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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 THURSDAY 20 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.

MS DAVIDSON: Chief Commissioner, the next witness is Peter Church and he is present at the back of the Commission.

THE COMMISSIONER: Yes.

MR GOW: Chief Commissioner, might I announce my appearance?

10 THE COMMISSIONER: Yes.

MR GOW: I represent Transport for NSW, my name is Gow, also Sydney Trains and Peter Church in his capacity as an employee of Transport for NSW.

THE COMMISSIONER: Yes, thank you, Mr Gow.

MR GOW: I understand we have, I have authorisation to appear, Chief Commissioner.

20

THE COMMISSIONER: Yes, you do. All right. Are we ready to commence with Mr Church?

MS DAVIDSON: Yes, Chief Commissioner.

THE COMMISSIONER: Yes. Mr Church, could you come forward? Please take a seat. Mr Gow, have you explained section 38 to the witness?

MR GOW: I have, Chief Commissioner.

30

THE COMMISSIONER: Is he seeking a direction?

MR GOW: Yes, it is sought.

THE COMMISSIONER: Thank you. Mr Church, as a witness you must answer all questions truthfully, produce any item described in the summons or required by me to be produced. You may object to answering a question or producing an item and the effect of any objection is that although you are to still to answer the question or produce the item, your answer or the item
40 produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first

exception is the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence, for which a penalty of imprisonment of up to five years. The second exception only applies to New South Wales public officials. Evidence given by New South Wales public officials may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

- 10 Mr Gow tells me that he has explained that to you the provisions of section 38 of the ICAC Act. Pursuant to that section I can make a declaration that all answers given by you and all the items produced by you will be regarded as having been given or produced on an objection. That means you do not have to object with respect to each answer or the production of each item. I understand you wish me to make that direction?

MR CHURCH: Yes, that's correct.

- 20 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at the public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

- 30 **DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THE PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

- 40 THE COMMISSIONER: Now, Mr Church, do you propose to take an oath or an affirmation?

MR CHURCH: Affirmation, please.

THE COMMISSIONER: Yes, thank you.

<PETER JAMES CHURCH, affirmed

[10.13am]

THE COMMISSIONER: Thank you.

MS DAVIDSON: Mr Church, could state your full name and age for the Commission?---My name is Peter James Church and I am 55.

10 Are you currently the Head of Rail Delivery for Transport for NSW?---I am.

And how long have you held that role for?---Since late 2019. So just over two and a half years now.

20 And what are your responsibilities in that capacity?---As the head of rail delivery I am responsible for the delivery of pretty much all the brownfield rail orientated projects for Transport for NSW, with the exception of Metro projects. So that would include projects that fall under the More Trains, More Services umbrella, changes to infrastructure and signalling, under that, Transport Access Program, Commuter Car Parks program, the new fleet and digital systems.

Is it correct to say that you don't have any responsibilities in relation to Sydney Trains?---I do not have any responsibilities in relation to Sydney Trains.

Prior to taking up your current position as head of rail delivery were you executive director of rail delivery?---Yes.

30 Was that reporting to somebody who was a head of rail delivery or was there a different organisational structure at that point?---At, at the time there was still the same reporting line into the deputy secretary for infrastructure in place, effectively a small reorganisational change and a change of job title.

Right. And how long were you the executive director of rail delivery?---Probably from early 2019.

40 All right. And prior to that were you heading infrastructure and services as a division?---No.

No.---I was the executive director for precincts and infrastructure which was a branch which reported into the deputy secretary for infrastructure and services.

How long did you hold that role?---That role was created in about 2016, 2017.

Okay.---And I held that role from then through till taking up the role as executive director for rail delivery.

10

Okay. Have you been with Transport for NSW since 2012?---That would be correct.

All right. When did you first take on responsibilities in relation to the TAP project?---My - - -

20

Projects, I should say.---Projects. Yeah, TAP program. My first engagement with the TAP program would be in 2014 where I did a period of holiday cover as the program director for TAP. That was for about three or four weeks. But towards the end of 2015 there was an organisational change where I picked up responsibility for the projects that were within the TAP program at the time.

All right. So since about 2015 you've been responsible for the TAP - - -? ---Yeah.

- - - program in your various capacities as you've moved around.---In various different levels of role.

30

Right. What's the size of the team that you currently manage within rail delivery?---The rail delivery team, core team, is around about 280 people. There are predominately project managers or people responsible for project management discipline, but the broader team which is supported by deployed resources from safety branches, commercial branches, environment, et cetera, there would be around about six to 700 people involved in rail projects.

40

And is there a sub-team within rail delivery that is responsible for the TAP program?---In the current structure we have two teams. We've split it geographically, north and south, so there's two teams responsible for TAP projects in those geographic areas.

Right. Are they responsible for TAP projects as well as other things within those geographic areas or they're focused on the TAP projects?---In the current environment there are also some other similar infrastructure upgrade projects around stations that they would be responsible for in addition to the TAP projects.

Right. So the geographical distinctions are not TAP specific.---No.

10 Okay. Who reports to you in relation to the TAP program?---I have two executive directors that report to me that are responsible for the projects that flow up from the TAP program.

And do those two directors relate to the geographical split?---Yes. Yeah.

All right. And they each have teams reporting to them in relation to the TPA and other infrastructure station upgrade responsibilities - - -?---Yeah.

20 - - - that they, or projects that are conducting, is that right?---They have three project directors that report.

How long has the TAP program been running for?---The TAP program has been running since 2011.

And have there been three or four tranches since then?---TAP 3 is the third tranche and I think retrospectively the ones that went before them have now been called tranche 2 and tranche 1.

30 Right.---They weren't known as that at the time.

I see. Is there a tranche 4 in contemplation?---Inevitably there is some work that is required to achieve the disability standards requirements for many of the stations in New South Wales, so there will be further work that will be required.

Is the purpose of the program to ultimately upgrade all of the stations in New South Wales to meet those disability accessibility standards?---The objective of the program is to meet those standards.

40 Is there a statutory requirement that you're working towards meeting in respect of that?---There is a legislative requirement to achieve that, yes.

And is there a timeframe in relation to that legislative requirement?---Yes, 2022 for all infrastructure and for all rolling stock, 2032.

Right. Now that we're in 2023, I think you indicated there are some stations outstanding.---There is.

Are you able to give an indication of how much is outstanding in respect of meeting that station goal?---That's not wholly in my frame of control - - -

10

Right.--- - - - in order to finance and provide that, but there's, in the order of magnitude, of about 50 to 60 stations which would require upgrade to achieve the DDA compliance requirements.

And is there work going on at the moment in respect of, I have used tranche 4, is that language that is being used within Transport for NSW?---It is language, yeah, yes. There is work going on on development and design of projects that would fall under an umbrella for tranche 4.

20 Have any contracts been entered into in relation to those projects as yet?
---(NO AUDIBLE REPLY)

No.---Not that I'm aware of.

Is there funding allocated that you're aware of in respect of a new tranche of projects?---The only funding that I'm aware of would be to cover early-stage concept design and development. So, investigatory works and preliminary design.

30 Has there been an extension to existing contracts between Transport for NSW and those with whom it has contracted on the existing TAP projects to cover off on that preliminary work?---There, there have been extensions to frameworks, particularly for our D&C contractors, design and construct contractors. That's not really in contemplation of TAP 4 works. That's because of the delays we've experienced through firstly COVID, secondly protected industrial action last year, which caused delay to many of the projects that were at the back-end of the TAP 3 program.

40 Has there been an extension to framework deeds in relation to managing contractor arrangements as well or only D&C contracts?---There, there have been prior extensions of managing contract frameworks but not as a

consequence of TAP 4. So again, in order to cover out the delays experienced due to COVID and PIA.

Is it true to say the managing contractor structure has been used for some but not all of the TAP 3 projects?---Yep.

Are you able to explain the thinking behind when that structure is used and not used?---Yes. So within the - if I go back to the early stages of TAP 3 and the delivery strategy that was put in place for that, TAP 3 - - -

10

When did TAP 3 commence?---TAP 3 commenced in delivery 2019 but in conceptualisation 2017-2018 was when the portfolio of works was put together and prioritisation of projects to be delivered as part of TAP 3 occurred. TAP 3 was a significant increase in the number of projects to be delivered in a four-year sort of period compared to the previous years of TAP.

20

And it was four-year period that was initially contemplated?---A four-year period is initially what was contemplated, from 2019 through to 2023. As part of the delivery strategy for TAP 3 and from what we had seen previously in the delivery of projects as part of TAP there are many projects where particularly there's a design and engineering risk around them which most typically we see in terms of heritage and heritage approvals, third-party approvals. Also third-party utilities, often you need to move those around stations. So they were in a slightly different risk profile to many of the projects which are very well defined, easily understood and can be contracted in a different way. So as part of the TAP 3 delivery strategy the concept of running with two managing contractors to deliver the less well-defined projects which might have a bit more, a bit of a different risk profile to them, two managing contractors to deliver some of the works and we had, we had four framework design and construct contracts to deliver the remainder of the work, the more straightforward projects, or predictable, and the reason for that would be those more predictable projects you can get a fixed-price cost response to them. So effectively tendered competitively, benchmarked numbers on the back of it. So you would expect to see more predictable outcomes there. The managing contract projects, typically because the design is more iterative, you're looking through a phase where a price is built as part of the design refinement period so then you end up with a price for delivering the work that has an element of known risk profile to it for both the party of the contractor and for Transport for NSW.

30

40

And one of those managing contractor frameworks that you have in place is with Downer in relation to TAP 3?---That's correct.

And a number of the allegations that are the subject of this inquiry are, fall under, or are projects that fall under that managing contract framework with Downer.---I understand.

Are you aware of that?---Yeah.

10 Under the managing contracts frameworks that were in place with Downer in relation to the allegations, or the projects that form part of the subject matter of this inquiry, the procurement, well, is it true to say the procurement process, that is, the procurement process that Downer entered into, was managed in part by Transport for NSW by approval of procurement management plans?---The, the procurement process that Downer underwent, the initial part of that contract would have been to provide a procurement management plan that explains the delivery and packaging structure for any of the projects that would require approval from Transport for NSW from the principal's rep from the contract.

20

And you're aware of that being a requirement under the framework deed that was entered into?---Yep. Yep.

I'll provide you with copies of some of those procurement management plans. And, Chief Commissioner, if I might have these marked for identification at this stage. The first of them - I'll hand them up, Chief Commissioner, and there's one for the witness. The next MFI would be 19, Chief Commissioner.

30 THE COMMISSIONER: MFI 19.

#MFI-019 - TRANSPORT ACCESS PROGRAM – PROCUREMENT MANAGEMENT PLAN DATED 12 NOVEMBER 2019

MS DAVIDSON: If that could be brought up on the screen. It is in volume 22.19, page 1. This is Transcript Access Program Procurement Management Plan version 0.2 dated 12 November 2018. And if we go to
40 page 4 of 37 of that document, you'll see the document scope there. This relates to North Strathfield, Glenbrook, Kingswood and Hazelbrook

stations. If I might have another document equivalently marked for identification, Chief Commissioner. This appears in volume 22.19 at page 41.

THE COMMISSIONER: What page?

MS DAVIDSON: Sorry, if that might also be marked for identification first, Chief Commissioner, the second document I've handed up.

10 THE COMMISSIONER: Sorry, 20.

#MFI-020 - TRANSPORT ACCESS PROGRAM – PROCUREMENT MANAGEMENT PLAN DATED 8 DECEMBER 2019

MS DAVIDSON: This is a - page 38 is the first page, I'm sorry. Thank you. This is a Transport Access Program Procurement Management Plan dated 8 December 2019. And if we go to page 4 of 35, the document scope
20 there, this one relates to Birrong, Banksia, Roseville and Wollstonecraft. Do you see that there?---Yeah.

Are these documents that you played any role in approving?---No.

Are they documents that you've seen before?---No.

Taking MFI 19, that is, the earlier of the two documents to start with, which is the one that was at page 1 of 22.19, and going to page 9 of that document using the internal page numbering, you'll see there the probity requirement
30 statement. If you'll take it from me there's an equivalent probity requirement indicated - - -?---Yeah.

- - - in the other procurement management plan. It's noted that it's recognised there that, "The NSW Government has an obligation to ensure its procurement conduct is at all times fair, ethical, transparent and probity rich. Clear visible and meaningful commitments to fairness which encourage suppliers to want to do business with government." Downer indicates there that it will "work closely with the probity advisor to ensure that any discussion or correspondence with any person with a conflict of
40 interest will be prohibited from any information concerning the sum of money that's being submitted as the tender sum. Downer will ensure that

the integrity and competitiveness of the tender process remains intact.” Are you aware, Mr Church, of the allegations that are the subject of this inquiry involving both persons with a conflict of interest being party to information in respect of - well, Transport for NSW information and secondly the integrity and competitiveness of the tender process not remaining intact?--- Though this inquiry, I am aware of that.

10 Do you have any understanding of how Transport for NSW monitored Downer’s compliance with those probity requirements?---I don’t have detailed understanding of how that was done. Within our structure there’s an obligation for the principals rep to accept these plans.

THE COMMISSIONER: There’s a, sorry? An obligation?---Sorry?

20 Sorry, say that again?---Within the sort of, the, the way the contract operates there is a principal’s representative who is basically the person from the client side, the Transport for NSW side, that is responsible for acceptance of these plans. They would do that in conjunction with advice from our other specialist areas such as commercial or procurement.

MS DAVIDSON: And the principal’s representative was somebody within your team?---They would be, yeah.

30 All right. And in, I think you referred to responsibility to accept these plans, but would you, to your understanding, was there also a review process, that is there was an approval function for the principal’s representative, it wasn’t simply accepting what Downer put forward?---Yeah. There, there would definitely be a review of the plans as a prerequisite for the principal’s representative to accept.

But you’re not able to speak to how monitoring in relation to that went on? ---No.

THE COMMISSIONER: Sorry, who was the principal’s representative, do you know?---At this time?

40 No, at that time.---2018 it would probably have been the project director level within the organisation. So a couple of levels below me and it would most, without - I wouldn’t be able to, to name precisely back from that time in 2018 because I wouldn’t want to get it wrong but certainly that information could be provided easily.

MS DAVIDSON: Could we go to page 30 within this document? I note there there's a reference to process review, including an annual review of Downer's program procurement process. I'm looking under the heading 9 there on the page, Mr Church.---Yep.

10 "Preparing a summary report for the program director with Transport for NSW input the procurement approach or plan for the following year is approved." Are you aware of who from Transport for NSW would have been the person providing input into that annual review process that Downer was supposed to be conducting under this procurement management plan? ---My expectation would, my expectation that would be organised through the principal's representative and would probably feature members of the Transport Project Teams that were responsible for the administration and management of the Downer contract.

20 Under the managing contractor framework are you aware of Transport for NSW exercising any control over Downer in respect of which particular subcontractors it used?---In terms of the way the managing contractor framework obligations operate there are controls around the approval of entering into subcontracts from Downer for values above 250 K I believe but also some specialist roles. Railways have some very specialist requirements, particularly around things like signalling and communications. So sometimes that financial threshold doesn't apply to the approval of subcontractors who require special accreditation.

30 So is it fair to say there were limited categories in which Transport for NSW had requirements that particular subcontractors be used and other than that there were approvals over certain thresholds that Downer wasn't required to use particular subcontractors nominated by Transport for NSW, for example?---There's no, that I'm aware of, no nominated subcontractors as part of the MC framework.

Right. And nor was Downer required to use panels of subcontractors who had been provided to it by Transport for NSW, was it?---No, there would be no obligation to, to use panels of contractors.

40 Right.---The only obligation there would be would be to use subcontractors with appropriate accreditation for undertaking the specialist railway work.

That related to safety requirements, for example, or awareness of - - -?

---Safety or, or obligations around particular specific disciplines.

Are you aware of what, well, in circumstances where Downer put forward subcontractors for approval to Transport for NSW, are you aware of what, if any, processes were put in place by Transport for NSW to do any due diligence in relation to those subcontractors, or was there reliance upon Downer to do that due diligence?---I think as Downer as a tier 1 contractor, there's an expectation that they would have robust detailed thorough process to go through. I'm not aware of any specific process that Transport put in,
10 put in place. That would be really the principal's rep and project director for those, those contracts to make sure that they were administered in accordance with the contract.

Can we have volume 22.18 brought on the screen, page 1. This is a document that is described as a, "Infrastructure and services division fraud and corruption risk assessment."---Yep.

It took place in June 2016. What was your role in relation to the infrastructure and services division in June 2016?---I think at that time I
20 would have been program director precincts and infrastructure.

Right. And so the infrastructure and services division was within your remit?---No, the infrastructure and services division is a bigger entity.

I see.---And I was one of ten, in fact even at that time I was part of a projects division that reported into the infrastructure and services division. I was one of four reports into that Transport projects division that then formed one of I think ten reports into the infrastructure and services
30 division.

Right, but the TAP projects as at this point were part of what you were looking after in your program director role?---Yeah, that would be correct.
Yep.

Were you aware of this document having been prepared?---Not specifically. I think I was a recipient of it after the fact. I participated in the survey that fed into the - - -

You were interviewed. Do you recall being interviewed in relation to it?
40 ---Yeah. Yep. I remember being interviewed for the, there's a survey as part of the fraud and corruption assessment, yeah.

Yep. We're going to come to some of the - - -?---Yeah.

- - - content of the document. It appears to have been prepared by some external consultants with involvement from those from Transport for NSW. Were you aware of there being external advisors to Transport engaged in relation to conducting this risk assessment?---Only as part of this survey exercise.

10 Right.---Which I think came about as part of a big organisational change in the creation of infrastructure and services around end of 2015, early 2016.

Right. And did you understand what was the impetus in particular for doing the fraud and corruption risk assessment in relation to the division at that point?---My, my understanding of the requirement was the infrastructure part of the business that had come together with the services part.

Infrastructure controls around fraud and corruption prevention were probably more mature than some of the services area which seemed to be a bit of a vulnerability. Because of the diversity of the new division,
20 infrastructure and services, the survey was done to get a maturity level assessment across the whole of the division.

Right. If we come to page 7 of the document, you'll see there there's a number of one-on-one interviews referred to, which there were 43, you agree that you were one of those interviews? You - - -?

---Yes, yeah, yes, yes.

Yes. You say there were a number of high-level risks identified.---Yep.

30 Including unregulated variations in scope to achieve a financial advantage for a subcontractor; invoice splitting to extend a contractor to avoid going to market or to avoid delegated authority limits; subcontractors invoicing for work not performed; providing confidential information to a competitor in order to provide a competitive advantage over other bidders, that is collusive tendering; and inappropriate use of Transport for NSW information by subcontractors, as well as collusion with a subcontractor - presumably that means by a person from Transport with a subcontractor - to supply goods or equipment in order to achieve a financial advantage.
40 Would you agree - and I should indicate finally that (h) there, collusive tendering being heightened due to the acceleration of new projects. Are you aware that probably all of the risks that I've identified there in that list are

risks that have manifested in terms of the conduct that is the subject of this inquiry?---It would appear that, that many of those risks, in some form or other, have manifested themselves.

Could we come to page 22 of this document. There was an effort made, it seems, to map various risks in relation to various parts of the division. You'll see that various risks are numbered. If we come to the following page, one of those that's identified is number 33, collusive tendering, being heightened due to acceleration of new projects and/or procurement outside competition limits. Are you able to explain - well, do you have a view on why collusive tendering risk would be heightened due to acceleration of new projects?---I think for the major procurements, which is what would be the significant focus here, that with the cost of tendering particularly being high from a contractor's perspective, there would always be an opportunity sought, potential, in order to establish what a reasonable bar for a project cost would be, and therefore the contracting market could set a tariff if it was in a collusive environment whereby contractor A might bid high in order that contractor B would, would win the works. And if there's sufficient work also in the market, that could be reversed in a collusive arrangement.

When you say that could be reversed, that is there could be some cycling involved between, well, between contractors?---Yeah, more, more that if two contractors were in collusion, they could work out a, a bidding strategy which would mean that they knew each other's pricing outputs. So effectively enhance their chances of winning work.

And would you agree that acceleration of new projects at a smaller scale, that is time pressure in relation to meeting deadlines for contracting in advance of possessions, for example, also heightened the risk of collusive tendering?---I'd say not necessarily. I think that comes down to the effectiveness of planning and scheduling.

So is that more a question of contract administration and planning by those who are administering the contract?---I don't necessarily see it as really a function of contract administration. I think that comes down to planning and scheduling. Possessions don't often move in the plan. So understanding what time frame you need to have a contract in place by, that's a function of how much time for approval before the, before the event that you require the work to be undertaken. That's a scheduling exercise. It does require robust contract administration, contract management and

procurement in order to meet those time frames, but really it's a function of schedule activity.

And is that from the perspective of procurement staff both at Transport for NSW and Downer or is it - that is, Downer as the contractor under the managing contract agreements that were in place here?---I think if you're talking about the way that the managing contractor operates, that's robust schedule and project management from the Downer, you know, from, from the Downer side of the house but an understanding of what the approval
10 timeframe and lead time requirements from Transport for NSW would be.

Because Transport for NSW wasn't initiating these approval processes, they had been set out in advance in the managing contractor - - -?---They would all be flow down within the main framework contract documents.

Could we come to page 37 of this document, recalling that risk number 33 being allocated to the collusive tendering risk. Here we have risk in respect, or risk, the risk matrix and heat maps being developed in relation to program delivery and in respect of risk number 33, which was collusive
20 tendering as we saw from the previous page, you will see that the likelihood is regarded as very likely and the consequence is regarded as severe. Would you regard that as a fair assessment in relation to the risk of collusive tendering for the purposes of program delivery?---We're looking for risk 33 on the - - -

I'm sorry, risk 33 on the program delivery table that you see at the bottom there and it's in red towards the right-hand side, second-right column.--- Yeah. Yeah, yeah. I see it now. Yeah. I, I think from the perspective of which this document is, was put together, it's more around the collusive
30 behaviours for major procurement activity which it would be very likely and very severe in high project delivery sort of scenarios where there's a, a large amount of work in the market.

So when you say the major procurements, did that include the TAP program as a whole but not individual projects within it? In what sense are you using the major procurements?---A major, a major procurement would be the actual contracting, the procurement process that we went through to establish Downer as the managing contractor, which is a process whereby expressions of interest would have been taken from the market and then a, a,
40 a long process of, of tender, tender evaluation with those from the original expressions of interest reduced down to two key entities, finally with

Downer being the recipient of the award for the managing contract framework. That would be the major procurement exercise and then once the major procurement exercise is complete then that's a contract that effectively is afoot and then we're moving into contract administration, contract management. So there would be procurement to be undertaken by Downer, which would then be approved by a principal's rep with the support from the Contract Administration and Procurement Teams within Transport thereafter. So that would be minor procurement from our, our perspective.

10

So this assessment relates to program delivery. Would you agree that that appears to include not just major procurement but the way in which the results of those projects are delivered?---It, it would be difficult to, to go back to 2016 and really understand what the intent of those words are and how that's been placed at the time.

Sure. I realise you're not the author of this document.---Yeah.

20 Would you regard the risk, in respect of program delivery, that is the program delivery for which you were responsible, specifically in relation to the TAP program, and responsible at the time too, would you regard the risk of collusive tendering as being less likely than very likely?---I, I think, of, of the time, I, I think we, within New South Wales the future forecast was \$70-something billion worth of work, which is a large volume of work to be going through. I, I don't know whether that assessment of very likely or likely is, with the power of hindsight, was correct or incorrect.

30 Can we come to page 41 of volume 22.18? You will see here that there's a reference to work that previously had been done, that is through a risk management database that was in place. It seems to have been limited to infrastructure projects and P and DMO. Effectively it seems what the task that was consulted or that the consultants were asked to perform included looking back at previous fraud and corruption risk assessments and how they'd been managed. You said that you thought there was more robust fraud and corruption risk management assessments that were in place as part of infrastructure projects. You'd been part of that project side of things before, is that right?---Yep.

40 There are a total of 36 fraud and corruption risks referred to here from an earlier risk register. That is one that was dated in 2015. And an observation's made - you'll see under the heading Observations there - in

relation to matters, well, tasks assigned under the risk treatment plan or actions - - -?---Yep.

- - - for the most part being either absent, incomplete, not started or in progress, and that not really being an effective way of managing fraud and corruption risk. Were you aware of a previous risk register, that is before this document was put together, in relation to fraud and corruption risk?

10 ---No, for most of the risks that are shown on here, many of them will be managed through our, the PMO, PDMO as it's titled there, because they relate to - - -

What does PDMO stand for?---Project and Delivery Management Office.

Right.---Program and Delivery Management Office. Because within that function, commercial and procurement activity, which is the major fraud and corruption aspect that's been flagged up here, that was managed and risks mitigated and actions honed through that part of the organisation at the time.

20 All right. And were there - did that part of the organisation at that time have any reporting lines to you as program director?---No.

No. Does it now?---No. There is not a PDMO now. The procurement and commercial function sit within a part of the organisation Commercial Performance and Strategy.

Right. And is there a separate head of that part of the organisation?---Yes.

30 And who's that?---James Sherrard.

Right. What's his title?---Head of CPS.

Right. Looking to the minor procurement risks that are identified there, is that effectively the division - you'll see there there's reference to major and minor procurement.---Yep.

40 Is that effectively the division that you were referring to in your earlier evidence as to there are some major and some minor procurements?---Not quite the same. I think minor procurement in terms of the procedure that's shown there would be around low-value contracts that Transport for NSW

would put in place, like small-scale survey investigation type works would be minor procurement because it would be less - - -

(FIRE ALARM SOUNDS)

MS DAVIDSON: It seems to have stopped, Chief Commissioner. On the other hand...

THE COMMISSIONER: Can you just check? That's the fire alarm.

10

MS DAVIDSON: It's not an ongoing situation, I understand, Chief Commissioner.

THE COMMISSIONER: Sorry?

MS DAVIDSON: It's not an ongoing situation as I understand it, Chief Commissioner. Are you content to continue? Would you prefer to take a brief adjournment, Chief Commissioner, to - - -

20 THE COMMISSIONER: There's a sound in the background. I'm not sure what that's about.

MS DAVIDSON: There is an air-conditioning sound that was different to the way that it was before but - - -

THE COMMISSIONER: I'm happy to proceed if you're able to.

MS DAVIDSON: Yes.

30 THE COMMISSIONER: All right.

MS DAVIDSON: Appreciating that you have indicated you understand the minor procurement risks here to relate to Transport for NSW engaging in procurement processes rather than them being through a managing contractor process, are you aware of personnel exercising bias or exercising influence during the contract or supplier selection processes, being a risk that has manifested in terms of the allegations that are the subject of this inquiry?--- In terms of this inquiry, yes.

40 And that includes both Downer personnel and Transport for NSW personnel?---Yes.

Similarly the other minor procurement risk that's referred to there as having been identified in 2015 is continual use of one or a small group of favoured suppliers or contractors. Is it your view that that was a risk that arose in respect of projects in the TAP program?---This appears to have arisen in the circumstances of the inquiry, around the managing contract framework.

10 Do you regard that as being a risk more generally that arises in respect of the TAP program as a result of there only being a small number of contractors who are able to do the kind of civil and building work in the rail corridor that was required for the purposes of the TAP program?---I don't think it's exclusively for the TAP program. I think there is an industrial shortage of accredited, competent contractors to deliver works within the rail corridor full stop.

20 Right. And is that because the additional safety requirements that contractors have to be aware of in relation to, or abide by in the rail corridor?---I think partially that's a function. I, I think also there's the nature of the volume of work within New South Wales, particularly on the Eastern Seaboard as well and even on the ARTC networks.

Has that problem, that is the volume of work, been a problem that has existed since this time, that is since 2016, or is that a more recent problem that's emerged?---I think it's been from, since my time in Transport, 2012.

So it wasn't the case that New South Wales was an outlier in terms of the volume of work that was being generated?---It's increased and now I think it's increased therefore - - -

30 That is New South Wales has increased?---Yeah. The volume of work in New South Wales increased between about 2015 and 2020. It's probably reduced somewhat through the last few years in the rail sector.

40 Do you have any knowledge of how the two risks that are identified here, that is, the personnel exercising bias or exerting influence during the contractor or supplier selection processes, and continual use of one or a small group of favoured suppliers or contractors, were managed from a general perspective within the TAP program, that is from a Transport for NSW perspective?---So from within a, within a Transport for NSW perspective of our contracting, major contracting entities, if we are

procuring openly, we all have probity advisors and we will run a thorough procurement process around that.

So that's if Transport for NSW is running the procurement. I'm asking in respect of the TAP program where there were main contractors - - -?---It's a, it's a - - -

- - - effectively between Transport for NSW and the subcontracting processes.---It's, it's a flow down of our obligations for procurement and contracting through managing contract frameworks. So the obligation there sits with the managing contracts themselves to run thorough and appropriate procurement processes that would manage these risks.

That is it relied on effectively the trickle down or the cascading down of contractual obligations - - -?---Yeah.

- - - from the managing contractors and then onto their subcontractors.---From Transport through the managing contractors, yeah. And there's a, there is an expectation that when we engage a managing contractor, these are organisations that are sufficiently large and have a sufficiently robust understanding of process that these processes are undertaken well.

There was a response prepared to this 2016 fraud and corruption risk assessment. Could we go within volume 22.18 to page 223. This is the infrastructure and services division response to that risk assessment. This was prepared in May 2017. Did you have any involvement in preparing this response document?---No.

Are you able to indicate, or do you have any idea of who would have been, or which part of the organisation would have been likely to have prepared this response document?---I would expect this would have come out of the PDMO, PMO, which at the time was headed up by Craig Gilman(?).

Were you consulted, do you recall, in relation to preparing this response document?---No.

On the following page, 224, you will see that there are recommendations with a proposed response and timeframe for delivery. I would like to take you to some of those just in terms of your experience. You continued within the infrastructure and services division by May 2017. Is that correct?---Yeah.

You'll note their action or recommendation, 1.2, involves regular review of the training register in order to ensure compliance with training obligations, and there was to be management reporting in respect of that. In relation to the TAP program, are you aware of any steps that were taken in relation to training staff specifically as to procurement obligations?---Not necessarily solely procurement obligations but from a fraud and corruption awareness training.

- 10 Yeah.---There was, where there's online training that's now on a repeat refresher cycle about every two years. We also have supplementary face-to-face training from ICAC itself and I think everyone - - -

Do you know when that occurred?---I, I would say again probably every two years. Certainly in my experience from joining Transport, I can remember the, probably the first time I did it was 2013 and then probably every two-ish years thereafter face to face from one of the ICAC experts.

- 20 And was there any reporting to you in respect of those reporting to you as to whether they had completed that training?---So, again, online training we would get exception reports to say who had completed the training and who hadn't and from, from my perspective trying to ensure that all my team that were, that were engaged down to sort of project management level would have undertaken certainly the fraud and corruption online, but I think there's more value in the face-to-face training, it's - - -

And do you recall seeing those reports that is, those exception reports?---
Yeah. Yeah.

- 30 And did you take steps in relation to members of your teams - - -?---Yes.
Yes.

- - - who were identified?---There's always a few people who have been on leave, absent, that you need to chase down to complete those.

- 40 Sure. And what steps did you take in respect of chasing them down?---We will have (a) there would be a broad chase list that would go out through email typically, just to make people aware that they've got mandatory training to complete. Sometimes it might require a more cascade approach to their line manager to ensure that people have picked up and completed that training.

All right. In terms of your - you indicated you thought there was more value in respect of the ICAC training, do you recall communicating with people who were reporting to you in respect of the - - -?---Yes.

- - - importance of completing that training?---Yeah, and the actual value of it and how good it is.

10 And what was the form that that communication took?---That would have been cascade through general routine line management meetings.

That is, you spoke at those meetings?---Yeah.

In relation to it?---Yeah.

And were you aware of that training having components that related to procurement processes as part of the more general fraud and corruption risk awareness envelope?---Well, through the actual training itself?

20 Yes.---Yeah, because I talked to the ICAC presenter at the time and after the meeting as well, very engaging.

All right. So you were part of, were you part of designing that training - - - ?---No.

- - - that is, having input into the content?---No.

30 Have you at any time had input into the fraud and corruption training that's been offered to those who are reporting to you?---No, other than my, my involvement is, is basically to sure it is, that it's understood that it's required and actually from a personal perspective, that there is a lot of value in that training and it's, it's good training to undertake.

Right.---To actually encourage people to, to get in, get it done and become more aware.

That is, if you found it valuable, others would be likely to also find it - - - ?---Yeah. Yeah.

40 - - - or at least take that signal from leadership.---Yes.

And do you recall, that is, over the period, since this is a 2016 or 2017 document, repeatedly making those comments or - - -?---Yeah. Yeah.

- - - providing that encouragement to, in meetings to your staff?

---Absolutely. And I think one of the other things that became apparent because of organisational change in late 2019 and then the impacts of COVID where it became much more - a less office-orientated environment to actually positively ensure that we re-engage with training activities, including ICAC training. Trying to make that happen in a remote
10 environment became important, and become aware of that through 2020, certainly.

All right. And were you involved in efforts to make that happen through the remote environment?---Yes.

And what did they involve?---So basically David Clarke who would have been the acting commercial director in my area, talking to David to, to go, you need to reinvigorate this training because it seems to have, it's disappeared because we're all working remotely now.

20

Right.---So to try and get, to try and move - - -

So that was during 2020 that you took the view that it had disappeared.---I think it would be 2021.

Right.---As a consequence of - - -

So it had disappeared, to your understanding, to some extent during 2020. Is that correct?---I think because it had become more difficult through
30 COVID, all training had become more difficult through COVID.

Sure.---So there were a few things to pick up on. Certainly the reinvigoration of the ICAC training in 2021 in a remote environment was important.

All right. And did that occur, to your knowledge?---Yes.

But it remained in the remote environment?---It was done as an online and a hybrid online in the majority and a little bit face to face last year.

40

Right.---This year we're trying - - -

Has there been a return to more face-to-face training in 2023?---Oh, yeah. This, like I said, I think there's a lot more value in being able to talk to people face to face, so we'll be moving back to more face-to-face training when we do the next iteration.

Turning to page 225, the following page, you'll see recommendation 1.5 there, "Staff with procurement specialisation or tender evaluation responsibilities and approvers in the procurement process should undertake
10 tailored face-to-face ethics and probity training." You'll see that there's a discussion there about strategic procurement updating the ethics and probity package and that that was mandatory face-to-face and that PMO was currently rolling out face-to-face training to INS, is that the face-to-face training of the kind that you're referred to?---Yes. That would have been, yeah.

In addition to ICAC face-to-face training are you aware of there being any face-to-face ethics and probity training that is offered to staff, that is now, who are involved in the procurement process?---We certainly have online
20 modules for ethics and probity training.

Are you aware of there being face-to-face training of the kind that's being referred to here, apart from what's offered by ICAC?---No.

To the extent that the training is recommended in relation to persons who have procurement specialisation or tender evaluation responsibilities or approvers in the procurement process, was it also your expectation that project managers would attend face-to-face training of the kind that was provided by Transport but offered by ICAC?---Yeah. So, so, I, I think it's
30 important for all our delivery personnel down to, down to sort of project management level to understand fraud and corruption risk issues and actually ethics in all of our projects, there should be ethical dealings in there. So it's an important part of their skillset to understand.

And was attending that training also an expectation for people who are more senior, that is senior project managers, project directors - - -?---Yes. Yeah, yeah. No, all parts of delivery organisation down to project management, yeah.

40 And to the extent that there were those who had tender evaluation responsibilities below project managers is it your expectation that they too

would attend such training?---It would be unlikely that you would have someone below a project manager level as part of the tender evaluation process.

So someone who was, say, a project engineer or somebody working below that - - -?---It, it will be unlikely that you, that they would be directly involved in a tender evaluation process.

10 Right. Is that because of the way the managing contractors arrangement worked that those who were more junior were likely to be working for the managing contractors rather than for Transport for NSW?---No. I think in the managing contractor context, I think it, then that's an obligation in terms of how Downer or the, or other managing contractors run their procurement processes and that should be clear to, made clear to us through the procurement and delivery management plans that they put in place, who they're going to engage and what level of training we would expect.

20 But is it your evidence that in terms of Transport for NSW's processes that the likely procurement specialisation or tender evaluation responsibilities were at project manager level and upwards?---It would be.

And that related to the TAP project as well as - well - - -?---Absolutely. The, the only exceptions I can think to anyone being lower than a - well, of a lower grade than a project manager involved in a tender evaluation for Transport would be if they were a technical specialist from a separate discipline, for example Safety or Environment. You might have someone that, that might be a specialist that you might involve in that. Reminding as well that I am talking about the transport processes for procurement here.

30 Yes.---Tender evaluation is not a requirement of Transport as part of the managing contractors.

No.---That's the managing contractor's obligation.

There's an approval process but not - - -?---Their obligation was to provide an recommendation on the back of the tender evaluation process that would be then approved.

40 Do you know whether there was, specifically in relation to the managing contractors agreements with Downer, do you know whether there was any engagement between Transport for NSW and Downer, other than as part of

approval of the procurement management plan, do you know whether there was any engagement from Transport's side with Downer in relation to how their staff were trained in respect of fraud and corruption risk?---I'm not aware.

If there has been any engagement of that kind, do you know who would have been responsible for it? Would it have been the principal's representative or somebody else with Transport?---I, I, I, I wouldn't know. Conceptually it, Downer could have advised the principal's rep. If it had
10 been done more, on a more corporate basis in terms of the training that Downer were providing corporately, it could have been to a different corporate entity in Transport.

All right. Turning to page, well, I'm sorry, sticking on this page, you'll see action or recommendation 2.1 and action 2.1.3 related to generating a separate fraud and corruption risk report, noting that the assessment of fraud and corruption risk is not consistent across the division, which I think was consistent with some evidence that you'd given and work was being undertaken by PMO to improve this, PMO to report back to the executive
20 by the end of 2017, to demonstrate where improvements had been made. Are you aware of separate fraud and corruption risk reports being generated subsequent to this, to generate a risk register across the division?
---I, I can't remember any specific detail around that, other than particular focus areas in this service is area where there's lots of of smaller scale procurement activity, so that would have been a, a real focus.

Would you in 2017 have been a part of the executive that's being referred to here - - -?---Yeah.

30 - - - in terms of reporting back?---I would have, but - - -

Right. Is it simply the case that you can't remember one way or the other whether PMO reported back - - -?---I, I, I don't recall the specifics of PMO reporting back.

You'll see action 2.2 on the same page there?---Mmm.

There's a reference to middle management being, a recommendation in respect of exposing middle management to the survey findings - - -?---Yeah.
40

- - - so that they could understand the implications and consider what actions were needed. Were you aware of any action being taken to expose middle management to these survey findings?---I'm aware that we had lots of email, case study-type activity coming out of the PDMO and the commercial areas within there, to highlight sort of fraud and corruption risk and activity that was, that was through there.

And you understood that to be the result of this risk assessment - - -?---I, I didn't - - -

10

- - - having been conducted?---I would say now, I can see the correlation between those two activities, but I'm, it's only aware of those emails coming out.

Was that, that is emails with case studies being sent around, an activity that you're able to place in terms of timing? Is it something that continues or is it something that occurred in a flurry at a particular time?---I think of the moment of 2017, 2018, I remember those.

20 Okay. If we could go to page 226, you'll see action 4 there, a recommendation that an anti-fraud and corruption strategy be developed, outlining real life examples of fraud and corruption events relevant to INS and linking those back to a sound ethical framework and the purpose for that is then stated. The response to that is that there is a comprehensive guide to conduct and ethics policies, that F&C was developing a strategy and INS would link in to any strategies and actions. Do you understand who F&C is that's being referred to there?---Fraud and Corruption, which at the time would have been a separate branch entity within Transport.

30 Right. And does that now sit within I think what you've said was the CMS - - -?---CPS.

CPS, I'm sorry - - -?---No, it doesn't. Fraud and Corruption sit in a separate part of corporate Transport.

Okay. But that still exists as a separate entity within - - -?---Yeah, and they have, like, responsibility for fraud and corruption prevention strategy, frameworks, setting the policy for, for the whole of Transport.

40 Right. And what engagement do you have with them, that is, now?---I would say direct, direct engagement very little, but from the flow down of

policies set through them in to risk strategies for each divisional area, so not direct engagement with them per se but actually engagement with the policy and how risk flows down from them.

Are you aware of an anti-fraud and corruption strategy having been developed as a result of this recommendation?---I believe there's a Fraud and Corruption Prevention Framework, I believe it might be titled now?

10 Right. And do you know whether that was developed in response to this or whether that was pre-existing?---I, I, I would assume it has evolved from this type of activity but that's an assumption that should be tested through the Fraud and Corruption Team.

20 Right. You see action 5 there, "A fraud and corruption risk register should be developed and implemented in each branch and a master register maintained at the INS divisional level to record all existing and emerging fraud and corruption risks." Are you aware of whether each branch now, if a branch structure is indeed still in place, has its own fraud and corruption risk register?---Each branch will have risk registers and there will be some risks that we manage at a branch level, some at project level. Those wouldn't be necessarily specific to fraud and corruption. Fraud and corruption would be a risk or a number of risks that would be held within projects, within branches and at a divisional level.

Okay. Is there some kind of master register held at divisional level of risk? Are you aware of that?---So, yeah, there'll be a divisional level risk register which would also include fraud and corruption risk identification.

30 Okay. And are you aware of it actually including fraud and corruption risk identification?---Yes.

And is there work that involves you being aware of what those risks are in relation to the master register or the register that's - - -?---So in our current environment there is an infrastructure in place, fraud and corruption action plan, which effectively is the risks and then the mitigations and actions against them.

40 Right. Do you know when that was developed?---I think that's developed as a flow down from the fraud and corruption framework, which was updated in 2018/2019. There was a reorganisation in 2019 where ownership

of policy and documents would have changed, so it would have flown down from then.

All right. So it's possible that the framework that was developed in 2018/2019 is linked to the recommendation in relation to the strategy being developed here?---It could probably be traced back through organisational change to this type of activity.

10 All right. Did you have input or are you aware of those reporting to you having input in providing real-life examples of fraud and corruption events for the purposes of that framework being developed or indeed the action plan that's subsequently been developed?---I'm sure that either myself or those within my team, we will have provided instances or examples of things we've come across during our working experience to, to play into sort of risk, risk treatment.

Right. Do you recall actually doing that?---I, I don't recall the specifics of actually doing that, but I'm pretty sure that activity would have taken place.

20 All right. Was there a particular person reporting to you in 2018 or 2019 that you can indicate may have been responsible for that?---Back then we would have had a risk manager for the area, for, for the, for a number of branches, and it probably would have come up through, through them.

And that is within Rail Delivery?---No, the Risk Management Team would have sat in the PMO at the time.

Okay. And the PMO, I think you've indicated, doesn't exist anymore?
---No. Slightly different guise.

30 Right. Could we go to page 227. There's discussion here you'll see in various sections under 7 of integrity due diligence. I think you'd indicated that as a result of tier 1 contractors being used, the expectation was that they would conduct their own due diligence processes. Do you know, during the process of forming those or entering into those managing contractor arrangements, whether there was any due diligence that took place from the Transport side in relation to how the contractors' processes would work for procurement?---As part of the major procurement activity of the managing contractor - - -

40

Yes.--- - - - the whole understanding of how the contractor proposed to undertake the works, which would have included procurement activity, should have come up through those.

All right. Would you have expected that to include consideration of how the main contractor would conduct due diligence on proposed subcontractors?---I would expect that to be discussed.

10 All right. Do you know who would have been responsible for that within Transport?---Within, within the procurement process that was undertaken for the managing contractor for Downer?

20 Within the process that was undertaken before the managing contractor arrangements were entered into with Downer, yes.---So that would have been whoever was involved in the procurement of Downer so I think at the time the lead for that would have been Dave Clarke who would have been commercial manager then at the time and the relevant project director for the, who would have taken up the, that particular contract and there would be one other independent from outside of the Commercial and Project Team that would have been involved in the tender assessment.

Do you know who the project director was at that time?---I can't recall.

Is that information that you could easily find out?---Yes. I could easily find that out.

30 One of the aspects of the integrity due diligence, or the integrity of contracting processes and risks associate with them, or tendering processes I should say and risks associated with them that's identified in the fraud and corruption risk assessment that relates to the treatment of confidential information. Were you aware of any review of the risks of confidential information being handled through the TeamBinder program or system being conducted by Transport for NSW?---I'm aware of the TeamBinder system. What was the question?

40 Were you aware of any review being conducted by Transport of risks associated with the use of the TeamBinder system and how confidential information may be able to be accessed through that system?---No. I wasn't aware of any risks that were, that were, were observed around the, the use of TeamBinder but the use of TeamBinder was mandated in order to manage

and reduce the risk of the share, the easy share of information through platforms such as email.

Are you aware of there being risks associated with the use of TeamBinder because of people moving around between various contracting entities or subcontracting entities I should say?---Yeah. I mean, there's, there's an obviously risk with any secure platform that if someone moves, closes down their account appropriately and quickly, there's a clear risk.

- 10 Are you aware of any steps that Transport has taken in relation to managing those risks?---I'm aware of steps that Transport took to close down from the Transport sort of side of the - - -

- So that's in relation to Transport employees. Are you aware of, having identified a risk that exists not just in relation to Transport employees but presumably employees and third parties?---I, I'm, I'm not personally aware of, of actions that may have been placed on contractors to manage that risk more, more, most appropriately but TeamBinder is a platform that is utilised by many of our contractors, so I would expect that to be, sort of, almost
20 administered through our IT administration or the TeamBinder platform administration to, to close that risk.

Are you aware of it being, that is the risks associated with access to confidential information through TeamBinder, being something that is on Transport's radar, that is not just in respect of its own staff, as a fraud and corruption risk rather than just as an IT issue?---Yes.

- And are you aware that there's been evidence in this inquiry suggesting access to confidential information through TeamBinder has led to
30 manifestation of fraud and corruption risks?---Yes. In the same way as the sharing of confidential information can occur through other mail server platforms.

Sure. Is that a vulnerability that you're aware of any further steps being taken or contemplated by Transport for NSW to address that risk?---I, I am sure we will take further action to reduce that vulnerability, remembering that TeamBinder, the use of TeamBinder and other direct-line secure file transfer-type protocols are much better than using open email platforms.

- 40 You will see there recommendation 8 related to management accountability and there was a suggestion that appropriate metrics should be developed for

executive directors - this is at 8.1 - to hold them accountable for managing ethics, compliance and fraud or corruption prevention with appropriate measures explicitly incorporated into the goals and performance systems to determine performance against those objectives. There was advice given, seemingly, that that wasn't appropriate and it wasn't occurring elsewhere in Transport for NSW. Are you aware of why that view was taken?---No, you'd have to talk to someone from Fraud and Corruption at the time.

10 All right. But it remains the case that executive directors, or those at whatever the equivalent level now, don't have metrics in respect of fraud and corruption, is that correct?---No, other than the monitoring and measurement of mandatory training and conflicts of interest declarations.

That is their own conflicts of interest declarations?---Not, their own team organisation to make sure that those, like, everyone within your organisation has completed that, those fundamental training needs.

20 Right, okay. So to ensure that those conflict of interest declarations are made by persons within the teams of the respective executive directors, is that correct?---Not aware of any specific metrics around.

All right. You see number 8.2 there. Again suggesting appropriate training, supervision and support in respect of management in high-risk positions. Do you know whether there was any additional action taken? The response is effectively that the Commercial Team is required to have a high level of fraud corruption and training. And then 8.2.1 indicates that training is currently being rolled out - if we could scroll to the next page - across the PMO and INS. Are you aware of whether there was additional management training offered as a result of the steps identified here?---Not aware of
30 additional training other than that I've already mentioned.

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

THE COMMISSIONER: Yes. We'll take a brief adjournment.

SHORT ADJOURNMENT

[11.32am]

THE COMMISSIONER: Mr Church, you're subject to the same affirmation you took at the commencement of your evidence to say the truth, understand?---Sorry?

Do you understand? I said you're subject to the same affirmation you took at the commencement of your evidence.---Absolutely.

Thank you. Yes.

10 MS DAVIDSON: Chief Commissioner, if we could have volume 22.18, page 228, brought back on the screen. Mr Church, this is still part of the response document that I was taking you through previously. You'll see action 9 refers to the INS Executive, the recommendation being that the INS Executive should have ultimate oversight of fraud and corruption control within the division. The INS Executive should be responsible for leading the strategic direction in the control of fraud and corruption, including overseeing the implementation of fraud and corruption control initiatives. There should be a review of the effectiveness of the plan, there should be formal review - I'm summarising now - of the recommendation on a
20 quarterly basis, and it should be incorporated as an agenda item in existing executive meetings, in addition to the Deputy Secretary and the Executive Directors' legal counsel and the Transport for NSW Fraud and Corruption Manager should be invited when discussing fraud and corruption. In response it's indicated that the draft fraud and corruption plan will be presented to the May INS Executive strategy meeting. Were you part of the INS Executive strategy meeting in 2017?---I probably was but I couldn't tell you specifically on that date.

Right. As in you don't recall whether this document was presented or not?
30 ---No.

Fraud and corruption being added or the response is that fraud and corruption has been added as a governance topic on the INS strategy meeting on a quarterly basis. Are you aware of that occurring, that is fraud and corruption being a governance topic in the INS Executive strategy meeting?---I can remember fraud and governance being discussed as a, as a topic within the INS Exec strategy. Whether it was May, June, July, whether it's 2017 or 2018, I couldn't give you the specifics on those dates, but I remember it being - - -
40

Did that continue being a standing agenda item or do you just recall there being a single discussion of that?---I can't honestly tell you whether it was a single. I believe it would be an agenda item but I can't tell you specifically which of those meetings it might have been discussed at.

All right. Do you know - well, is there now an equivalent of the INS Executive strategy meeting, that is currently?---Yes.

And do you attend those meetings?---Yes.

10

And are you aware of whether fraud and corruption is a governance topic that is included on a quarterly basis for discussion in those meetings?---It is.

And is it discussed as part of that agenda item?---Yes. Yeah.

And what - well, is it the case that legal counsel and the Transport for NSW Fraud and Corruption Manager or the equivalent person is invited to attend for that discussion?---Certainly we've had representation from the Transport for NSW Fraud and Corruption Team.

20

Right. Not necessarily the person who's in charge of that function. Is that your evidence?---Without knowing specific job titles, but representation from that team participated and briefed on fraud and corruption in the most recent - - -

I'm sorry, participate in a - - -?---They presented in, as part of the discussion on the fraud and corruption topic in the most recent of those meetings.

Okay. Does a person from the Fraud and Corruption Team attend the INS strategy meeting on a quarterly basis, do you know?---Not routinely.

30

No, okay. Does the Transport for NSW legal counsel attend the strategy meeting on a regular basis?---Not routinely.

40

Action 10 refers to data analytics and there's a - the recommendation is that there should be consideration given to effectively improved data analytics for functions including projects to identify unusual or anomalous behaviour requiring further investigations. The response is that there's some privacy impact assessment being done at the Transport level but that also this is a specialised forensic activity requiring external support which can be included as part of an audit program. Do you have any oversight or

awareness of what data analytic work is applied to projects - that is TAP projects - for which you have responsibility? For the purposes of it - - -?
---Not in this context.

Right. That is not in the context of detecting unusual or anomalous behaviour.---Yeah, not for measuring trends or trying to spot the type of environment here across the whole construction sector.

10 Right. Well, I'm not discussing across the whole construction sector. Just in terms of the TAP projects. Are you aware of any data analytics being applied to try to identify unusual or anomalous behaviour?---Not from a, not, not from the perspective of the people who own fraud and corruption and will be looking at the detection of those risks across the Transport suite of contractors.

Right. You're not aware of that occurring?---Not aware.

Right.---And I wouldn't be aware 'cause it's not my, not my domain.

20 All right, although they are your projects. If there was some data analytic process being applied to them by Transport for NSW - - -?---I would expect to - - -

- - - you'd expect to be told about that, wouldn't you?---I'd expect to see reporting, but for information like this where it might be corrupt conduct, that might go through more of an exception reporting rather than a routine reporting.

30 You'd still expect to find out about it, though, is - - -?---Yeah.

Because you're concerned in respect of the existence of fraud and corruption.---Absolutely.

Ultimately within your rail delivery as a whole.---Yeah, in the same way as the nature of this inquiry was made aware to me through the Professional Standards Team.

40 Sure. So is it a fair surmise that it's unlikely - although you can't say for certain - that that kind of data analytic work is being done?---I think there'd be a more appropriate person within Transport that would provide that

answer. There's a lot of data and analytic work within Transport. I'm not party to how comprehensive that is and which domains it works.

Okay. But you're not aware of any that's specific to fraud and corruption?
---No.

10 Could we turn to page 229. There's a reference there to a progress report against this plan being tabled in the INS Executive strategy meeting on a quarterly basis and then being shared with the Fraud and Corruption Team to inform the quarterly Transport for NSW Audit and Risk Committee meeting. Are you aware of progress reports against this plan being tabled at the INS strategy meetings that - executive strategy meetings, I should say, that you attended?---I don't recall.

Right. Is that, well, are you able to indicate one way or the other whether you saw any of them or you simply don't know?---I, I don't recall. It might well have been papers if it's purely on reporting, but it might have been papers for noting, which would have covered relatively quickly.

20 Right, not necessarily being discussed.---I do recall being briefed on fraud and corruption and treatments and litigations.

All right.---As mentioned earlier.

Are you aware of Transport for NSW holding overall risk registers with respect of the TAP and NIF programs?---Yeah. We hold overall risk registers for all of our projects and programs.

30 Right. Are you aware of whether fraud and corruption risk is assessed as part of those registers?---Fraud and corruption risk predominately, if it was, if it's, predominately relates to procurement and contract management functions, you would see those mitigations being held in the CPS area because they provide the personnel who manage and mitigate those risks.

All right.---On a project level you will see some fraud and corruption risks that we would manage through delivery. Typically they're around things like security, theft or manipulation through redundant materials, but also like credential-type fraud.

So is that both physical risks in respect of what might be held on the site and risk of fraud being perpetrated by particular individuals seeking to come on the site?---Yeah. Yeah. Yeah.

But not the kind of procurement-related risks that have manifested themselves in the - - -?---Not the manipulation of contracts.

10 Right. Right. So to the extent that risk registers in relation to the, those particular projects don't refer to fraud and corruption risks that relate to manipulation of contracts, is that because you regard those as being treated at a higher level within the organisation within the commercial function?
---No. It's because they're more appropriately managed by someone who has oversight across a whole domain rather than just in a narrow field. Like, for example, managing contractor contracts that were used, they're not unique to, to what we use in rail delivery. We have two within rail delivery. They're also used in other areas across Transport. It would be better that the risks and mitigations were understood how they would apply, not just in one domain but in the suite of domains across all areas where the MC would operate.

20 All right. Would it also be important though for somebody like the principal's representative under the managing contract to be aware of those risks and how they were to be mitigated, that is, that are used for the TAP project?---The principal's rep would normally see those flow down in terms of changes to policy or procedure and also would be taking advice from expertise provided in terms of commercial and contract management from those deployed resources.

30 Is it something that you would expect, well, might the situation in respect of the management of risk be improved if those risk registers in relation to the individual projects also included fraud and corruption risk rather than treating them at that higher level?---I don't know. That would be a - it's an interesting hypothesis, but if you replicate that issue across 20 different contracts, does that actually dilute the message or does it enhance it?

40 Right, but I'm interested in your view on that question. Have you thought about it?---Yeah. I think about risk in many ways. It's really, it's about who is the most appropriate person to actually understand and spot where that risk might be manifesting.

So the principal's representative was, for example the person who is giving approvals in respect of subcontracting. Would it be sensible in your view for the risk register that they were aware of and dealing with, to be one that reflected fraud and corruption risk rather than simply holding it at that higher level, appreciating that those contracts are used outside of rail delivery as well as inside rail delivery?---The, the advice the principal's rep, he should be getting from the contract and commercial expertise that's within his team, as provided to his team. If the contract, the commercial manager thinks that there's a heightened chance of that risk manifesting in that project or that contract form then you would be, I would be expecting that to be added to the risk register through, through the risk identification exercises done by the team.

So whose responsibility would that be to add it? The commercial manager or the principal's representative or some discussion between them?---It, it would come typically through, like, risk identification comes typically through, like, workshopping exercise that involves all disciplines, including the delivery and commercial environment, safety et cetera. So it would come through that process, the principal's rep to, or the project director, senior person in that environment, to hold those risk workshops and generate a risk register that, that then you monitor against. So you would expect it to come from the, the whole team.

Could we have volume 22.18, page 79 brought up on the screen? This is a judgment of significance document for the TAP 3 program in respect of the station upgrades at Banksia, Birrong, Roseville and Wollstonecraft generated by the technical - well, the author is stated to be the technical manager engineering within the Infrastructure Delivery Group. That's signed off for approval on 24 January. Is this a document you've ever seen before?---I haven't seen this particular document before.

What do you understand the purpose of a judgment of significance document to be?---The judgment of significance, this is an engineering document.

Right.---To determine the level of engineering assurance to be applied to the project in question.

So it's got nothing to do with risk assessment exercises?---It would have, it's to do with risk - - -

Other than in engineering, is that right?---So it would have to do with the risk of the complexity of the engineering, particularly noting that also director electrical engineering is on here. There are particular risks around competence and experience in the electrical field which is why they're referenced on there but this is an engineering document to determine what level of design, review, oversight and approval would be required for the project.

- 10 So you wouldn't expect there to be any consideration of procurement-related risks in a document of this kind?---No. Only that there would probably be a stipulation that entities to do work in a particular discipline be authorised engineering organisations.

Which was the kind of restriction that you referred to in your earlier answer in relation to - - -?---So effectively it's an accreditation of an organisation, that they have robust training and understanding of their engineering field and they have got appropriate discipline level experience and competence to undertake work.

- 20 Have the allegations, so far as you're aware of them in this inquiry, led you to the view that corruption prevention efforts need to improve within the infrastructure and services division?---I think the nature of this inquiry, anything you learn, anything I learn, from this, there's always more that we can do and there are always things that we can do better to understand how we can prevent scenarios that, that I have seen unfurl over the last few weeks be prevented. It's not in the interests of, of, of anyone in New South Wales or particular in my area anyone delivering projects for the betterment of New South Wales.

- 30 Have you formed a view in relation to what needs to be improved?---I'm keen to understand what the recommendations might be. I have my own view. We can tighten up on a few things. I think in terms of - - -

- 40 What would those things be?---Well, I think particularly, like, given the volume of work that we have on across the state and because of changes in organisational structure and recruitment there's always that level of awareness where we're getting people in from, who don't have the same longevity or experience of, of working within a government context, particularly if they've come from external organisations who may, their view of probity and, and, like, ethical contracting might be different. Actually, the training and awareness is a really important thing and I think

one of the things from this whole inquiry is actually raising that, that awareness for many people in the organisation.

Are you aware, however, that Mr Abdi, for example, who was not somebody who had come to Transport at the time that he'd engaged in the conduct that was the subject of the allegations in this inquiry, who was a new employee from outside the public sector, he was somebody who had worked for Transport for some years?---So what was the question?

10 Are you aware of the fact that Mr Abdi - - -?---Yes.

- - - whose conduct is central to a number of the allegations in this inquiry, was in fact somebody who wasn't new to Transport.---No.

He was somebody at the time who had worked at Transport for some years.-
--Yes.

Right.---Yeah. So heightened awareness is not just about how individuals might behave, it's about how people perceive the behaviour of individuals within teams.
20

Yes.---So the behaviour of Mr Abdi might have been picked up or questioned.

Are there improvements that you think need to be made, for example, in the whistleblowing area in relation to corruption or potential collusive tendering activity?---It's not really my field of expertise.

Right. So you referred to a few things that you think need to be tightened up, one of them is training or awareness.---Training and awareness, definitely, particularly in the environment that we've come out of COVID where, you know, knowledge and experience isn't shared in, hasn't been shared in the same sort of way that it would have been done in a more collegiate environment before COVID.
30

Are there other things that need to be tightened up, in your view?---Almost certainly but I'm keen to understand what the recommendations of ICAC are.

All right. Have you formed a preliminary view in any other areas apart from training and awareness of steps that should be taken?---I, I think in terms of audit function and commercial oversight, we will - - -

10 What needs to be improved there?---We will look at deeper cross-sectional sort of auditing. I think the area around data and analytics is already changing in all sorts of sectors. I think we'll find there will be more that can be done from trend spotting around there, but again, that's my personal opinion where technology will move us. I think in terms of knowledge of where people are on and off site will also change through technology, but these are not things that I will wholly influence in my own ability.

20 I understand that. When you say knowledge of where people are on and off site, is that where Transport people are located at a particular time?---I think all, I think we have like, the, beyond fraud and corruption there are also safety and fatigue issues with people on and off site. I think it's in our interest to make sure that we make sure we have a fit workforce out there. It's actually understanding more in the context of what our workforce is doing generally is just useful, and I think that will come through data and technology changes.

Could we have exhibit 186 brought up on the screen. This is a letter that was addressed to you from Mr McCarthy, the general manager south-east region at Downer Infrastructure Projects. It relates, well, refers to the framework agreement and he's giving notice, as you'll see from the third paragraph there - - -?---Yeah.

30 - - - to Transport in respect of Mr Stanculescu and conduct that Downer had identified on Mr Stanculescu's part. Do you recall receiving this letter?---I do.

What steps did you take after receiving this letter?---I shared it with our Professional Standards Team and also others within infrastructure and place executive team.

And what occurred following that? Was there some discussion of it?---With the Professional Standards Team.

40 Yes.---Yes.

Yeah. Did actions flow from those discussions?---Not specific actions because at the time I was aware that Downer had undertaken an investigation which was probably triggered by the ICAC entry and interest in four individuals mentioned as part of this inquiry. But because we weren't fully aware of what the complete nature of the corruption was, Downer undertook this exercise, and this was a consequence of them undertaking this exercise.

10 Right. An so are you aware of whether any steps were taken as between Transport for NSW and Downer following receipt of this letter?---No other than to acknowledge that this investigation had occurred and Downer had taken steps to remove Mr Stanculescu.

All right. Were you aware, well, Downer indicated - if we can scroll to the next page - that Downer will take additional steps, including reviewing all tenders in which the former employee was a key decision-maker. You see that at the bottom there?---Yep.

20 And then following that, Downer considering the implications of the matters set out above for Dalski, including in relation to matters or projects in respect of which Dalski has been maintained and - sorry, engaged, I should say. And then Downer considering whether there are any steps that can be taken to improve Downer's systems and processes in respect of the management of tender submissions and disclosure of undisclosed conflicts, and then ensuring that all employees in this line of business have received appropriate code of conduct and anti-bribery and corruption training. Taking those further steps, were you aware of Downer completing a second investigation report in relation to Mr Stanculescu?---No.

30 Was that drawn to your attention in any way?---No.

There's a reference at (c) here to Downer considering the implications of the matters set out above for Dalski, including in relation to projects in respect of which Dalski has been engaged. Are you aware of any discussion as between Transport for NSW and Downer in relation to the engagement of Dalski on future projects?---I'm not aware of any further conversation on this.

40 All right. Was there any - there's been some evidence in this inquiry in relation to Transport, persons indicating that Transport had banned particular contractors, or subcontractors, I should say. That is, that Downer

couldn't use them anymore. Were you aware of Transport having any process for doing that?---I'm not aware that we have banned any contractors specifically but I would think that it would be remiss of any organisation to - knowing the awareness of which contractors and the nature of this inquiry - for anyone to engage them.

All right. Was there some process that Transport had in place in relation to particular subcontractors being banned, to use a colloquial term?---Yeah. I'm not, I'm not aware of any specific process that is in place.

10

Right. Is there somebody else who would be likely to be more aware of that or - - -?---If, if it, if it was in the nature of - - -

If it existed.---If it was in the nature related to commercial contracts or procurement, then that would be held through the CPS Team.

Right.---Yeah.

THE COMMISSIONER: Just - - -

20

MS DAVIDSON: I'm sorry, Chief Commissioner, were you - - -

THE COMMISSIONER: Yeah, there is something I just wanted to ask you. We've heard evidence from Mr Nguyen, who you might be familiar with, that he's working for RJS now on a railway station on a contract. Does that surprise you?---Is he actually engaged now?

Well, that's the evidence we heard. I don't know if you've followed it. ---Without knowing the specifics of which station, it actually would surprise me. But then that may not appear in my portfolio of works. It might be 30 minor works being undertaken through Sydney Trains.

All right. I might just leave it to Counsel.

MS DAVIDSON: I understand it's rectification work in respect of Banksia Station. Is that something that assists you in relation to whether or not that surprises you?---It would surprise me given the evidence we've seen over the last three or four weeks.

40 Do you regard, noting the actions that Downer indicated that they would take in this letter, which is more than a year ago now, being consideration of

whether there are any steps that can be taken to improve Downer's systems and processes in respect of the management of tender submissions and detection of undisclosed conflicts of interest, appreciating that's Downer's systems and processes, not Transport's, are you aware of any steps that Transport took to follow up in relation to what the results of Downer's consideration were?---I, I'm not aware.

10 Do you regard that as a step that should have been taken within Transport to ascertain what improvements Downer was making, given the conduct of Mr Stanculescu that was disclosed in this letter?---There should have been follow up.

And whose responsibility would that have been?---Probably through the management of the managing contractor framework. So - - -

That is, what, the principal's representative?---Yeah.

20 All right. And you're not aware one way or the other of whether that occurred?---I'm not aware one way or the other. There may well have been.

There is a reference to Downer ensuring that all employees in this line of business have received appropriate code of conduct and anti-bribery and corruption training. Would you agree that that too is a step that should have been followed up from the Transport perspective as to whether it had occurred within Downer?---Yep.

Are you aware of whether that occurred or not?---I'm not aware of any correspondence which confirms or states when that was completed.

30 The Chief Commissioner has asked you in relation to Mr Nguyen, which was a topic that I was intending to raise with you. Are you of the view that steps should be taken in respect of engagement of other persons whose conduct has been the subject of allegations in this inquiry in relation to work within the TAP program?---Sorry, could you - - -

Are you aware of or do you have a view of steps that should be taken by Transport in respect of the future engagement of persons whose conduct has been the subject of allegations in this inquiry?---Yes. I would expect - - -

40 What would you expect those - - -?---I would expect - - -

Well, firstly, do you think that steps should be taken and, secondly, what should those steps be?---Yes. Steps should be taken and I think that if we've got organisations out there that are found to have been not properly engaged then they should not be working on our projects.

And in respect of individuals rather than organisations, do you hold a similar view?---Yes, but cautiously with the fact that people will make mistakes. There needs to be a potential for redemption for everyone in the -
- -

10

Could we come to volume, or have volume 22.5, page 180 brought on the screen? This is an assurance and governance plan in relation to the TAP tranche 3 project, again proposed by the system's engineering manager but then endorsed by the program director for TAP in 2017.---Yep.

Are you aware of this document?---Not specifically.

20

Could we come to page 183? There's a statement of its purpose. If you can just have a look at that. If you can take it from me, and we can scroll back up to the table of contents to show you that, that this is not a document that includes consideration within the assurance and governance framework of fraud and corruption risks. Is that something, having seen the purpose that's described for the document, that surprises you?---No. It doesn't surprise me. If you scroll back to the purpose it talks about "This is the transport access program tranche 3 up to configuration gate management, gate 2."

30

Yep.---That's well in advance of construction and this is concept design stage. So formation of the projects that would form part of the TAP portfolio of works.

Right. So is it the case, you indicate - well, this document is assuming that TAP projects will be handed over to delivery agents after configuration gate 2 and as such the delivery agents will be responsible for assurance and governance thereafter.---Yes.

Does delivery agents contemplate managing contractors?---No.

40

No.---So in this context, this is the transition. At the time the way that Transport for NSW was configured this would have been produced by an organisation called, that, that really dealt with the sort of pre-delivery

aspects and the delivery agents to be contemplated here would be to move into the INS delivery part of the organisation.

Right. So this is before it got to INS, effectively?---I can't remember the proper organisational titles for branches at the time.

Sure. But this is effectively before it got to the division for which you had any responsibility, is that - - -?---Before it got to the branch where I had accountability for the delivery of the works.

10

I see. Are you aware of the managing contractor framework requiring compliance with something that's referred to as the Transport standard requirements?---TSRs?

Yes.---Yes.

Yep. And they included preparation of a risk management plan.---Yep.

20 And Downer produced program-level risk management plans. Are you aware of those having been produced?---I'm not personally aware of them but I would expect them to be produced along with project risk management plans as part of the contractual requirements for the delivery of the work.

30 So at the program level, can we have volume 22.3, page 2, brought on the screen? This is a document, this is a risk management plan. You'll see it was generated in October 2016. And if we scroll to the next page and continue, the scope - which is on page 5 - indicates its purpose in relation to, well, effectively all of the project managers within Downer who are involved in it. At this point, the - well, at this point this was a project risk
30 0management plan that related to or covered the period of the Victoria Street Station upgrade. There was then a further document produced, and if we can go to volume 22.3, page 119. This is another one that was produced later in - well, the previous document was October 2016.---Ah hmm.

40 This was one produced in 2018. If we can scroll to the table of contents, which is the following page, again to the extent that this document doesn't include or canvass fraud and corruption risk management, is that something that surprises you?---No, this is a risk management plan, not the actual generation of risks. I would expect to see fraud and corruption risk being generated through the, what's down on 9.2, step 2, Risk Identification Exercise. So as part of the plan, assuming - having not read the plan in

detail - the way the plan should operate, it should talk you through the process of risk, of, of how a risk register is built and then how it might be mitigated. Step 2 should generate the risk identification. You'd expect fraud and corruption risk to come up through the - - -

All right. So you would expect to be able to identify it on risk registers other than to the extent that they were held at a higher level within Transport for NSW or the commercial managers in the way that you've just been discussing?---No, this is a Downer document.

10

Right. But it was approved by Transport for NSW, is that your understanding?---As to how Downer were going to manage risks associated with the delivery of those projects, which would include safety, environmental, commercial, schedule risks but also fraud and corruption risk, and also the risk to procurement. It should be either held at a program level within the Downer suite of documents or at the project level if it's specific to that project.

20 Did you understand Transport for NSW personnel to have participated in those risk identification exercises with Downer at the program level, that is these kinds of documents?---Program or project. I'm not aware. It, it wouldn't surprise me either way whether Transport personnel had been excluded from the risk identification process because Downer are a very competent contractor that should be looking at and understanding risks and risk identification process, but I also think it would be a good thing if the Transport personnel had been involved in that risk identification process because we have many experienced, quality people that would help provide robust risk registers.

30 Right. Would you again expect that to be the principals' representative if these exercises were being conducted at a program level?---Not exclusively. I think it would depend. It depends upon the nature of what experiential risks are likely to, to flow around the type of project to be delivered.

So which other Transport for NSW staff would you expect to - - -?---You might, you might have specialists, you might have specialists from Safety, Environment, Commercial. It very much depends upon the nature of the project that they might, may or may not be engaged by Downer as part of the risk process.

40

Are you aware of there being any element of performance management in relation to the managing contractor framework that was focused on fraud and corruption risk?---Not solely focused on fraud and corruption risk. There is a contractor performance reporting regime that occurs on a six-monthly basis that considers all aspects of each contractor's performance irrespective of the contracting mechanism they were engaged under and also within the managing contractor, and many of our other contract frames, we have a monthly performance management metric around key result areas that are identified.

10

Did those result areas, to your knowledge, include management of fraud and corruption risk?---Not solely and uniquely identified as such.

So when you say not solely and uniquely identified, what were they blended in with, are you able to say?---Fraud and corruption-type risks would typically be assessed or commented on in the CPR, six-monthly contractor performance regime. That would be covered out under commercial activity, commercial and procurement. In the monthly reporting cycles that, any issues there would be flagged up again similarly under commercial. There was a commercial KRIN there.

20

Did the six-monthly performance reports come to you?---No.

Who was responsible for assessing those?---They would have been, whole team is, all disciplines, all functions, provide their feedback and input into the scoring and any anecdotal evidence to support the scoring. The principal's rep would review and vet to make sure that their, that they're objective and also that the scoring across the whole suite of projects that we have is consistent. So the principal's rep would, would vet that and sign off for that and then there would be oversight from a project directors to basically endorse the report when it goes back out to the contractor.

30

And who is it provided to within Transport for NSW?---The, all CPR scores are logged within the CPS area, so Commercial Branch.

Yes.---Therefore they have a picture of the commercial and contractual performance of all our contractors and - oh, sorry - on the many contracts that, that we have been delivered through Transport for NSW.

40

But that visibility to that commercial function within Transport for NSW doesn't extend to you, is that - - ?---No.

Or doesn't filter up to you?---No.

Can we have volume 22.6, page 25 brought on the screen? This is part of a record of interview with Ms Nadine and my apologies for mispronunciation - - -?---Bourezg.

Bourezg. Thank you. She was the principal's representative in respect of a number of the projects that are the subject of the allegations in this inquiry.
10 She was asked, if you look at about line 17 on the page, "When talking about risk, was corruption risk specifically discussed or are we talking more about risk generally across the project? Her answer was, "Generally across the project." She was asked, "And was the risk more focused on delivery and things like health and safety and things like that?" And you see her answer, "Yes, yes. So corruption risk not necessarily. If I were to speak about that I would say it's something that we take inherently. We have all the processed and procedures and if we follow all of that then the risk is properly managed." And the answer is "Yeah." And then she said, "And therefore we wouldn't. Unless somebody tells us something it wouldn't be
20 one of the high risks." She was then asked, "So, if it was found out a serious corruption on any of the projects that you had managed would you be surprised or shocked?" And her answer was, "Absolutely, yes, absolutely shocked because as I said there were enough. Especially I struggled to think where and how." Just dealing with the first part of those answers, was it your view that risk management across the project was more focused on delivery and health and safety than on corruption risk?---I think like, every project is different, and the view of risk that you get across a project or a suite of projects is going to be unique to those, so I think there's, the context of understanding which project and what type of risks
30 have been identified, that's the only way you're going to understand whether, how appropriate it was.

All right. In relation to the - - -?---And there is - - -

- - - TAP program, are you able to comment on whether assessment of risk was focused more on delivery and health and safety as opposed to identification of risks associated with procurement by managing contractors?---There, there is, there is always a trade in risk 'cause you cannot manage absolutely every aspect of everything.

40

Of course.---And obviously safety risk from a, from a travelling public, from a construction site, site worker, that's obviously at the forefront at everyone's mind in the delivery of works. That doesn't necessarily mean that fraud and corruption risk is not discussed or not appropriately managed. I think it's just trying to workout what is the most appropriate risk and what the most appropriate mitigations are for each of those unique scenarios.

10 Ms Bourezg referred to corruption risk, her words, "Something that we take inherently," or something that was managed my processes and procedures and reliance on following processes and procedures. Would you agree with her assessment of that being the way by which fraud and corruption risk was managed in relation to the TAP program?---I think there's a, you, that's a question for Ms Bourezg.

20 All right, but I'm asking your view in relation to the way that that was managed through the TAP program.---My view of the context of her answer would be I think she's thinking more about the major procurement activity where we have very robust and rigorous process around major procurement of our major contractors and understanding how fraud and corruption would occur there would be difficult to conceive.

Right.---Not impossible, and that's the reason why we have probity advisors and we have controls around, but without talking to Ms Bourezg, context of her answer is difficult to interpret.

30 But as to your view in relation to the management of corruption risk in the subcontracting field, that is, between Downer as managing contractor and subcontractors upon whom it was relying to perform the work, is that something that you regarded as largely being addressed by processes and procedures from the Transport perspective or was it simply something that Transport entrusted Downer with?---The reason why we use managing contractor style of contracts is to mitigate against the volume of smaller scale procurement that we would have to do. So, and then the flow down of Transport's policies and procedures through the managing contractor, we have an expectation that Downer will follow those, or any managing contractor, not just Downer, will follow those processes and procedures rigorously. And that's why we use that type of framework. So I can't quite remember the nature of your, your full question.

It related to the extent to which there was reliance on the managing contractor as opposed to the implementation of Transport processes and procedures - - -?---So - - -

- - - for the level of risk that we are, well, for the procurement-related risk that is the subject of the allegations dealt with in this inquiry.---There is a reliance on, on managing contractors to run rigorous procurement processes and to follow the agreements that we have made through our contracting mechanisms. That doesn't diminish the need to talk about it in terms of a risk that's there.

And does it diminish the need for Transport to have policies and procedures for checking that managing contractors are complying with their obligations - - -?---Yeah.

- - - in respect of those procurement processes?---We have a right and obligation, a right and, to audit through the managing contractor framework. It's about how those audits are structured and how they're targeted and what areas we may or may not see to be deficiencies that might require further depth of insight.

All right. There was a requirement - well, are you aware of the requirement in the managing contractor arrangements that Downer comply with the Transport for NSW Statement of Business Ethics?---I wasn't aware of the full details but, like, that sounds like it would have been part of the TSR suite of requirements.

Right. And were you aware of the expectation that that obligation of compliance would filter down to subcontractors? That is in terms of contractual arrangements that Downer put in place with its subcontractors. ---It would make sense in the flow-down arrangements to our policies and procedures, yes.

All right. This inquiry has heard evidence from subcontractors that they had not paid attention to that requirement. That is, to the extent Downer included it in subcontracts, that they hadn't read it or hadn't, their attention hadn't been drawn to it other than by including it in the subcontract. Does that surprise you?---Does it surprise me that they included it in the subcontracts or that it was not understood?

40

No, that the subcontractors had not had their attention drawn to it other than by inclusion in the subcontract.---It doesn't entirely surprise me. There is a large volume of contract documentation, so in the flow down. If it's not properly understood and the obligations in it - - -

You're not surprised about that?---It wouldn't surprise me.

10 Right. The Transport for NSW Statement of Business Ethics required compliance with the Transport for NSW Procurement Policy. Was the Transport for NSW Procurement Policy a document you're aware of?
---Yep.

20 Could we have volume 22.5, page 238 brought up on the screen. This is page 5 of 38. If we go to the first page, you'll see the identification of the document. It's the procurement policy that was applicable as at 18 May 2016. Can we return to page 238. You'll note that there's a requirement here in respect of - well, there's a number of examples of evaluation criteria that should be applied. Could we then go to page 240, and you'll see the heading there 3.3 Procurement Risk and a reference there to staff needing to establish processes for the identification, assessment, allocation and treatment of risk in accordance with something referred to as the "term framework". Are you familiar with the term framework?---Yep.

30 And there's a requirement - if you see at the bottom of that page - for staff to consider risks and potential impacts when making decisions in relation to value for money assessments, approval of proposals to spend public money and the terms of the contract. Are you aware of how Transport - noting that this is a procurement policy that was required to be complied with as part of the statement of business ethics, which I think you've indicated you understood flowed - - -?---Yep.

40 - - - flowed through to Downer, are you aware of how it was that Transport expected that that would flow through to its managing contractors? That is consideration of procurement risks and their potential impacts when making assessments of proposals and approval of proposals to spend public money?---And probably easier to, to explain my expectation of what flows back as a consequence of that, which would be through any tender exercise that a managing contractor undertakes in terms of reporting back of their proposed subcontractor nomination to award to, what their assessment criteria was, what their, how, how they engage the market, the probity arrangements that the put in place around that, that actually led them

through assessment to form the view that contractor A was fit for approval as subcontractor to deliver works as part of the managing contract.

So you would expect there to be a probity, do I understand you correctly to say you expect there would be some element of probity reporting as part of subcontractor recommendations, that reached the principal's representative. Is that - -?---I would expect there to be some, whether it's a statement from a probity adviser or an explanation of how probity had been maintained through the exercise, yes.

10

All right. And, to the extent that wasn't present in the subcontractor recommendations that were provided to Transport, would you expect that to be something that Transport staff should seek?---If not actually seek, to actually ask a question about its omission and whether it is dealt with in a different way in a different documentation.

20

And to the extent that didn't occur in relation to subcontractor recommendations being made on these projects, does that represent a deficiency in Transport's processes, not picking that up?---Whether it's a deficiency in processes or people's understanding of what should be required through the contract.

30

All right. And when you say "people's understanding" would that again be the principal's representative?---Not just the principal's representative, as part of the flow-back of information and the approval of a subcontractor. The reason why we have a matrix organisation that provides two levels of oversight, specialist technical knowledge in this scenario coming from our Commercial and Procurement Teams, to provide that advice to the principal's rep about what's a fit for purpose submission and what isn't.

Right. So you would expect it to come from the specialist Commercial Teams as well, asking those questions?---I, I would expect someone to flag that there would be something missing there that might be expected.

Right. Could we have volume 22.12, page 85 brought on the screen? This is the managing contractor contract in respect of Wollstonecraft Station. You see that from the top of the - - -?---Yeah.

40

Is this a document that you would have had any cause to see before?---No.

You'll see the obligation there in respect of subcontract proposals, sorry, at 7.1, restrictions on reimbursable work include that the subcontractor must - I withdraw that, "the contractors must ensure that all subcontract tender documentation is prepared and all tender processes for reimbursable work are conducted," and then (ii) "with the highest standards of probity, fairness and equal opportunity in accordance with the tendering probity plan". Is that a reflection of some of the evidence you've been giving in relation to how you would expect probity requirements to flow down, cascading through the contracting to the subcontracting arrangements?---That, that should be explained through the managing contractors procurement management plan or however they want to term it as how they're going to deal with the probity aspects through their tenders.

Right. Putting aside the collusive tendering aspect of this or of the evidence that's been heard in this inquiry, there's been evidence in respect of subcontractor engagement, including unapproved contractors being told to commence before there's been approval by Transport for NSW. Are you aware of that?---I'm aware of that through this, this inquiry. Yes.

There's been evidence in respect of a failure to follow requirements imposed in relation to going to the open market where subcontracts are above \$250,000. Are you aware of that?---Through the nature of this inquiry, yeah.

Again, I'm asking you questions relative to evidence in this inquiry - - -?
---Yeah.

- - - and just to test your awareness of them.---Yeah.

You're aware of that evidence, as well. And of bidders being added to tender processes in such a way that or at a timing that has enabled them to have access to information supplied by other bidders. You're aware of that?---Yeah. Yes, through this.

Yes. Having become aware of that evidence, what's your view as to how that was permitted to occur, having regard to the contracting processes that were in place and the expectations that Transport had in place in relation to procurement management?---So my view, I formed about, I think that there's a lack of, there has been a lack of rigour in the following of the managing contracts procurement management plan, certainly in terms of

oversight of probity. That would be the most strongest formed view from this. Yeah.

Have you formed a view that there is a need for better assurance mechanisms in relation to the managing contractors' adherence to procurement management planning, that is better assurance mechanisms from the Transport perspective?---I, I think certainly there, there are areas where it could be more robust or we can find alternative ways in which to assure ourselves that the subcontractor tendering is being operated correctly.

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To the extent that there was issues of that kind, that is the kinds of evidence I have taken you to that's been heard in this inquiry, that weren't escalated to Transport, or no action was taken in relation to them, does that, in your view, reflect a weakness in the project governance arrangements?---I don't necessarily think in a project governance, I think in a contractual administration, it probably highlights a weakness in understanding of how the contract properly operates.

20 And is that the contractual administration from Transport's perspective or simply from Downer's perspective?---I think definitely from the Downer perspective in terms of the procurement side of things. I also think from a Transport perspective clearly there are some areas there in terms of our contract administration that, that should have been tighter.

Could we have volume 22.6, page 109 brought on the screen? I may need to come back to that. I think that's the wrong volume. Chief Commissioner, might that be a convenient time? I can then chase the page reference and I don't have a lot longer to go with this witness.

30 THE COMMISSIONER: Come back at 2 o'clock.

LUNCHEON ADJOURNMENT

[12.57pm]