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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 2.00PM

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

THE COMMISSIONER: We'll resume. Mr Church, you're subject again to the same affirmation you took at the commencement of your evidence. Do you understand?---Yep.

Thank you. Yes.

10 MS DAVIDSON: Chief Commissioner, over the course of the luncheon adjournment Downer has provided the Commission with a letter that was addressed to Mr Church dated 10 February 2023 and I would like to hand that up and tender it.

THE COMMISSIONER: Thank you. That will be Exhibit 190.

20 **#EXH-190 – LETTER FROM DOWNER TO PETER CHURCH RE
UPDATE ON INVESTIGATION OF VLAD STANCULESCU DATED
10 FEBRUARY 2023**

MS DAVIDSON: If that could be brought up on the screen? It's a letter dated 10 February 2023.

THE COMMISSIONER: It's a letter from Downer to Mr Church of 10 February 2023. Thank you.

30 MS DAVIDSON: Mr Church, this is a letter that's addressed to you relating to - I had asked you some questions prior to lunch in relation to Mr Stanculescu and the letter that you received that was Exhibit 186. Seeing this letter now, do you recall that there was a follow-up letter from Downer?---Yes. Fairly recently.

Do you recall receiving this?---Yes, and I would have put that through to our Professional Standards Team.

40 So to the extent you answered previously that there hadn't been any follow up was a lack of recollection of this letter?---Lack of recollection of - - -

All right. You indicated you put that, you say you would have put that through to the Professional Standards Team?---Yep.

Can you explain what that process was, that is you sent it on or you had discussions or - - -?---I, I, I would have sent it onto the team and had a discussion with them because of the context of the inquiry as well that was going on, yeah.

10 And what was the nature of that discussion that you had with them?---
Around the findings and also the nature of closure from the perspective of Mr Stanculescu's engagement.

You will note that there is a reference to Downer's subsequent investigation, that is the second investigation that I asked you about that you said you weren't aware of. Would you agree you were made aware of that second investigation - - -?---Through this letter.

20 - - - through this letter?---Not necessarily that there was a second individual investigation, yeah.

But you agree that you were made aware of the outcome of the steps that Downer took subsequently by means of this letter?---Yes.

30 You will see down the bottom of the first page here that although not the decision maker, the former employee, that's Mr Stanculescu, was the author of several documents submitted by Dalski as part of its tender for the building works upgrade package for Birrong and that he used his position at Downer to access internal project budget information to inform the tender price Dalski submitted in relation to Birrong and that Dalski was engaged in relation to Birrong and separately there had been breaches of Downer's procurement framework and sourcing guidelines, specifically in relation to Dalski. Did that, that is being made aware of those developments, cause you to take any steps apart from passing this onto the Professional Standards Team in relation to the TAP project?---I, I would say not specifically but apart from sharing this information more broadly with my peers than the Infrastructure and Place Leadership Team.

40 So when you say sharing it more broadly with your peers, that was by way of simply updating them as to what had occurred or indicating that some further steps should be taken?---No. The, the nature of the event and that,

actually this formed part of what appears to be an ongoing investigation through ICAC.

You will see that there's a reference to schedule 2 down the bottom of this page too which contains an update on the relevant actions taken by Downer.---Yep.

If we then go to schedule 2, and this is the actions that had been proposed in the initial letter that I took you to - sorry. Schedule 2 is page 7.

10

THE COMMISSIONER: Sorry, we're at page - - -

MS DAVIDSON: Page 7 of the document is headed Schedule 2, Chief Commissioner. Do you see there there appears to have been action taken in respect of the other stations and an indication of where Mr Stanculescu had been involved as key decision maker, a confirmation in respect of engaging Dalski and then a description of further steps to improve systems and processes in respect of the management of tender submission and detection of undisclosed conflicts of interest. The first of those is training. The second two both relate to the use of the ARCUS procurement platform. Do you know anything about that platform insofar as it's used by Downer? ---I don't know. That will be a platform that's proprietary that's used by Downer.

20

Right. So you have no idea about how it works or what its utility might be? ---No. Nope.

Thank you. Could we have volume 22.2, page 109, brought on the screen, please? This is an email, if you see the bottom email in that chain there, that's sent from Mr Wakim, who was the acting senior project manager at the time in relation to the Wollstonecraft Station TAP project. He was also the principal's representative in relation to a number of these projects. Have you seen this email before?---I have, the nature, through this inquiry.

30

In the context of preparing for this inquiry. You'll note there that Mr Wakim reflects his concern in relation to not knowing much, seemingly, about RJS and this - that is the awards of contracts occurring prior to seeking Transport for NSW endorsement to do so. But before we go to that, perhaps, you'll see the list of addressees within Transport.---Yep.

40

Are you able to explain or do you know what the roles were of those addressees, apart from Mr [REDACTED], in relation to the management of the TAP project at this point?---So Steve Hayes would be an experienced construction manager, Jim Hill is senior project manager, and Aaron Jarvis would be commercial and contracts administrator.

10 Right. And were they all working specifically, do you know, on the Wollstonecraft project or were they - was this effectively, to your understanding, a means of elevating the concern beyond simply the Wollstonecraft project?---Not, not elevating. Sharing across the team.

Right.---Yeah.

As to Mr Wakim's statement about a number of large contracts being awarded prior to seeking Transport for NSW endorsement to award those contracts, would you agree that the endorsement of the award of the contract is a critical step in terms of Transport's ability to monitor the procurement process?---Yes.

20 And thus would you regard that as a significant issue in terms of noncompliance with what the procurement framework envisaged, that is by way of Transport for NSW's monitoring of what Downer was doing?---If you're asking whether there was, whether Brenden is flagging that there was insufficient time to properly assess prior to endorsing, or are you actually asking - - -

Well, Brenden is saying here that the contracts had been awarded prior to seeking endorsement to do so.---Which would not be procedurally correct.

30 Right, exactly. I'm asking you whether to the extent that occurred you regard that as - - -?---I don't know what extent to which it occurred, but if it occurred in this instant, it's procedurally incorrect.

Right. But would you regard that final step in respect of approval of the award of the contract to be an important step in terms of the procurement controls, that Transport had in place?---Yes, it is an important step.

40 There is lower down in the email, in the third-last paragraph, Mr Wakim says the subcontractor recommendation for this company came through at 5pm on Friday night, literally hours before they were due to start onsite.

That, would you agree, seems to reflect a concern about insufficient time - -
-?---It does.

- - - to review - or he seems to have attempted to find out some information
in relation to them and wasn't able to find out very much.---Okay, it seems
like there's insufficient time to review, although I'm unaware of what other
conversations or information might be being provided informally in advance
of that formal proposal to subcontract.

10 All right. There's a reference in the fourth paragraph there, "Please be
aware of this on the weekend. Please check if this company is just
subcontracting the work out to other firms. It may be an example of
pyramid contracting." What do you understand pyramid contracting to
mean?---I believe that what Brenden is trying to say there is effectively
we've got a contractor that's just purely doing pass through to other
subcontracted entities.

Is that a concern from Transport's perspective?---It's certainly a concern
from myself that we wouldn't have a contractor engaged that's undertaken
20 adequate supervision of works, that are being undertaken on one of our
projects.

Is it also a concern in respect of value for money that could be offered by
such a contractor if they're putting margin on margin effectively, that is,
they're subcontracting out to others the work that is being subcontracted to
them?---There is always a potential for further subcontracting. Setting aside
money in the contracting packages for the delivery of the works, there's an
obligation on supervision and management of those works. If that's not
occurring, that's probably more fundamental failure.

30 Right. And you would regard - - -?---And it has a broader range of risks
associated with it.

Right. And you would regard pyramid subcontracting as reflecting or being
more likely to reflect an inadequate supervision regime - - -?---If it is - - -

If it is occurring.---If it is sort of true pyramid subcontracting with no
engagement in terms of supervisory or management facility.

40 All right. Could we have the transcript to the public inquiry page 664
brought onto the screen. This is the transcript of 28 March 2023 and it's

part of Mr Wakim's evidence to this inquiry. He was asked in relation to complaints in respect of whether he'd made any complaints in relation to his dealings with Downer and whether if he'd raised anything. You'll see that at about line 23. Was he given an instruction back from the executives? You'll see he gives an answer "generally" in relation to the work he and Ms Bourezg were doing, and then he was asked a question, "Were you ever told by anyone whether it was within Transport for NSW or someone external to Transport that you yourself personally were exhibiting a lack of trust with respect to Downer?" And his answer was, "Yes. So those conversations were had. I know that the Downer team had complained to the Transport executive that, that I lacked trust. That I was questioning" - if we could scroll to the following page - "decisions. That I was questioning their integrity. I would have had those conversations with both Nadine Bourezg for the main bulk of that but also at the time I was sending the email." On 20 October 2020 he indicates there was quite a rotation in project directors and at the time it was Chris Daffin. And then he was asked whether there was an indication of who at Downer he dealt with and then he answered in respect of what feedback he'd been given by project directors at Transport, and he was asked a question, I'm not at about line 28 on the page, "And when you received that feedback from your project directors was there an instruction as to how you should behave in respect of your dealings with Downer" And his answer was, "Towards the end of my time there, a couple of weeks after I raised those concerns about RJS there was a site barbecue that was to be held at, at Birrong Station and there was, there was an email sent at that time talking about, from my project director talking about the importance for us to build trust in our, between ourselves and Downer and that was the secret ingredient to how to manage these managing contractor roles." Were you aware of any communications being sent by the project director in respect of the TAP project about the need for trust with Downer being key to managing the managing contractor roles?---No.

Do you regard, if those instructions were given about the need to build trust with Downer and not question, raise the kinds of questions that Mr Wakim raised in his email, would you regard that kind of instruction as inappropriate?---I, I'll answer that in a slightly different way if I may. It is really important in the delivery of our projects that we have a, a common understanding and respect for the delivery of works by our contractor and our contractor respects the requirements of the client. So it is important to build trusting relationships. That does not remove the obligation to ask questions. If anything it actually highlights the need to ask questions in a respectful way so that issues can get properly aired and dealt with.

Because the questions that Mr Wakim was raising in his email that we've just been looking at were precisely the right questions to be asking, were they not?---I agree.

And indeed if those questions had been asked more broadly there might have been potential, in respect of some of the conduct that's the subject of these allegations, for it to have been at least exposed earlier, would you agree with that?---Well, I understand the questions were asked of Downer and Downer provided feedback on RJS's history with Downer.

Yes.---Unfortunately that was a history created in a, what transpires to be a, a corrupt way.

I'm asking you a broader question in relation to, I suppose, had Mr Wakim or his equivalent persons in that role have been asking more of the kinds of questions that he was asking in relation to some of the subcontracting arrangements that were going on, might some of the conduct, in your view, have been able to have been exposed earlier?---Mr Wakim asked these questions and then we got a response back through Downer that explained RJS's history. So the questions were asked. Whether they would have detected or given rise to, to suspicions of corrupt conduct earlier is difficult to answer even with the power of hindsight.

THE COMMISSIONER: Can I ask you this question, sorry? Sorry to cut across you - - -?---Sorry?

We heard some evidence, I don't know if you've been following it at all, from Mr Wakim, on 28 March and it's at the transcript on page 675 at about line 7. Ms Heger asked him this question, "So in other words Downer was performing well in relation to the criteria that Transport itself had set, you just disagreed with the criteria. Is that your evidence?" And the answer was, "You could frame it that way." And then he says, "Thank you. On paper, Downer did deliver the jobs within time and under budget. My concern with that is that they were delivering their jobs a long way under budget so that their gainshare was more than what it should be because they were becoming very experienced in how to work the TBE system. So at Transport we want our contractors to make a profit, to do well because otherwise they wouldn't come back to price work. We don't, however, want them to take an unreasonable amount of money away from the public purse because we are charged with upgrading the transport network to make

it accessible for everyone. So there's a balance we're trying to find." Now, I'm not sure if you heard that evidence previously. He goes on to cite some other observations that he made that caused some concern. Was any of this brought to your attention? Did you notice these - - -?---Through the nature of the inquiry - sorry?

Did you notice these things?---Through the, through the inquiry I have read Brenden Wakim's transcript and the, the statement around the target budget estimate, yes.

10

So you're familiar with that. Were you familiar with these observations at the time?---No.

How come he was and you weren't?---Sorry?

How come Mr Wakim was - - -?---Mr Wakim would be close as the principal's rep to the actual doing of the work and the target budget estimates. From my position, my understanding of where we were in terms of individual contract pricing versus the total program view and position would be different. With respect to Downer and the managing contractor, the target budget estimate process goes for a period of around about eight weeks. It's an independently we have an independent estimator engaged to assess and validate that price that's put together, and I know that our project teams put a lot of effort into ensuring that the target budget estimate that is agreed between Transport and any of our managing contractors is robust. So the fact that downstream there may be gainshare made on that - which is shared 25% with contractors, 75% with Transport - if we do get to positions of gainshare, that is a good outcome for the people of New South Wales. But it's not a guarantee that, that contractors will land that side of the target budget estimate. The other thing that's worth mentioning, that TBE phase, there is not an obligation for Transport to enter into a contract with the managing contractor, and we have instances on record where we have been unhappy with the TBE where we've felt that it was inflated or didn't appropriately reflect the project benchmark value that, that we hold, and then we have not placed a contract with a managing contractor and gone down another procurement mechanism.

That's all very interesting, but here you have Mr Wakim expressing concerns about his observations and, what, you say you weren't able to make the same observations? Is that a fair - - -?---Sorry?

40

Here is Mr Wakim expressing concern about observations he was able to make. You say you weren't able to make the same observations.---So, Brenden's observations at the time or even subsequently, they've, they've not raised, they're not raised through either our contractor performance reporting or in terms of other mechanisms which would formalise some of those concerns and elevate them to a position where they would be dealt with.

10 That doesn't mean they're inaccurate, does it?---No, it doesn't mean that they're inaccurate.

Well, were you able to make those observations?---Observations in terms of
- - -

Of what he, what I've just read out to you about the - - -?---In terms of, in terms of allegations of inflation, inflating the TBE?

20 Becoming very experienced in how to work the TBE. Gainshare was more than what it should be because they were becoming very experienced in how to work the TBE system. That's what he said.---So again, the target budget estimate, we have a large amount of benchmarking data for our project cost and project value that we'd built over the history, particularly of TAP. I, when Wollstonecraft occurred, that's 2020, so eight or nine years' worth of projects to benchmark cost criteria against. We also have an independent estimator to validate the costs that are put towards us in terms of proposal by our contractor. So it's not one person's view of whether that TBE is right or not. There's also a period of negotiation with Transport where typically we're looking at areas where we think costs are either inflated or don't reflect the risks in undertaking the activity. And at the
30 period, at the end of that period we end up with a signed-off TBE that's independently verified. So Brenden's a really experienced construction manager and PM and he will have a view of whether, of how that, how robust that TBE is, and he's entitled to that view, but the process we go through provides a level of independence in the verification of that TBE as well.

Yes.

40 MS DAVIDSON: Could volume 22.4, page 1442 be brought up on the screen. Were you aware, Mr Church, of the Paxon Group being commissioned in, well, the work commenced in 2021 by Transport for NSW

to conduct a financial review of the TAP 3 project?---I, I was subsequently aware of this Paxon report being engaged specifically toward it, some elements in the managing contract framework.

Right. So you weren't aware at the time but you became aware of it later. ---Yeah, other findings.

10 Was that only in the context of preparation for this inquiry or was it something you became aware of in your day-to-day activities?---I was made aware of it in the day to day and that there were recommendations on the back of it.

Right. Could we bring up, just to show you the document, could we come to page 1,447. This is the executive summary. You note, sorry, Paxon notes in the fourth paragraph there, "Noncompliant processes which may have an indirect financial impact such as subcontractors being appointed by Downer prior to approval by Transport. Downer considered these processes to be documented at an impractical level which they believe would hinder the successful delivery of the projects if adhered to. Consideration should
20 be given to these processes to strike the right balance between oversight and effective delivery for any future contracts to ensure an appropriate and practical process is put in place." Do you agree that the approval process by Transport for NSW, that is, the documentation of that process, was on your evidence, critical to the way in which Transport, that is approval for the subcontractors was critical to the way in which Transport for NSW had oversight over Downer's procurement processes for subcontractors?---Yes.

Yeah. Were you made aware of Downer considering those processes to be documented at an impractical level that could hinder the delivery of the
30 projects?---No, not at that, not that opinion from Downer.

You weren't aware of that opinion?---No. That wouldn't, we have a managing contractors. That's inconsistent.

You're aware of that opinion being inconsistent with the opinion held by other managing contractors?---Yeah, I wouldn't necessarily say the opinion of other managing contractors but in terms of the performance for the managing contractor.

40 As in that the problem that's identified here in respect of subcontractors didn't occur to your knowledge in respect of other managing contractor

agreements. Is that your evidence?---I would say it doesn't occur in the same apparent level of, same, same volume as has occurred - - -

Right. So it was a Downer specific issue at least in respect of its magnitude. Is that - - -?---It appears to be, in terms of volume.

Right. Are you aware of any concern being raised by Downer other than in the context of this report as to the document, the processes being documented at an impractical level in a way that should hinder the, sorry, 10 that would hinder the successful delivery of the projects if adhered to?---No, I'm not made aware of that. I would think the more appropriate people would be if Downer would want to challenge something within the contractual framework, it would have been made through the principal's rep, or alternatively if it was on a more generic feedback on the performance or the ability to perform the managing contractor role, it would have been made corporately through senior commercial entities.

All right, but in any event, you're not aware of any changes being made to those processes for subcontractor approval in order to, to use Paxon's 20 approach, strike the right balance between oversight and effective delivery? ---By Downer or by Transport?

Well, changes to the managing contractor - - -?---No, there's no changes.

- - - processes would have had to have been agreed by Transport presumably.---If we were going to change the way the managing contractor framework?

Yes.---Yeah, no changes. 30

And there weren't any such changes, were there?---No.

Is it accurate to say that from your perspective the approval processes that Transport had in place were not an impediment to effective delivery of the projects?---In my opinion they should not have been an impediment to the approval process.

And is that because of the planning, the evidence that you gave previously about the - - -?---Again, earlier, what - - - 40

- - - need for planning?---With effective scheduling and understanding of critical dates, should have been - - -

And is that a project management task effectively?---It is a project management function.

You'll note in the following paragraph Paxon making reference to the value of potentially considering changes to the audit clauses given limitations in scope and the need to perhaps make those more effective. Were you made
10 aware in the context of becoming aware of this report of any recommendations about changes to audit arrangements?---Yeah, made aware in the context of receiving this report, yeah.

Do you recall whether any steps were taken in respect of changes to right to audit clauses?---No. I'm not, unaware of any changes to clauses that have been made to date.

Do you recall any discussions about making changes to right to audit clauses?---No, no discussions but that, that may well have been a
20 consequence of the, the fact that at the time that this came out probably the length of time left on the managing contractor frameworks would be relatively modest.

Is the Downer managing contractor framework still on foot?---No.

It's expired, has it?---It is expired.

And are there discussions in contemplation in relation to renewing it?---No. We will open source if we need to, if we require a managing contractor for
30 future station upgrade works.

Are you aware that a number of the allegations, well, a number of pieces of evidence that have been the subject of this inquiry involve persons who were employed by Transport accessing budget information and providing it to potential subcontractors in the course of the tender process?
---(NO AUDIBLE REPLY)

I'm sorry, you need to verbally answer the question.---Oh, sorry. What was the question? Sorry.
40

Are you aware of evidence in this inquiry relating to employees of Transport providing budget, well, accessing budget information, Transport budget information and providing it that potential tenderers?---I'm, I'm aware through the, the inquiry that that seems to have happened, yes.

Does that raise a concern from your perspective about it potentially being too easy for Transport for NSW budget information to be accessed by Transport staff?---No. I think there, there, there are appropriate controls over information and (a) from a control of IT and security side of things but
10 also the, the perspective of confidentiality of information flows through, repeatedly through conflicts of interest-type work and also, like, the fraud and corruption online training that we talked about earlier.

From an IT or security of information perspective, are you aware of logging or tracking that's applied to budget information, that is Transport budget information - - -?---We, we have many secure areas for the, for financial information. Within project teams there is a need to access some of that information.

20 Yes.---So, its defined personnel who will have access to that.

And has Transport, so far as you're aware, given any consideration in relation to whether any of those controls should be tightened as a result of evidence that's been heard in this inquiry?---I am sure that we will be tightening up in some of those areas, particularly with the use of more collaborative platforms that are evolving in the IT domains.

If I might just have a moment. That's the examination, Chief
30 Commissioner. I would ask that Mr Church be released from his summons, subject of course to any application for cross-examination.

THE COMMISSIONER: I don't think there is any, is there? Ms Heger?

MS HEGER: Commissioner, we had applied for leave to cross-examine Mr Church - - -

THE COMMISSIONER: I'm sorry? You'll have to speak up.

40 MS HEGER: I'm sorry. We had applied for leave to cross-examine Mr Church. I understand that his record of interview will be tendered and on that basis I don't need to press that application.

THE COMMISSIONER: Thank you.

MS DAVIDSON: I had indicated to Ms Heger that, consistent with the intended tender of the remainder of the corruption prevention brief, that the record of interview which forms part of that brief will be tendered.

10 THE COMMISSIONER: All right, thank you. All right. Well, in that case, Mr Church, you can stand down and you can be discharged from your summons.

MS DAVIDSON: Yes, can be formally released from his summons, Chief Commissioner.

THE COMMISSIONER: Thank you.

THE WITNESS EXCUSED

[2.44pm]

20

THE COMMISSIONER: Yes.

MS DAVIDSON: Mr Nguyen is now to be recalled.

THE COMMISSIONER: Thank you. Thank you. Is Mr Chhabra here or Mr Vo?

MR VO: No, your Honour, I appear. My name's Vo, V-o.

30 THE COMMISSIONER: Yes, thank you, Mr Vo. Yes, thank you, Mr Nguyen. Mr Nguyen can be resworn. Do you wish to take an affirmation?

MR NGUYEN: Oh, oath, take an oath.

THE COMMISSIONER: Yes, all right, well, your evidence, Mr Nguyen will still be subject to the declaration that I made on the last occasion pursuant to section 38.---I understand.

All right, please take a seat. Yes.

- 10 MS DAVIDSON: Mr Nguyen, a number of the topics I intend to cover with you today are topics that were canvassed to some extent in your evidence, and the purpose of asking further questions relates to clarification or putting allegations to you that have emerged as a result of the evidence that's been heard subsequently in this inquiry. Commencing with the topic of ASN or TRN Contractors.---Yes.

It's been suggested in part of the evidence that that was effectively your company only. What's your response to that?---That's not true.

- 20 At the inception of ASN, what do you recall in relation to discussions with Mr Abdi and Mr Sanber in relation to the formation of the company?
---Well, it's always been us three. I don't know, I'm not too sure how it was born but it's always been us three, hence the name ASN or TRN was the abbreviation of our names.

All right, so was it - do you recall anything about the discussion of the name specifically? That is that you would use the names of the three of you?
---No, just I don't recall how it happened. It just happened to be our names.

- 30 Do you recall having discussions, at or before the time the company was incorporated, with Mr Abdi and Mr Sanber as to their participation in the company?---Of course, yes.

And what were those discussions - - -?---It's just - - -

- - - what was the nature of them?---Let's form, I guess, a business together. So I think the initial idea was go out to do, seek work, you know, just to go out on our own and then that ended up being, I guess, what you heard from the hearing about the whole Transport job or project.

40

As in the intention was to seek work that would be broader than Transport work?---That's correct. That's correct.

Right.---That was the original intention, yes.

10 All right. And do you recall in those discussions agreement, as in Mr Abdi and Mr Sanber actively agreeing to be part of the company?---Yes. So, so what I can recall is I think Raja took charge of, I guess, setting up the business. So I think he was the one that appointed the accountant. It was his accountant. He's the one that was, I guess, taking charge, which he liked to do.

That is the accountant that he was using personally at the time?---That, that was correct, yes.

All right. And do you recall visiting that accountant for the purposes of setting up the business?---Yes, I do recall. It's always been the three of us, no one else.

20 All right.---So if we were to meet the accountant, it would have been the three of us.

All right. And do you remember going to meet the accountant?---Yes, I do.

And what can you tell us about that meeting?---So I remember we would park at - it's opposite the accountant firm, there was a KFC. We would park there and walk across the road, so - - -

30 All right. Is this the same accountant that you subsequently visited in respect of distribution of cash?---Yes.

All right. So I think you've given some evidence in relation to that being opposite a KFC.---Yes.

As to the first visit, that is the visit to set up the business - - -?---To set up the business, yeah. So to set up the business we all - - -

40 What do you remember about that?---I think Raja would have made an appointment with the accountant, so the three of us would have met there so I think, what I can recall is Nima and Raja rocked up together in one car and I met them there.

Right.---And then we met a guy named Peter, yep, and then he just talked us through how to run a, or how to set up a business and all that and to fill, fill out the form and to put, who do you want to nominate as the business owner, and hence where my wife name came in.

All right. And you'd given some evidence in relation to there being a written agreement or a document between the three of you.---Yeah, so there was a share agreement, like, I think we all put in \$30 each. There was like
10 a, I don't know if it was recorded. I remember there was a printout but I can't really recall where it is - - -

Right. Do you recall - - -?--- - - - that, that had the share in the company.

- - - having those discussions with the accountant?---Yeah, that's the one, he, so it was the accountant's idea, saying that you should do this share agreement so then you know everyone has a third each of the company.

Right. Did he provide you with that document - - -?---Yes. Yes.
20

- - - or the template for that document?---No, he printed it out. We signed it.

Right.---Yes.

So you recall signing it in that - - -?---Yes, I recall, yes.

- - - meeting?---Yes.

And did you recall paying in some amount of money at that meeting or was
30 that subsequently?---I don't recall paying it. It just, it just said I think 30, I just remember \$30 each, just to be fair.

Right.---So then, so we all paid \$30 each or own that part of the company.

You don't recall whether you actually provided \$30 or not?---No, exactly. Yeah. Yeah.

All right. The inquiry has heard some evidence in relation to the creation of
40 the business cards for the business and that being your idea or at your initiation with your instructions with Mr Sanber. Did you provide instructions with Mr Sanber in relation to creation of the business cards?---I

would imagine it would be a joint effort. I wouldn't say it was an individual effort. It would have been like we all agree, "Okay, let's do business cards." And then it would be like, "Okay. What do you want on a business card? So it will be you, you and you."

All right. Did you individually come up with the aliases and provide Mr Sanber with instructions as to what the aliases were that were to be included on those business cards?---So, so, so we would have come up with our own alias individually, so - - -

10

All right. So when you say we would have, do you actually remember that or - - -?---Yeah, I do remember, then we all laughed 'cause it was, yeah so it would have been, I remember I called myself Anthony, Anthony Lee and then they said, "Yeah, 'cause you're Asian." And Raja would be like a, you know, like a white name and Nima, Nick, you know?

So you recall discussion about that?---Briefly, yes.

Right.---Vaguely.

20

Right. And what was the point or purpose of having the business cards, do you remember?---Just to get work, as in just to hand it out.

Right.---Yeah.

30

So was it the intention that you would, that is, the three of you who had the business cards would go to meetings and hand them out or that one person would take other people's business cards to the meeting and hand them out?---I'm not too sure. I don't recall that detail, the level of detail we went to. It's just that we said we'd print out some business cards, obviously, 'cause the initial start of this business is to go out to seek work.

Right.---Yeah.

So to the extent Mr Sanber's evidence was that the business cards were simply for some purpose in making the business look bigger, would you agree, bigger than it actually was?---Yeah, I would say, yeah, that would be towards that idea as well.

40 You would agree with that?---Yes.

Right. And how would they work in that sense, simply that there seemed to be other people with matching business cards to the ones that were being handed out? Is that - - -?---It's just more employees in the company.

Right. Right.

THE COMMISSIONER: But were you to use your own names in the company?---I don't think that was the idea because we were working for someone, or we were employed by, we were all employed so - - -

10

So you weren't going to use your real names?---No, I don't think so.

You were just going to use the aliases.---The aliases, yes.

So how were you going to be bigger?---I don't know. As in, it was just the idea at the time.

Sorry. Yes.

20 MS DAVIDSON: In relation to the Victoria Street project - - -?---Yes.

- - - that is, moving on from the ASN or TRN period, at the time that the Sanber Group was incorporated, did you, which is 2015, did you at that point have an agreement with Mr Sanber and Mr Abdi in relation to you being Mr Sanber's partners in that company?---Well, originally I didn't know he opened his own business or opened his own company - - -

Right.--- - - - until they came up to me and said, "Raja got, opened up his own company."

30

Okay, so it wasn't at the time that it was incorporated, is that - - -?---That, that's correct. Yeah, he just came to me when, 'cause I kept in touch with Nima and then he said, "Oh, yeah, Raja opened now his own company." So, yeah, he was just informing me that he opened his own company.

All right. And was there, after you learned of that, was there some discussion between the three of you or, alternatively, just between you and Mr Sanber as to you becoming a partner in that company?---No, I was, I don't think I was ever going to be a partner or, or seen as a partner.

40

All right.---It's just the profit, just the project I was involved would just be -
- -

THE COMMISSIONER: Sorry?---Just the project I was involved I would
receive - - -

So you were never a partner in RJS?---Sorry?

10 You were never going to be a partner in RJS or the Sanber - - ?---Sanber
Group, Sanber Group.

MS DAVIDSON: We're talking about the Sanber Group at this point.
---Yeah, Sanber Group, yeah.

THE COMMISSIONER: Sorry, Sanber Group.---Yeah. So he just, the
only project I participate, I get a profit share.

20 MS DAVIDSON: All right. So in relation to at the outset of - well, to your
understanding, what was the outset of Sanber Group's involvement in the
Victoria Street? Did they - that is, did Mr Sanber or Mr Abdi come to you
at an earlier stage in that project and say, "Will you be a partner on this
project rather than in the company?"---I wouldn't say a partner. I would
just say would you be a part of the project but not a part of the company,
yeah.

30 Yeah, so in relation to the project I'm just trying to place, to your
understanding, when or if you entered into some form of agreement or
understanding with Mr Sanber about you receiving a part of the profit from
the Victoria Street project.---I don't know. I'm not too sure how it started.
I think it might have started through Nima 'cause all my correspondence
went through Nima to Raja. I had very minimal interaction with Raja.

Okay. So you might have started through Nima.---Yes.

Are you able to recollect any more clearly when or what was the nature of
the contact that Nima had with you about becoming part of the project?
---Oh, I think he - - -

40 Victoria Street.--- - - - it would, it would have been like something along
those lines of, "Oh, there's a project in Vic Street that I guess Abdal is

project managing.” At the time I didn’t know who Abdal was so he said, “Yeah, we can price this job and then we’ll split the profit.”

Okay, so where you say “we” - - -?---We as in the three of us. But at the, at the, at the time I didn’t know Abdal was involved or how he was involved.

Okay. But he told you on your evidence just now, he said, “Well, Abdal’s the project manager”?---Yes. He said there’s a guy named Abdal.

10 Okay.---I didn’t know what’s his relationship with Abdal, yes.

I see. And did you understand, when Mr Abdi came to you with that plan or that proposal, that he’d already agreed it with Mr Sanber?---I would assume so, yes, yeah. I would assume it would be the same as the, the ASN or TRN setup.

Okay.---A three-way split, yeah.

20 But it was before the pricing of the project commenced?---Yes, it was before the pricing of the project, yes, so it was just my assumption that it will be the same, same way we did with ASN.

All right. So did Mr Abdi say we can share the profits as part of that conversation?---I cannot recall.

Right.---But I would assume so.

30 Okay. You - - -?---‘Cause I would have got the profit so, I received the profit.

All right. The profit - have you been following the evidence that’s been given in the course of the public inquiry, Mr Nguyen?---Yes, I have.

All right. So you’ll understand that the inquiry’s heard quite a deal of evidence in relation to the profit split for Victoria Street.---Yes, yes.

And the disputation that occurred in relation to it.---Yes.

40 Right. I’m just trying to ascertain your version of events in relation to what was agreed when you first became part of the project, and we’ll come later on to the dispute.---Okay, yep.

But just in terms of what happened at the beginning, did you just assume, as a result of having been part of ASN and TRN, that the profit would be split three ways with Mr Sanber and Mr Abdi?---With the, that's correct, yes.

Do you recall ever asking Mr Abdi about that or him ever saying anything to you about it?---Possibly but I can't recall.

Okay.---Yeah.

10

Do you recall having any discussion with Mr Sanber at - this is at the outset of the pricing stage - - -?---The beginning, yep.

- - - about profit splitting?---Possibly but I can't recall.

Okay.---Yeah.

20 Right. Do you think that you had that discussion, that is about profit splitting, at some stage before the question of the profit split became something you were arguing about?---Yeah, we would have, we would have to, yeah, 'cause then, yeah, we would have had that discussion.

So you would have, you would have had to.---Yeah.

Why did you have to?---Because then we will know what we, I guess, getting ourself individually involved in.

30 Right.---So I wouldn't be doing, you know, the SWMS and stuff like that and - - -

You wouldn't have worked for free, is that your point?---Exactly, yeah, exactly. So what was the benefit of doing something to benefit, you know, Nima and, and, and Raja.

Right. You had no reason to benefit Sanber Group, to use your time, unless you were getting profit out of it, is that - - -?---Exactly. Exactly. Because it does take time to, you know, produce documents and do the inductions and all that stuff, yeah.

40 And you did quite a number of safety inductions for people who weren't you, is that right?---That's, that's correct. That is correct, yes.

And did you agree with Mr Sanber and Mr Abdi, that is that at that early phase where you were pricing, that you would manipulate the tender process by using Ballyhooly and Dabcorp?---I don't think we used Ballyhooly.

I'll come back to that.---I think it was, yeah, Dabcorp, so Raja and there was a, there was a third company Rapid, was it?

10 Just coming back to the question of what you must have agreed or you said, "We would have had to have agreed" in relation to profit splitting. Are you able to place, during any time in the project before it became a matter of argument between you as to what the profit split was?---Oh, yeah, it would have been - - -

Any discussion in relation to that beyond saying you would have or you must have had that discussion, are you able to place any conversations about it or remember anything about agreeing that?---So it would, it would, it would have been, so we, I would have got the cost price from SDL and then, obviously, then they would talk about the markup and they would say,
20 "Sweet, we'll split the markup." Yeah.

So it would have been at the point you think that you got the price back from Mr Laphai?---At the, exactly. Because we don't know what was the markup. So, and then we would have got the markup from Nima which he would have got it from Abdal.

That is relying on the budget information?---That's correct.

30 Enabling you to - - -?---Mark it up.

- - - price the markup to as close to the budget as possible, is that what you remember happening?---From, that, that, that's correct, yes.

And do you remember actually having a discussion of the markup?---It wasn't, I wasn't too involved on that conversation. I think it was more between Raja, Nima and Abdal, yeah.

40 Did they come to you and, that is any one of them, come to you and mention what the markup had been?---Oh, yeah, so they would inform me of what they decided. I, I don't think I was in the decision making. Like, I was just the, I guess, the guy that receives second-hand information at the time, yeah.

But you understood that you were informed about it?---Yes, that's correct.

In relation to - could we have page 194 of the transcript of the public inquiry brought on the screen? So Mr Nguyen's evidence. You'll see you were asked some questions in relation to the process on Victoria Street. You see there your answer is, "So, I guess my role was to bring in a builder and get them to price the work there".---Yes.

10 So was that an accurate description in relation to the work that you did in the initial pricing phase? Was there further work that you then did on the project, that is the Victoria Street project?---Yeah. So, so I think they were trying to get a builder in so then I said, "Oh, I know a builder", which is SDL Projects, Seng's company, and then, yeah, I would assist in pricing the job and then after that then, then I guess they become, they, they give us a price, I would forward it onto Nima and, and Raja and then from then on I left up to them to see what was the markup but throughout that whole project I would assist in, I guess, documentation, producing documentation and doing safety inductions.

20 Were you also assisting in relation to effectively managing Mr Laphai, given that Mr Sanber's evidence was that he had numerous difficulties with Mr Laphai?---Yeah. So when, if he had a problem with, I guess, Seng's and his company then he will go to me and then I will just say, "Okay, hey Seng, what's going on?" then pretty much, like, put my foot down saying, "Okay, you need to do this, you need to do this."

And did that take up a reasonable proportion of your time?---I can't recall. It did take some time.

30 And was Mr Sanber aware that you were fulfilling that role?---Yes. Because he would have come to me and he said, look, Seng's not, say, his boys are, say not rocking up on time or, you know, they, they, they're behind schedule or what's going on? Where's the windows at? Then I would just pass on that message to Seng 'cause I have a relationship with Seng.

Right. How did you come to understand that Mr Aziz was going to form part of the profit sharing arrangements for Victoria Street?---Well, Nima eventually told me.

40

Right. When you say Nima eventually told you - - -?---Yes.

- - - do you recall when that was?---It probably must have been the beginning (not transcribable)

Must have been at the beginning?---Beginning, yeah, the beginning of the, I guess the, the pricing stage, saying that, "Yeah, we get a price, I have Abdal in there and then he'll tell us where to put it."

10 All right. So did you understand that to be before Mr Aziz had taken any role that would be unusual for a Downer project manager in relation to managing the subcontractors on the site? On his evidence, he was ultimately doing much more than he would have otherwise been doing because he was working effectively for Sanber Group, as well as working for Downer, managing subcontractors on the site because Mr Sanber wasn't doing that. Did you hear that evidence?---Yes, I did.

Right, and we heard, that is the inquiry heard evidence that Mr Aziz's requests for payment related to that work rather than an earlier agreement in relation to him sharing part of the profits. What's your - - -?---My thoughts
20 - - -

- - - understanding of that evidence in relation to Mr Aziz and the profit sharing arrangements in relation to him?---Well, from my, from what I can recall, or from my point of view, I, I thought there was always agreement that he or that Abdal was always going to get a profit, profit share, yeah, 'cause of the system - - -

All right. Well, I'm asking for your recollection. Do you remember being
30 told by Nima that Abdal would get a profit share?---Yes. Yes.

Right. And so when you said he told you eventually, was that further down the track than originally discussing profit with you?---That's correct, yes. So that would, I would imagine it would have been after they put a price in and say, okay, Abdal helped us out. He's, he's, he, he, he wants a cut.

Right. And do you recall being told what that cut was?---I know the cut but I don't know when, I, I can't recall when I was told the cut, yeah.

40 Okay. Did you understand his cut in any way to be as a result of work that he actually did on the project, that is, acting as a quasi project manager for

Sanber Group?---Well, I recall having a discussion with Abdal, I guess, venting about the amount of effort he has to do, just to cover SDL's, just to cover SDL, just the, yeah.

Right. That is he was - - -?---Manage SDL.

- - - concerned that SDL - - -?---Is slipping - - -

10 - - - needed a lot of management onsite?---Exactly, yes, 'cause Raja's never there.

Right. So you do recall him coming to you with those concerns?---I, yes, he would vent to us. He said, "Can you come up?" And I said, "I can't come up." I said, "Where's Raja?" And he said, "He's not answering his phone," or blah, blah, blah, he'd make some excuse, yeah.

20 Right. Did he, that is, did Mr Aziz first attempt to get you more involved in that process, that is of managing SDL?---I don't think, well, he attempted, but, yeah, it just phased out pretty quick 'cause he knew my situation, yeah.

Okay. That is the fact that you are already working for Inner West Council at the time?---That and - - -

And the personal situation?---Exactly, personal, more the personal situation where I couldn't leave my family to go up there, 'cause it's a far drive, a drive.

30 Right. And do you recall as part of his venting to you, to use your word, him saying, "I want a bigger cut"?---No, he was just venting about he's just doing a lot of work, but nothing, he never mentioned to me about a cut, yeah.

All right. But did you understand by the time of that conversation that he was getting a cut?---Yes, yes.

That is, he wasn't working for free?---Yeah, he wasn't working for free, no. Yes. I knew he was getting a cut at that time, but he was just venting, yeah.

40 Why was he venting about it if he was getting a cut? Do you understand what the complaint was?---Because I - - -

Did he think that he should have done no work in relation to the cut?---No, I think 'cause he expected Raja to be there on a regular basis, to actually manage rather than himself, like, to, like, he, like, expect that, that, yeah, Raja there, we all expected Raja to be there, to manage.

Could we have page 196, so two pages forward in the public inquiry transcript, brought up on the screen? You gave evidence in response, you see underneath the line that says 30, on the left-hand side there?---Yes.

- 10 There's a question, "Had you had discussions with Mr Sanber and Mr Abdi at the time you first became involved in the Victoria Street project in relation to whether you would be paid for your work, how the profit would be split?" And you said, "Yeah, there was some, yeah, so there would be a split with - I can't recall that the split would be 50% to Abdal Aziz, and then the rest, the 50 would go to us three and then we split into three again." I think perhaps that should be "I can recall that the split would be 50% to Abdal Aziz", but from what you've said today, was that not a discussion - that is about 50% going to Abdal - was that not a discussion you had at the outset but one that was a little bit down the track, perhaps after the tender
20 had been won?---Yeah, that's, that's what, I can't recall when the discussion was made but I do recall the discussion was made.

Okay.---Just I know the time of it.

All right. And was the figure put on it, was it just Abdal will get a cut or was it he'll get 50%?---I can't recall if it's 'cause of the hearing what I've heard - - -

Sure.---Yeah, yeah.

- 30 Right. But do you think there was at some stage prior to there becoming a dispute between you - that is - - -?---Yes, so before the dispute, yes, there was a clear-cut, hence the spreadsheet I made - - -

THE COMMISSIONER: Sorry?---So before this dispute with, within I guess ourselves, amongst ourselves, yeah, there, there was a clear-cut of who's getting what. Hence the spreadsheet I created to circulate.

- 40 MS DAVIDSON: Right. 'Cause Mr Sanber's evidence was that he was surprised to be receiving these requests for cut or for a cut or for payment from either Mr Aziz or you or Mr Abdi. What's your response in relation to

his evidence that that was a surprise to him?---That's, that's not true because my, my spreadsheet was circulating with, within ourselves and then everyone had feedback on it. So he would, so he would have sent his spreadsheet first. He would have tweaked this spreadsheet to suit his, I guess, situation. And then I would have just done my own investigation and tried to, you know, tried to put everything together, what, what's the real profit of, of the project.

10 All right. Well, his evidence was that he was attempting to persuade you that there was no profit of the project. Do you recall those - - -?---No, there was never a discussion, no.

- - - those discussions?---No.

And that he wasn't making any money at all.---No, they were never, yeah, we never had that discussion.

20 Right. Could we have volume 8.1, page 207 brought up on the screen. This is a spreadsheet that was attached to a Guerrilla Mail email. I'm not suggesting it's a document that you made. It appears to have, on the evidence, to have been a document that was at least edited by, if not created by, Mr Aziz. Do you recall seeing this spreadsheet at the time?---I don't recall seeing this, but if he sent it to my email, then I would have seen it.

Right. There was certainly discussions, that is messages between the two of you - - -?---Yes, I can recall the message.

30 - - - in relation to him preparing a spreadsheet as well as you preparing a spreadsheet? Do you recall that?---Yep, I recall, I recall that, yes.

Right.---So I recall he does his own investigation and I do my investigation and then we'll meet halfway and see.

You were comparing notes, effectively?---Exactly, comparing notes, that's it, that's the word, comparing notes, yeah.

40 Right, right. And so do you recall in the course of that comparing notes process having a look at his spreadsheet?---I must have if I was to give him feedback or comparing to my notes, but I don't recall this spreadsheet.

All right.---Yeah.

You'll see that in the left-hand column - well, not in the column but down the bottom, effectively in the notes, there's a series of figures for total credit. Do you see that, on the bottom left-hand corner?---Yes.

And there's a number of payment figures indicated there and there's credit to AZ as of 15/4/2018 and total credit paid to NT as of 15/4/2018.
---Yes.

10 Do you recall receiving payments out of the profits of Victoria Street as the project was going on?---No, I can't recall. I, I can't recall receiving, as in partial payment along the way, as along - - -

Yeah.---No, I don't, I don't recall.

But it wasn't necessarily along the way but by the time - - -?---Like, during the process - - -

Before the time that the - - -?---The project was complete.

20

- - - dispute occurred with Mr, or around the time the dispute was occurring. Do you recall having effectively some credit from him by that point, some payments made by him?---No. I can't, no, I don't recall, no.

All right.---To me this especially doesn't, I don't, it doesn't make sense to me what the credit means, yeah.

Are you aware of a company called Sadco?---Throughout this hearing, yes.

30 Is this hearing the first time you've heard of Sadco?---No. It rings a bell. It rings a, yeah, so Sadco, it rings a bell.

When you say it rings a bell in relation to what?---I think that's how, I think, Raja was I guess getting money out.

You think that's how Raja was getting money out.---Yeah.

What more can you tell the Commission about that?---Oh, he was just dealing, so it was, Raja was dealing with that side of things. Like - - -

40

And when you say getting money out, that's getting money out for you and Mr Aziz and Mr Abdi?---That's correct.

And that was money that on your evidence was paid in cash?---That's correct.

Do you recall any discussion about Sadco or SSD being - - -?---No. I just, as in, like, like what he did with ASN is source out, source a company or speak to the accountant to source a company.

10

When you say source a company, you mean source a company to provide invoices?---That's correct.

That could be paid?---That's correct.

And was that so that cash could then be distributed?---That's correct.

Did you understand that to be a mechanism to avoid paying tax?---Not at the time but hearing the hearing, yes.

20

You said it rings a bell in relation to what Raja was doing. Did he tell you at the time that he was using a company Sadco, did you discuss it with Mr Abdi, how did you become aware of it, do you remember?---It wouldn't be a conversation with Raja, it would be a conversation with Nima. So, like I said, I kept my distance from Raja.

Right.---So everything I hear was through Nima. So, but that Sadco does ring a bell, yes.

30 Do you recall being provided with a copy of Mr Sanber's bank statement?---Yes.

That was a hard copy document that had some annotations on it?---That's correct, yes, hard copy scanned version.

And some of those notes, you can take it from me, said Sadco.---Yes.

That is Sadco was noted.---Yes.

Do you recall whether when you saw that document at the time that you knew what Sadco meant?---Oh, yes. I would, I would have because I would have transferred that onto my spreadsheet.

That is you would have understood that Sadco payments were payments that had been made to those who were getting a cut of the profit, is that right?---That's, that's correct, yes.

10 Do you recall visiting - well, when you received the cash do you recall how it was that you actually received it? That is where it you received?---Oh, I, I didn't, I didn't receive the cash personally.

All right.---So Nima took my share and he held onto my share.

So, that was the funds that were then discussed between you and Nima in relation to what he held for you?---That's correct, yes.

20 And was it from that cash that your farm investment was - - -?---Was taken out of, yes.

- - - taken out?---That's correct.

Do you know where Nima went to receive the cash or whether it was brought to him somewhere?---I, I can't recall, yeah. I didn't pay attention to that.

30 Do you recall being told anything about Sadco charging a fee for this service that was being provided to Raja?---Not that I recall. So all I heard is that this, Raja has someone just like ASN. So - - -

Has someone just like ASN, that is - - -?---As in the same setup as in just to get cash out, yeah.

A service to get the cash out?---Exactly, yes, yeah.

Once there was a dispute in relation to the profits, do you recall any conversation in which threats were made to Mr Sanber?---By whom? By anyone or - - -

40 Well, by anyone or a conversation that you were a part of?---Not that I recall, no.

All right. Did you yourself have conversations with him as part of that dispute?---I don't think I spoke to him.

It was through Mr Abdi, wasn't it?---Through My Abdi, yeah, or I remember we had a, one phone conversation where he was on loudspeaker where myself and Nima was in the car. So we both of us had a conversation with Raja going through the, his bank statement that he provided.

10 Right.---Yep.

And what do you recall about that conversation? You went through the bank statement?---Exactly.

Did you question entries in that bank statement?---Yes, we said, "Why is this so high? Who is this poor guy? Why is it, like, you know, 100,000 just for a bit of small brickwork," and stuff like that.

Okay.---Yeah.

20

And to the extent that bank statement showed Sadco payments, do you remember in that conversation saying, "Okay. Well, that's money that's money that's come to us," or, "That's what we've already got"?---Exactly, yeah. So the Sadco payment was, that's, that's the profit.

Right. So the conversation, if the Sadco payments had already been made by that point, the conversation was really about the outstanding profit, was it, that is, how much more you should get at the end?---Left, remaining, yes. Yes. Yes.

30

Right, what remained. Do you know in respect of Mr Abdi's profits out of Victoria Street whether, well, do you know what he did with those? The cash that he was paid in, well, the cash or the proceeds of the Victoria Street project?---Oh, so he would he, he would, so he would have had it with my bundle, my, my profit share.

Right, that is a bundle of cash that he held.---That's correct, yes.

As a result of both.---Yes.

40

Did you - - ?---Sorry.

Please continue.---So he would have kept my share at his property, and then if I needed it I would go there and take it.

Right. And do you recall doing that at times?---Yes. Occasionally, yes.

Right. And how did he hold that there?---Until I had zero funding.

Right.---Yeah.

10

Do you know whether any of Mr Abdi's profits from the Victoria Street project were taken by him in the form of payments for things to be done on the farm that were made by Mr Sanber?---That was deducted from my, I think, if, like, I vaguely remember it was deducted from the overall profit share between the three of us, the 50%.

Sorry, it was deducted from the overall profit share as between the three of you.---Yeah, which is the 50%, 'cause the other 50 was to Abdal.

20 Right.---Yeah.

So that's my question. Do you recall whether there were some, you've given some evidence that you understood that some farm costs of Mr Abdi's were paid out of the profits from the Central project.---That too, yes. Yeah.

Right. I'm asking you now the same question effectively in relation to the Victoria Street project. Are you aware of whether farm costs of Mr Abdi's, any of those were paid out of the Victoria Street project proceeds or the profit proceeds?---Yes. Yes, I think the shed and the greenhouse came out of Raja's company which was then deducted from our profit share.

30

I see. Right. And were you aware of that at the time?---Yes. Yes.

Okay.---'Cause they would have told me, "We're going to spend this much on the farm," or on the shed or whatever they need to do, and I said, "Yeah, that's fine."

Right. So insofar as Mr Abdi's perception of his profits was perhaps lower than the figure that was shown on the spreadsheets, that was because some of the costs had been paid in relation to the farm, was it?---Possibly. Possibly. I need to see the spreadsheet just to - - -

40

All right, but you did understand that there were farm costs paid on Mr Abdi's behalf out of the Victoria Street - - -?---That's correct, yes.

Did you understand Mr Sanber to be a partner in the farm business?---He was originally, yes.

10 Right. He was originally. Was there a point at which that stopped after you fell out?---Yeah, when we fell out, and then he said, "I don't want anything got do with the farm."

Okay. So to the extent that Mr Aziz was asking for there to be some agreement made as between the three of you as to whether farm costs should be split two ways or three ways that is by the time in April 2018 that there was dispute between the four of you - - -?---Yes.

20 - - - did that relate to whether Mr Sanber was or wasn't still a partner in the farm?---Yeah, that would have been related to that we had the, after we had the falling out that he wanted out. He didn't want anything to do with myself and Nima.

Right. And do you recall conversations about that subject in relation to how payments should be made, that is how the farm costs should be split? ---Yeah, well, originally it was supposed to be three ways and then it got to a point where we were just going back and forth and I just told Nima we'll just, me and you we'll just cop his, his part.

Okay.---Yeah.

30 All right. So that was the eventual resolution?---That's right. And then he, yeah, so we'll just - instead of splitting it three ways, we'll split two ways, my share and Nima's share.

All right. And do you recall how the dispute was ultimately resolved with Mr Sanber? That is in relation to final payment of money out of the Victoria Street project?---I think based on my spreadsheet.

40 You think that your spreadsheet ultimately was the one that - - -?---I think so, yes.

- - - was followed?---Followed, yeah, was followed, yes, yes.

All right. Do you recall how that was ultimately agreed?---I think after we split the farm costs between two, between myself and Nima, that was the final figure.

Right. But did Mr Sanber agree, to your understanding, to pay that final figure?---Oh, he must have, yes.

10 When you say “he must have”, is that because you remember getting paid - -
-?---That’s right.

- - - an additional amount of cash - - -?---That’s correct, yes.

- - - after the conversation, the disputations conversations between you?
---The falling out, yeah, that’s correct, yes.

Right. And do you recall how long afterwards that was paid?---Oh, I can’t recall. The time frame I can’t recall.

20 Okay. But you do recall receiving a payment or Mr Abdi receiving a payment on your behalf?---That’s correct, yes.

And do you remember how you learned that had been made?---When, when you say - - -

How you found out the payment had been made.---As in, as in through, as in - I don’t understand that. I don’t quite understand the question.

30 Well, if the payment was made in cash and I - - -?---That’s correct, yes.

- - - I recall, well, your evidence was that Mr Abdi was receiving that on your behalf. Do you remember him telling you that the final payment had been made?---Oh, yes, he would have told me, yes, I got the final sum from Raja.

Okay.---And then he said it’s with me. I said, okay, keep it with you.

40 Right, okay. Could we have page 252 of the public inquiry transcript brought on the screen. This is your evidence in relation - or questions you were being asked in relation to the Kingswood project.---Yes.

And arrangements that were made with Mr Pilli. And you were asked, if you see under number 10 on the left-hand side of the column there, “So there was some understanding that he would receive a portion of the profit?” And you said, “He did receive a portion of the profit.” There were then some further questions. You were asked around line 20, “Was there an understanding between you?” and you said, “Yes, there was an understanding.” And then you were asked, “And do you remember whether there was an understanding beyond that it would be split three ways?” And you said, “I would assume it would be split three ways because he said there
10 was a project engineer from Downer involved and then he’s doing, I guess, the legwork.” And that was Mr Pilli. Where you say you would assume it would be split three ways and he said there’s a project engineer from Downer involved and that he’s doing the legwork, do you recall when in the course of the project that you were told that by Mr Abdi?---Oh, it’s hard to say ‘cause I remember having a conversation with him. I don’t know when the conversation, but I remember having a conversation saying that there’s a project engineer Sairam and we’re going to have to go three ways. He wants in.

20 Okay.---But I don’t know the time frame of when that conversation was made, yeah.

Okay, but did you understand from - well, is it fair to say that from early in that project or the tendering process of that project you understood that there was a project engineer - that is Sairam - and he wanted in as well?---Yes.

Right.---So not particularly Sairam but he said there was someone.

30 Okay. You didn’t realise it was Mr Pilli at that point?---It was, exactly, ‘cause I never, I never heard of him before.

Okay. Scrolling forward to page 254 of the transcript. You were asked some questions in relation to the variations on the Kingswood project and you were asked, “But he was, as you understood it, giving instructions to Mr Pilli about approving them. Is that right?” And you said, “Yes, that’s correct,” that is Mr Abdi was giving instructions on your evidence to Mr Pilli about approving them. Did you understand that Mr Pilli had the capacity to approve variations in relation to the Kingswood project?---
40 When, when I say, so, I’m, I’m, I don’t think I was clear at the time. So when I say “approved” I mean, he would have done, I guess made an effort

to get it approved, 'cause I knew a project engineer's capacity, they don't have the delegation.

Right. So you knew that Mr Stanculescu had to approve them?---That, that's correct, yes. So what I meant was, yeah, he would have made an effort, trying to get it over the line.

10 And at that time, that is during the Kingswood project, did you understand Mr Stanculescu to have any knowledge of what was going on between you, Mr Abdi and Mr Pilli?---I don't think so, as in, from, from my recollection, I had nothing to do with, with Vlad, yes, but - - -

Had you met Vlad in the course of the Kingswood project?---Maybe once or twice, but it, it was more on a professional level.

20 Right. Could we have page 264 of the public inquiry transcript brought on the screen? You were asked here some questions in relation to information that was obtained by Mr Abdi in relation to the new TAP projects, that is, Banksia, Birrong, Wollstonecraft and Roseville?---Yes.

20 You indicated that Mr Abdi had said, "[REDACTED] downloaded this for me" and you said in the middle of the page there, it would have been for the four, and then you were asked, "Are we talking about Kingswood?" And you said, no, this was the new TAP. "And you received a budget document from Mr Abdi?" "That's correct." And then he said to you, this is below line 30, about line 34, "And he said to you that he'd got it or that [REDACTED] had downloaded it. Is that right?" And you said, "Not that, not for that particular file. I assume that came from Sairam because that was the Downer budget," and then you were asked to confirm that you had a Downer budget. Do you
30 recall that the Downer budget that you had also related to those four stations?---So, so the Downer budget that I was, I received from Nima was the four stations.

Right. So it wasn't unique to Banksia?---No, so it was, so it was one Excel sheet that had four tabs, yeah. And then each tab is each station.

All right. And do you recall the circumstances in which he provided that to you?---As in?

40 As in Nima.---So he, I think he sent it through WhatsApp, yeah. WhatsApp or - - -

Did he tell you that or is it possible he sent it to you through Wickr?
---Possibly, I can't remember if he could send anything through Wickr,
which is more a chat.

Right. Okay.---But I could be wrong, like, I, I don't recall. It's, it's, so (not
transcribable) I would have received it either through Wickr or WhatsApp.

10 Right. Do you recall when in relation to the preparations for those, that is
preparations for RJS tendering on those projects or some of those projects,
that you received that budget document?---I, I, I can't recall the actual time
line of it or time, yeah.

Do you recall discussions with Mr Abdi in relation to trying to obtain those
documents from Mr Pilli?---Yes, 'cause he would have said, 'cause it's, it's
a Downer budget, so the, he would have got it through Sairam, so, yes,
'cause - - -

20 So it couldn't have come from Mr [REDACTED], could it, as a Downer
budget?---No, 'cause, 'cause I don't think Transport have access to Downer
budgets.

Right. Is there any reason that Mr [REDACTED] would have had the Downer
budget at this point in the procurement process, so far as you understood it?
---I don't think, well, I, I don't know, why would he, had it at the time,
yeah, as in - - -

30 As in, your question would be why would he have had it at the time? You
don't understand that he would have?---Yeah. Exactly, yeah, 'cause it was
more for, I guess, Downer, Downer staff, yeah. It doesn't relate to
Transport.

Right. Okay. Can we have Exhibit 165, the transcript, brought up on the
screen, and the call played? This is a call, session number is 03839 and it's
on 3 June 2020 between Mr Nguyen and Mr Abdi. If that call could be
played.

40 **AUDIO RECORDING PLAYED**

[3.35pm]

MS DAVIDSON: We can stop playing the call now. Returning to page 2 of that transcript, this seems to reflect a period of time where you don't yet have, or Mr Abdi doesn't yet have a budget from Mr Pilli, would you agree?---Yes, yes.

And he indicates, "Banksia, I know it's rubbish, like, it's small but I need to see the budget so I know what we can go for. Do you know what I mean?" Did you understand him there to be referring to the Downer budgets? Because presumably, on your evidence, he obtained a Transport budget.---
10 Yeah. It would have been a Downer budget, yes.

Or he would have had access to an Transport budget through Mr [REDACTED], is that right?---That, that's correct, yes.

And that was your understanding at the time?---Yes.

Mr Abdi said, at the bottom, well, in response to a comment from you that, "Yeah, I know, but if it's all legit then we're up against, you know - - -" and he indicated in response to that, "We're fucked. Like, that's what I said,
20 that's what I said, what I was thinking. We can go legit, right, and do some of the building packages on some of the stations." Did you understand what he meant by that, the doing some of the building packages legitimately?--- Oh, like, as in actually tendering properly.

As in not colluding with other - - -?---Exactly, yeah. So he had no control. So at this stage he was, I think from the sounds of it, he wasn't, didn't have full control. So he said, you have, I guess, you have to, probably, you have to go in legitly.

30 But he still intended to it with the benefit of the Downer budget?---That's correct, yes.

So did you understand his reference to doing things legitimately to pricing them having regard to the Downer budget?---That's correct, yes.

Which wasn't actually pricing them legitimately, was it?---No.

Scrolling to the following page. This is Mr Abdi saying to you, "Sorry, mate, we can't really do anything. It's a legit job and then maybe throw him
40 a carrot about variations and say, look, if you give us variations we'll cut you in 10%." Do you recall having a conversation with Mr Pilli subsequent

to this conversation with Mr Abdi about cutting him in on the Banksia project?---I've never spoken to Mr, Sairam.

About this?---About this.

Would you agree it seems Mr Abdi's suggesting that you do that?---Yes. He, well, Nima suggested me to do a lot of things which I didn't go through with.

10 Do you know whether Nima subsequently spoke to Mr Pilli about - - -?---
Oh, he would have had to, yes.

As in he would have had to because your understanding is he subsequently obtained the budget from Mr Pilli?---That's correct, yes.

And did he have a discussion with you that you recall subsequently about making some agreement with Mr Pilli, given that he had sent him the budget, about profit splitting for Banksia?---I vaguely remember. We, we just had a discussion about, yeah, he needs, he, he probably wants the same
20 set-up as Kingswood, a third, a third of the profit.

Right. Okay. And you think that was the discussion you had with Mr Abdi?---Yes.

All right. And did you agree to that?---I would have had, I would have to because if it, if it gets us work, then I would have said yes.

All right. Could we have exhibit 161, the transcript brought up on the
30 screen.

AUDIO RECORDING PLAYED **[3.46pm]**

MS DAVIDSON: This next extract is slightly later in the call.

AUDIO RECORDING PLAYED **[3.47pm]**

40

MS DAVIDSON: This is a slightly earlier conversation than the previous one about getting the budget - - -?---Yes.

- - - from Mr Pilli. It seems to be detailed instructions being given, or suggestions being given, by Mr Abdi to you in relation to a conversation with Mr Stanculescu. Did you ever have a conversation with Mr Stanculescu of the kind that's being suggested to you here?---No.

10 And why was that?---Because, like I said before, half the things that Nima told me to do I didn't do.

THE COMMISSIONER: Sorry, you need to speak up.---So, so like I said previously that half the things Nima told me to do I, I didn't do.

MS DAVIDSON: And do you recall why you didn't attempt to convert Mr Stanculescu to use the word that you used in conversation with Mr Abdi?--- (1) I don't think I was confident enough to pull off by myself and (2) I don't, I, I, yeah, I wasn't, yeah, I was uncomfortable, yeah.

20 Do you know whether Mr Abdi tried to do that, tried to have a conversation of that kind with Mr Stanculescu or did he have a conversation of that kind with Mr Stanculescu?---I don't think he, I don't think would otherwise he would have told me.

Could we go to page 5 of the transcript? You seem concerned in relation to Kevin Watters finding out about this. Do you see at the bottom of the page?---Yes.

30 And you ask several questions about Kevin Watters about not finding out. Why were you concerned about that?---Because at that time I thought Kevin was legit.

That is you thought there would be some consequence for RJS of Kevin Watters found out?---That, that's correct, yes.

40 So when Mr Abdi was telling you Kevin Watters got you Kingswood was that news to you at the time?---Yes. Oh, well, I, my, my take from that was that, because Vlad was on leave and Kevin Watters and had to, or stepped in as acting project manager for Kingswood, so he was the one that signed off the papers.

But you didn't understand it to involve anything about any arrangement between Mr Abdi and Mt Watters at that time?---That, that's correct, yes.

There was discussion about Abdal leaving and putting in a \$600,000 invoice. Do you have any idea what that related to?---I thought that was just an over-the-top comment. Just Nima being Nima, yes.

10 And in the course of discussion, if we could go to page 8, discussion of Mr Stanculescu, Mr Abdi says to you, "Mate, we already know he's dirty. We know the guy is fucking doing shit. He owns Dalski, right?" Was Mr Stanculescu's connection with Dalski something that you knew about at this time?---I, I wouldn't say knew. I, I heard about it, yes.

So where Mr Abdi says to you, "We already know the guys is fucking doing shit", was that conversation - well, were they conversations that you'd had with Mr Abdi about Mr Stanculescu's involvement with Dalski?---Yes. So, I think the influence would have, it came from Nima but then I did hear onsite as Chinese whispers.

20 When you say you heard it onsite as Chinese whispers, do you remember who that was from?---From, like, just rumour. I can't recall but it was from Downer staff. It could have been, like, Ross Dean or someone like that.

THE COMMISSIONER: Who?---Ross Dean.

MS DAVIDSON: Because Dalski had done some work on Kingswood, had it not?---At the beginning, yes, yeah.

30 At the initial stages?---Yes, that's correct. Yes.

And do you recall anything about what Ross Dean said to you?---No. It, it, I think Ross Dean was one of them but he didn't have anything good to say about them.

THE COMMISSIONER: Sorry, good to say about who?---Dalski.

40 MS DAVIDSON: But did he say anything to you about Mr Stanculescu's connection to Dalski?---Oh, he said Vlad was looking after them. That, that's it, that's, so he kept it very vague. So then I put the dots together from Nima's conversation and this conversation and other conversations on site and said, okay, so he must have had an association with Dalski.

So there was more than one conversation onsite, was there?---Yes, yes.

In which you were told about that association?---Yes.

Chief Commissioner, might that be a convenient time?

THE COMMISSIONER: Yes. We'll need to continue with your evidence on Thursday, I think.

10

MS DAVIDSON: Yes. I understand Mr Vo is not available tomorrow and thus I seek an adjournment in respect of the public inquiry to the Thursday 27 April, which I understand is the next day that's available.

THE COMMISSIONER: Are you available next Thursday?---I think so, yes.

2pm, is it?

20 MS DAVIDSON: 2 o'clock, yes.

THE COMMISSIONER: 2 o'clock. All right. And what did you want to do with Mr Aziz?

MS DAVIDSON: I don't understand at present there to be an intention to recall Mr Aziz.

THE COMMISSIONER: Right, okay.

30 MS DAVIDSON: So it would be at that time for Mr Nguyen's evidence to continue.

THE COMMISSIONER: I'm sorry?

MS DAVIDSON: It would be for Mr Nguyen's evidence to continue at that time.

THE COMMISSIONER: All right. Should I discharge Mr Aziz at this point?

40

MS DAVIDSON: I might just have a moment, Chief Commissioner. I understand no indication's been made to his representatives in respect of discharging him given that evidence is still to be heard in the public inquiry.

THE COMMISSIONER: I see.

MS DAVIDSON: So, no, I wouldn't make that application at this point, Chief Commissioner.

10 THE COMMISSIONER: Thank you. All right. Adjourn until Thursday at 2pm.

THE WITNESS STOOD DOWN [4.05pm]

AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.05pm]