page 1 to start with, please. Okay. There's page 1. This is the managing contract to contract for Banksia between Transport and Downer. Do you see that?---Yes.

And if we go to page 226 - sorry, that might be the incorrect page. Just give me one moment. I'll have to come back to that. But you're aware, aren't you, that Downer was obliged, when engaging subcontractors, to ensure that subcontractors made similar acknowledgements that Downer had to make in relation to compliance with the NSW Government Statement Of Business Ethics and Code Of Practice for Procurement?---There was flow-down conditions in the contract.

Yeah, the special conditions that were in the contract between Transport for NSW and Downer on those topics were then replicated as special conditions between Downer and its subcontractors. Is that correct?---In most instances, subject to the form of contract being used, yes.

Okay. Now, other than requiring subcontractors to include those special conditions in their contracts with Downer, did Downer do anything to educate subcontractors about those requirements?---In what capacity?

Well, in any capacity at all. Do you know, did they hand out a copy of the Code of Practice for Procurement or the Statement of Business Ethics to subcontractors? I'm not suggesting that Downer did, but did it do anything to educate subcontractors about those requirements?---Subcontractors were provided copies of our management plans if they didn't have their own management plans or if their own management plans were inadequate, and often they spoke to those requirements.

So what do you mean often they spoke to those requirements?---So the management plans and the guidelines that were provided to the subbies to, to operate under were in accordance with.

All right. Perhaps if we can go to volume 22.11, page 43. So this is a contract between RJS Infrastructure and Downer that picks up those special conditions. Do you see that?---Yes.

So special condition 26 refers to the Transport for NSW's Statement of Business Ethics, and the subcontractor agrees by entering into the contract that it must at all times comply with the Statement of Business Ethics, a copy of which is available at transport.nsw.gov.au. Do you see that?---Yes.

If we scroll down to the next page, you can see here's the reference to the New South Wales Code of Practice.---Yes.

And these are those cascading special conditions you just gave evidence about, is that right?---Correct.

10 Can we go, please, to transcript page 243. So from line 18 you can see that this is Tony Nguyen's evidence. He's asked about that page we just looked at, volume 22.11 page 43. And we were just looking at special condition 26. He says, yes, he's had a look at it. "This refers to Transport for NSW's Statement of Business Ethics. Had you ever seen Transport for NSW's Statement of Business Ethics?" He says, "No, I haven't." Do you see that? ---I can see that, yes.

20 And, question, "Did you understand yourself to be acknowledging that - if you see there, B there - you had received, read and understood and would comply with Transport for NSW's Statement of Business Ethics?" And he goes, "Yeah, that would be correct. I would have acknowledged that if - - -" And question, "You acknowledged it but you never read it?" "Exactly, yes." "Did you know it existed?" "No, I didn't. Personally, no, I didn't." Do you see that answer?---I can see that, yes.

Now, the purpose of including these special conditions in the contract between Transport for NSW and Downer and its subcontractors is to ensure probity, equity and effective competition, would you agree?---Yes.

30 But here it is that there's evidence from subcontractors that they didn't even know these documents existed. What does that say about the extent to which Downer cares about probity, equity and effective competition with its subcontractors?---It doesn't say anything about Downer. It says, it speaks to subcontractors' interpretation and attitude towards it. It doesn't say anything about Downer's attitude.

But aren't you giving evidence of Downer's attitude there? You've consistently said it's up to someone else, it's someone else's fault. This time you're saying it's the subcontractor's problem if they don't read that stuff. Is that your evidence?---No, I'm not saying that at all.

40 Well, what are you saying then? Mr Nguyen is saying he didn't even know these documents existed and you're saying, well, that's his job to go and

look at them. Is that fair?---I'm saying that that's his evidence, that he is, he is saying that he didn't know they existed.

And can you point to one thing - - -?---And he read and signed the contract.

Can you point to one thing Downer did to bring these documents to his attention other than the special conditions we've seen?---No, I can't.

10 If we go to - sorry. Just sticking with page 243 and going down to page 244, there's reference to C. Do you see item C there, "Prior to the engagement of any subcontractor by the subcontractor" that is RJS "the subcontractor must obtain a written acknowledgement" can we scroll down to the next page "from such contractor, that is" - sorry. I was reading the question. That is from your subbies that they have received read and understood and would comply with Transport for NSW's Statement of Business Ethics. You understand that's where, if RJS engaged a subcontractor, it had to ensure that the same special conditions cascaded down to that further level of subcontracting, would you agree?---Yes.

20 And Tony Nguyen's answer in relation to the question in that context, "Was that a process that you ever engaged in on any of the projects you worked with for Downer?" was "No." Do you see that?---I can see that, yes.

So, as you sit there today are you able to say whether Downer paid any attention to whether additional subcontracts that were engaged in the matter being discussed here - let me start again. As you sit there today are you aware whether Downer paid any attention to whether the further subcontracts contained these special conditions?---I, I can't comment on that.

30 It goes down to make reference to the code of practice. You can see there in the next question, line 9, question, "Were you aware of the NSW Government Code of Practice for Procurement?" Mr Nguyen says, "I was aware of it but I didn't pay too much detail to it." "Did you know what it contained?" "No, I didn't." "And any guidelines in relation to that code, were you aware of those?" "I didn't pay too much attention to it." "Did you pay any attention to it?" "Probably not." "Where this required you to notify Downer in relation to any non-compliance or any remedial action taken did you ever take a step of that kind?" "No, I didn't." And you can
40 see again he says at the bottom of the page, line 38, "I paid no attention to it." Does that cause you any concern, those answers that Mr Nguyen gives

to his lack of attention to detail insofar as concerned requirements with or compliance with those documents?---Yes, it does.

In what way?---It shows that he's obviously not reading the contract or taking any notice of the contract requirement which exposes RJS and subsequently could expose Downer.

I just want to take you to some evidence now in relation to the effectiveness of some of Downer's policies. Can transcript page 948 please be brought up
10 on the screen. This is evidence from Mr Aziz. All right. Line 37, Mr Aziz, you can see there, was taken to a proof of learning record like you were today. It says, "It shows what qualifications or courses you've attended and it identifies on 3 December 2019." If we can go over to the next page, "You received training on the anti-bribery and corruption. Doesn't say any more than that, but in relation to that topic at Downer. Do you recall that?" "Yeah, I can see that." "Do you recall receiving that training?" "Not specifically, no." Question, "Okay. And if we go to the next page you can see you received training on engaging contractors at Downer. Do you see that?" "Yeah." "Do you recall receiving that training?" "No." And then
20 he's asked some questions about financial delegations and authority and training in relation to that, and at line 31 he says, "That would have been part of the initial induction package but I don't specifically remember that module." Do you see that evidence from Mr Aziz?---Yes.

Now that suggests, or certainly he hasn't remembered anything about training on those particular courses, would you agree?---It suggests that that's his evidence.

Well, he's saying he can't remember anything that he may have seen or
30 learnt in those courses. Do you agree?---Yes, I agree that's what he's saying.

All right. Does that say anything about the effectiveness of Downer's training on those courses?

MS HEGER: Chief Commissioner, can I object to this question. There have been a number of questions asked of this witness about Downer's training and policies and whether the conduct of particular individuals reflects adversely on the quality of those training of policies, and there's a
40 degree of unfairness in those questions, and particularly this one in circumstances where Mr Bedwani is not the one who designs this training.

He hasn't been taken to the content of the training and yet he's being asked to comment generally on whether Mr Aziz's evidence reflects on the adequacy of the training generally. In addition to that I'm not sure why he's opinion about that matter assists the Commission. I can understand why the Commission might be interested in the adequacy of the training but surely that's a matter for the Commission to consider as opposed to Mr Bedwani who has no responsibility for these matters to opine on.

THE COMMISSIONER: Is this much more left on this or - - -

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MR ENGLISH: There's not. In relation to the point that he hasn't been taken to any of the policies, well, that, in my submission, doesn't arise because Mr Aziz couldn't recall any of it. That's the point. It seems the training as a whole on those three documents was ineffective and I would like to know whether the witness agrees.

THE WITNESS: I disagree that the training was ineffective. I think certain individuals - - -

20 THE COMMISSIONER: Just a moment.

THE WITNESS: Sorry, I thought that was a question, Chief Commissioner.

THE COMMISSIONER: No. Look, it might have some marginal relevance but - - -

MR ENGLISH: All right. Maybe I can put it another way. Just, if you accept from - - -

30 THE COMMISSIONER: At the moment, I mean, this witness's opinions on some of these issues is going to have some limited impact, I would think.

MR ENGLISH: All right, Chief Commissioner. I hear what you say. Accept from me you've seen now what Mr Aziz's evidence was. Can you accept from me, please, that Mr Gayed also said he couldn't recall receiving training of that nature. Can you accept that from me?---Am I being asked to answer these questions now?

40 Can you accept from me, I'm telling you, Mr Gayed had a similar lack of recall in relation to training on these trainings? Can you accept that from me?---I can accept that from you, yes.

And likewise Mr Pilli, he said he couldn't recall receiving any bribery and corruption training at Downer. Can you accept that from me?---I can accept that from you.

All right. When was your last day at Downer in full-time capacity?---I'm still employed at Downer.

I know but you've been stood down from duties, haven't you?---Yes.

10

So when was your last day in a full-time capacity?---During the opening of this investigation.

All right. So 17 March? Or 20 March I'm assisted, thank you.---20 March, that's correct.

20 March.

THE COMMISSIONER: Sorry, is there something you wanted to say?

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---Sorry, I was just confirming that the 20th was correct, Chief Commissioner.

Perhaps I could ask this question, and it may short circuit it, but you're aware of all of these individuals who Counsel's referred you to, Mr Aziz, Mr Watters, Mr Gayed, Mr Pilli, Mr Stanculescu. I'll leave aside Mr Vardanega. He's in a somewhat different position. But all these people you've heard the evidence in relation to what is alleged to have occurred. I'm just trying to understand, from someone in your position who was more senior to these people, what you did to reinforce those obligations which you understood persons working in Downer had in carrying out their duties. That is, the policies in relation to conflicts of interest and ethics and probity. So I just want to understand what you saw your role - - -?---Sure.

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- - - as a leader, so to speak, or a person occupying a leadership position, in reinforcing those values which were so important to Downer and were reflected in their policies and procedures and their contractual requirements. Are you able to assist me?---I can try to, Chief Commissioner. As I advised at the commencement of the hearing today, I instigated a procurement meeting with the team. Part of the team was to reinforce the requirements under the contract, the processes and procedures that should be followed, the expectations from Downer with, you know, from myself and, and as a

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project what the expectations were and what the processes that needed to be followed were. I had regular monthly meetings with the team. We went through all aspects of the project. We went through procurement, we went through all the KPIs and how were they performing and how they, how would, how they were delivering the job. And so there was constant reinforcement of that message and I think we were trying to gauge how the, how the individuals were performing, and if there was any issues that needed to be raised, we would raise them accordingly.

10 Right. Thank you.

MR ENGLISH: But you were asked by the Commissioner about what you did to promote probity at Downer. Can you name one thing that you did as a leader to promote probity in those beneath you?---Yeah, we introduced the ARCUS system on, on TAP in conjunction with discussions with our Delivery Board.

All right. And you mentioned KPIs, that you'd have monthly meetings and discuss KPIs. Was corruption prevention one of those KPIs?---Corruption
20 prevention as a topic, no. But proper procurement practices and adherence to the requirements, yes.

All right. You might not know because of being stood down on 20 March. Do you know whether Downer's conducted any sort of cultural review following the allegations leading up to this inquiry, including those involving Mr Stanculescu?---I wouldn't be able to comment on that, sorry.

Okay. Do you know whether Downer has an outsourced whistleblower program or whether it's an internal whistleblower program?
30 ---I'm not sure, sorry.

All right. Are you aware whether Downer has ever audited any of its staff to see whether Downer materials are being sent to personal email addresses?---I, I wouldn't be able to comment on what Downer's processes are in relation to that. That's an IT function.

All right. If we can go to volume 22.1, page 292, please. Here's a clause at 3.5 relating to access to records. "(a) Consistent with the principles of
40 behaviour referred to in clause 3.3 of schedule 1, the proponent must keep and maintain all records and other documentation referred to in this deed or

that are created in the performance of the MC services, including the development of the MCC offer.” Do you see that?---Yes.

And at (c) “The proponent must make the records and any other documentation referred to in this clause 3.5 of schedule 1 available to the principal or its nominee upon request at any time and from time to time.” Do you see that?---Yes.

10 Just bear with me for one moment, please. If document 10 of the email brief can be brought up, please, and I’ll need to tender this. I’ll hand up a copy for you, Chief Commissioner, and tender that.

THE COMMISSIONER: Yes, all right. The document titled TAP 3 Review Status Update will be Exhibit 187.

**#EXH-187 – PAXON EMAIL AMIT PATEL TO ANDREW
BEDWANI RE TAP 3 DATED 5 NOVEMBER 2021**

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MR ENGLISH: If we can go to page 2, please, you can see there’s a reference from Ian Ekins from Paxon. Do you see that? On 4 November 2021. Do you see that, Mr Bedwani?---Yes, I can see that.

30 He’s saying, “Dear all, please find attached an updated information request, which includes the documentation received from Amit to date, and our update. There is still some key information we haven’t received, as documented and highlighted within the information request, though some good progress has been made in the past week.” It goes on, “If DEDI, Downer, could provide the documents or respond to the queries highlighted within the information request as soon as possible, that would be greatly appreciated, as we could then follow up if required in the meeting with Amit next week. We feel that potentially the call this Friday should be cancelled until the above steps have been completed.” And then if we - I’ll tender another document, Chief Commissioner, which is document 11. And this is the - - -

40 THE COMMISSIONER: The document titled Tab 3 Information Request, 5 November 2021, will be Exhibit 188.

**#EXH-188 – PAXON TAP3 INFORMATION REQUEST DATED 5
NOVEMBER 2021**

MR ENGLISH: Okay. And if that can be brought on the screen and then we'll come back to Exhibit 187 in a moment. So this is the information request that Mr Ekins was referring to, and you can see the bits highlighted in yellow that I understand are outstanding. Do you see that, Mr Bedwani?
---Yes, I can see that.

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And the third dot point, it says, "Organisation charts and listing of staff grade utilised for each project in hours or other supporting information, e.g. time sheets." And then - - -?---Yes.

And then Paxon comment, "We have received chart 5 v 14 and chart 5 v 11 of the organisation chart. We require all charts through the project history and all of the requested changes to personnel in order to perform testing." And then the response is, "Org chart by end of this week. We don't do the time sheet as the nominated staff works on the project." Have you see this document before?---Yes.

20

And who inserted that information in blue from information provider?
---Amit.

And so that's right, was it, is he trying to say, as you understand it, that time sheets aren't available?---Correct. So staff were allocated to projects. So full-time staff that were allocated full-time to a particular project didn't have time sheets. The costing was just allocated to that project. We only had, we only had time sheets for contractors.

30

And then there's some further material sought in relation to procurement process guidance and subcontractor contract management plan and processes. Do you see that?---Yes, I can see that.

And it seems the procurement management plan was provided, was it, is that what Mr Patel is saying there in relation to procurement process guidance?---Yes. It appears that they were looking for a particular management plan for Canley Vale and from what I can read in this response Amit is clarifying that the documents are consistent for the tranche of works.

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And over the page, any other processes related to engaging subcontractors and design consultants, which is the first dot point, Paxon comment, “Can DEDI please confirm if any more information will be provided” and then Mr Patel writes, “This consultant engagement is done prior to TBE phase and prior to award of the MCC engages the consultants considering suitability, experience and availability.” Now, if we can go back, please, to Exhibit 187, page 2. You can see there, and this is on 5 November 2021, you can’t see that but take it from me, Mr Patel writes to you saying, “Good morning, Andrew. Could you please provide all org charts throughout the project. With regarding consultant engagement can you please let me know what information can be provided?” And if we go to the next page you write on 5 November 2021, “Hi Amit. I feel like this is turning into an investigation, not an audit” double exclamation mark. “An audit should be reviewing a snapshot in time, not the full project lifecycle. Can we please clarify what the intent is?” What were your concerns there, Mr Bedwani, in relation to this request for information by the Paxon Group on behalf of Transport for NSW?---I wasn’t concerned at all. We were advised that there would be an audit, or a commercial audit or a financial audit, on, on this particular project. My understanding, apparently incorrectly, was that it was an audit not dissimilar to any other audit that would take place, which would be provided with the terms of reference, we would provide evidence based on a snapshot in time and that was it. It wasn’t – an audit can normally go through from the commencement of the project to completion. It was just, it was literally just testing of our processes and procedures for an individual period of time and that’s what I understood the intent of this particular audit to be. I didn’t realise it was a much bigger, the intention was for it to be the full performance of the job.

Well, did you have any understanding at the time of the requirement to provide access to records or any other documentation to the principal or its nominee upon request at any time and from time to time?---Yes, and I believe we did.

Okay. So were the organisational charts that were requested provided to Transport for NSW at around this time, that’s 5 November 2021?---I believe so. I can remember compiling the email and sending it to Amit.

All right. So is your evidence that that request was fully complied with? ---So far as providing the org charts, yes.

All right. Thank you, Chief Commissioner. That’s the examination.

THE COMMISSIONER: What's to happen with this?

MS HEGER: Chief Commissioner, there was an application made for leave to cross-examine Mr Bedwani - - -

THE COMMISSIONER: Yes.

MS HEGER: - - - on behalf of Downer on some topics - - -

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THE COMMISSIONER: I wasn't sure what was to happen with the, there was some statement, wasn't there?

MS HEGER: Yes. So a statement has been provided from Mr Bedwani. I understand the Commission is still considering its position on whether that's tendered or not. If the statement is tendered, I will not need to cross-examine Mr Bedwani on the topics that were notified.

MR ENGLISH: I'm happy to tender that statement, Chief Commissioner. It was MFI 18, and I've been given a, it's been given a, it's been booked into property at the Commission, so I've got an updated version that bears the proper barcode.

THE COMMISSIONER: All right.

MR ENGLISH: And I might I hand that up and would that - - -

THE COMMISSIONER: That can be Exhibit 189.

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#EXH-189 – STATEMENT OF ANDREW BEDWANI DATED 18 APRIL 2023

MR ENGLISH: Thank you, Chief Commissioner.

THE COMMISSIONER: Just give me one moment, please. Just take a seat, please. Yes, sorry, Ms Heger. Did you have something you wanted to say?

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MS HEGER: Yes. There was some evidence given by Mr Bedwani in the last hour or so that I'd like the opportunity to take some instructions on before I confirm whether or not any further application is made for leave to cross-examination him.

THE COMMISSIONER: I don't anticipate he'll be discharged today, so you can make your application at a later time if you feel the need to do so.

MS HEGER: Thank you, Chief Commissioner.

10

MR ENGLISH: Chief Commissioner, we've received a request from Mr Bailey, who is on the screen and represents Mr Bedwani, for - - -

THE COMMISSIONER: That's just come through now, has it?

MR ENGLISH: It did. He wished to make an application for leave to examine Mr Bedwani.

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THE COMMISSIONER: What's the topic, Mr Bailey, that you wish to - - -

MR BAILEY: Chief Commissioner, the topic is, it concerns some evidence that Mr Abdi gave on 17 April regarding taking of profit. If it assists the Commission, I can give a transcript reference for that.

THE COMMISSIONER: Yes, what is it?

MR BAILEY: It's a passage that commences at page 1658 and goes overleaf to 1659.

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THE COMMISSIONER: Is that the only topic?

MR BAILEY: That's the only topic, Commissioner.

THE COMMISSIONER: How long will you be?

MR BAILEY: Less than five minutes.

THE COMMISSIONER: Yes, all right. Leave is granted. You can proceed.

MR BAILEY: Please the Commission. If the transcript at 1658 could be brought on-screen for the witness.

THE COMMISSIONER: Yes. 1658. Can we put that up, please.

MR BAILEY: So, yeah, for 1658.

THE COMMISSIONER: Yeah, 1658.

10 MR ENGLISH: It just has to be loaded in Chief Commissioner.

THE COMMISSIONER: How long will that take?

MR ENGLISH: A couple of minutes, I'm told.

MR BAILEY: If it assists, I can recite the transcript without it being on the screen.

20 THE COMMISSIONER: I have a copy of it. I'm not sure that the witness is able to see it, but if you want the witness to see it you'll just have to wait a few moments.

MR ENGLISH: I'm unfortunately told now that it can't be brought up on the screen.

THE COMMISSIONER: We'll have to do this on another occasion. Just, unless you can read it out, Mr Bailey.

30 MR BAILEY: I believe I can do so, Chief Commissioner, if that's acceptable to Mr Bedwani.---Yes, that's fine.

Mr Bedwani, do you recall some evidence of Mr Abdi on 17 April concerning a question of Downer taking profit and a question concerning you taking off a certain percentage and taking off a profit?---Yes, I do.

40 If I can just read an extract from the transcript for you. I'm reading from transcript 1658.36, it is "Here on page 4 the attribution to you, you're talking about the profits that Downer were earning, and you say, 'That's what they do. Downer corporate has already taken 8% up front and Bedwani has taken his profit as well. So Downer corporate has taken 8% off that 70 mil, then, then Bedwani took off a certain percentage to secure a

profit and then told the PMs, 'Here's your budget.'" Do you recall that evidence?---Yes, I do.

Then Mr Abdi was asked, "What do you mean by that, Andrew Bedwani taking his profit?" To which he replied, "I don't know to be honest. I'm just not sure. I don't remember. I just - - -" Then on page 1659 the question was put to Mr Abdi, "But are you saying Bedwani takes a legitimate profit or an illegitimate profit?" To which Mr Abdi answered, "I don't know. I don't know." Mr Bedwani, are you able to describe the process for releasing budgets to project managers?---Sure. So upon award of each individual contract, the Candy file is converted to a bill of quantities which outlines every scope line item and the allowable target budget estimate for each of those scope items. On this occasion the target budget estimate was reduced by a certain percentage which was held within the project as the project director's contingency and then the project manager's budget was derived from the balance of that budget. The bill of quantities, including the project manager's budget, was then issued to each of the project managers for their review, acceptance and then for execution of the project based on those numbers. Basically the project manager's budget was what they were allowed to expend on a project. And - - -

And - - -?---Sorry.

Sorry, go ahead.---The intention was that was two-fold. It ensured that we maintained commercial tension on the job. It, it gave the project managers a target to drive for. It also allowed a contingency within the project in case of any unforeseen circumstances, in case of other target blowouts, trade prelims being in excess of what we had anticipated them to be. The project director's contingency was always maintained on, within the budget. There was never money, any money taken off the project and access to the budget was only through approval by myself and through the board.

So, do you personally derive any profit from that or any revenue from that in your personal capacity?---Absolutely not, no.

No further questions, Mr Commissioner.

THE COMMISSIONER: Yes, thank you. All right. Look, we might just leave it there for today. We may need to have you brought back, Mr Bedwani, on another occasion. So at this stage I'm just going to stand you down. You're not discharged.---Understood, Chief Commissioner.

In the event that you are required to come back you will be notified through your solicitor, Mr Bailey, and arrangements will be made on a suitable occasion. All right. Thank you.---Yes.

At the moment you're stood down.---Thank you.

THE WITNESS STOOD DOWN

[4.04pm]

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THE COMMISSIONER: Sorry, is there anything else?

MR ENGLISH: Nothing else, Chief Commissioner.

THE COMMISSIONER: Yes, all right. Was the letter of 28 January marked as an exhibit? 186, was it? It was 186.

MR ENGLISH: Thank you, Chief Commissioner.

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THE COMMISSIONER: I'll adjourn.

AT 4.08PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.08pm]