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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 24 MARCH, 2023

AT 10.00AM

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

THE COMMISSIONER: Thank you. Mr Nguy, you're subject to the same affirmation you took yesterday to say the truth. You understand?---Yes.

Thanks. Yes. Thank you, Ms Davidson.

10 MS DAVIDSON: You can sit down, Mr Nguy. Mr Nguy, yesterday afternoon, we discussed an agreement that you had with Mr Nguyen in relation to being paid either 20% of the net profit or 10% of the contract sum as a kickback in relation to work that was awarded by Inner West Council to Constructicon. Do you remember those - - -?---Yes.

- - - that evidence? And I showed you a spreadsheet that indicated some payments having been made on 17 August 2017. Do you recall that?---Yes.

20 After that period in 2017, did you continue to keep track of kickbacks in the same way that you had in the spreadsheet that we had in evidence yesterday in relation to payments owed to Mr Nguyen?---I think it was that second table on that same spreadsheet.

All right. Well, we can bring back the sheet that we had up, so that is volume 6.1, page 28. So this is the Inner West Council progress claim tracker - - -?---Was there one more page? The next page?

- - - and there at page 29 - - -?---Yeah.

30 - - - if we could have that a bit bigger? Now, you'll see that reflects dates in the bottom part of the table there?---Yeah. Correct.

Through to March 2018?---Yeah.

But you continued to do, that is, Constructicon continued to do work for Inner West Council after March 2018, did you not?---I did, but that's when I stopped the tally.

40 Right. So when you say "stopped the tally" what do you mean?---Stopped, I've stopped putting it down, yeah.

Right. You've stopped updating it on this document?---Correct. Right.

Did you keep track of it somewhere else?---No.

And why was that?---At that time, the majority of my works was SDL so at that time, I was working in, full-time at SDL and, yeah. I don't think I was doing much work with Constructicon.

All right. Could we provide you with another copy of - - ?---Yeah.

10 - - - MFI 5? Mr Nguy, this was the table that you were given yesterday in relation to Constructicon jobs?---Yeah.

Have you noticed anything, well, looking at that table, you see there are jobs there extending past April 2018. There's the May Murray Child Care Centre upgrade, and then the Mervyn Fletcher roof restoration in 2019, the Mervyn Fletcher hall refurbishment, the toilet block in August 2019 and then work going through into 2020, Leichhardt Oval toilet in February 2020?---Yeah.

20 Do you agree that that all reflects work after the period that's shown on this spreadsheet?---Yes.

And do you agree that in relation to those projects, you also had an agreement or an understanding with Mr Nguyen in relation to paying him a kickback?---I think at that time, I was already working on the station jobs, maintenance and I think that's when Tony said don't worry about giving me anything for council.

30 He said don't worry about giving you anything for council?---Yeah.

Do you understand why he said that?---Because the focus was on the Transport jobs.

Right. Were you giving him something for the Transport jobs?---No, but I was doing the works.

40 So you thought that he was at some point changing your arrangement in relation to the Transport - I withdraw that. You thought that he was at some point there changing your arrangement in relation to the council jobs?
---Yeah. He wanted me to focus on the train station jobs.

But he was continuing to give you council jobs?---Correct, correct.

And he was continuing, so far as you understood it, to control the tender process to make sure that you were successful?---Correct.

And the value of those projects was considerable in relation to, for example, the May Murray Child Care Centre upgrade, that was a \$52,000 contract?
---Yep, correct.

10 And the Mervyn Fletcher roof restoration was \$89,000?---Yep, correct.

And the hall refurbishment was \$147,000 in terms of initial contract value?
---Sorry - - -

I'm looking at number 6, the hall refurbishment on the first page.---Yeah.
At, at that stage - oh, Mervyn Fletcher. Yeah. At that stage I wasn't working with SDL anymore.

20 Well, these are all Constructicon jobs.---Yeah, correct. So I worked with SDL for two years and then when I left SDL I focused purely on Constructicon.

And these were all jobs given by Inner West Council to Constructicon.
---Correct.

This is not a table that includes any SDL jobs.---Correct, yep.

30 So what I'm asking you is, in relation to these jobs that were after March 2018 and recorded here, is it true to say, to your understanding that they were still awarded to Constructicon in the way that you were describing yesterday, that is Mr Nguyen controlled the bidding process?---Correct, correct.

And Mr Nguyen disclosed to you in relation to pricing them council budgets?---Correct.

And Mr Nguyen told you how much to mark up your quotes?---Correct.

40 And is it despite that your evidence that Mr Nguyen didn't have an expectation or agreement with you in relation to being paid a kickback?
---Yeah. He told me - - -

Why would he give you that information, if you'd been doing it previously on the understanding of a kickback that you had between you, why would he change that arrangement?---Yeah. He, he said focus on the train station jobs.

But you weren't paying him kickbacks in relation to the train station jobs, is that your evidence?---I was working for SDL at that time and the focus with Tony was on the train stations.

10

But SDL wasn't working on the train station jobs at that time, was it?
---Maitland.

Maitland.---Yeah.

But after Maitland concluded.---Yep.

What period of time was Maitland.---I can't remember.

20 It was 2017, wasn't it?---Yep.

So, we're now talking about 2018 and 2019.---Yep.

Is it really your evidence that at that point there was no expectation of a kickback or understanding between you of a kickback from Mr Nguyen in relation to later jobs that you did for Inner West Council?---Yeah. I think I told him 10% of the contract sum, yeah.

30 You think you told him that?---Yep, but it was never tallied or anything,
yep.

So there was an understanding or agreement?---Yep, correct.

And do you recall the conversation in which you made that understanding or agreement?---Yeah. I think it was just to work of 10% of the contract sum.

So did you have that discussion for each project?---No, just after I left SDL.

40 After you left SDL.---Correct.

So for further jobs after you left SDL, do you have a memory of talking to him about what the agreement would be at that point?---Yeah, 10% of the contract sum, yep.

THE COMMISSIONER: Just a moment. So you left SDL in June of 2019, didn't you?---June 2019. I think that's correct but I was at, I was at SDL for two years.

Yes. So if you have a look at this document, MFI 4.---Yep.

10

From project number 5 downwards, they're all jobs you did for Constructicon?---Correct.

When you were not working for SDL?---Correct.

So do you say for each of those you had an agreement that you would pay Mr Nguyen a portion of the contract amount?---Correct.

20 Was it the same for each of those?---So I think Brown Road, Ashfield was an, an open tender and I just quoted that one.

What about the other three that are mentioned on that sheet?---Yeah, that's right.

On the first page.

MS DAVIDSON: So that is for the May Murray Child Care - - -

30 THE COMMISSIONER: Sorry.

MS DAVIDSON: I'm sorry, Chief Commissioner.

THE COMMISSIONER: Yes. So for Mervyn Fletcher roof restoration, 10%?---Yep, correct.

Mervyn Fletcher hall refurbishment 10%.---Correct.

40 Was there any agreement in relation to Ashfield?---I think Ashfield was, he was going to inflate the variation.

MS DAVIDSON: And if you have a look at the variation figure there showing in the second column in from the right.---Yep, yep.

You see the variations of \$25,000.---Yep.

Did you have discussions with Mr Nguyen in relation to inflating those variations?---Correct.

10 And was there an agreement that he would be paid a kickback in relation to the inflated variations?---Not a kickback but onto what I owe him.

Well, when you say onto what you owe him, that there would be an amount added - - -?---Correct.

- - - to what you owed him - - -?---Correct.

- - - in relation to the inflation.---Correct.

20 And turning over the page, the Leichhardt oval new accessible toilet that was \$99,000 in February 2020.---Yep.

Did you similarly have an agreement with him in relation to that?---Yep.

And what was that?---I think it was 10%.

And for variations on these jobs that you were doing such as, if you go back to the first page, the Mervyn Fletcher hall refurbishment where there was \$44,994 worth of variations - - -?---Yep.

30 - - - did you similarly have an agreement with Mr Nguyen about inflating those variations?---Yes.

And was there to be amounts paid to his tally or added to his tally in relation to those variations?---Yes.

And how did that work, was it a percentage of the variation or - - -?---I think it was just 10% of the final contract sum.

40 Right. So final contract sum taking into account the variations.---Correct.
Correct.

And you'll see that in the second part of this table there's a number of smaller jobs that you worked on throughout the period.---Yep.

That is under \$10,000.---Yep.

And so according to the council's process it wasn't necessary for Mr Nguyen to go out and get three quotes. Did you understand that?---I did.

10 And that he could directly therefore award that work to Constructicon.---I did.

And were those jobs similarly jobs where you were able to provide inflated prices as a result of knowing that the work would be awarded directly to you?---Yes.

And did you do that?---Yes.

20 And was there an agreement with Mr Nguyen in relation to being paid a percentage of the profit or the contract sum on those jobs?---Yeah. I think that was 20% of the net profit.

For the smaller ones?---Correct.

Right. And so for this work in 2018 and 2019 that Constructicon was awarded, you said you didn't put it on the spreadsheet. Was there any way that you kept track of what was owed to Mr Nguyen?---Just would be in the top of my head.

30 Right. And did you keep a running sum adding it up in the top of your head?---Yeah. From memory I think it was about 30.

About \$30,000?---Yep.

And did you ever pay that amount of money to Mr Nguyen?---No.

Did you talk to him about paying it to him?---The discussion was to use it for his house.

40 Right.---Yep.

And what do you mean, what did you mean in relation to using it for his house?---Just to cover my overheads when I was to build his house.

Okay. So the intention was that Constructicon would do some building work - - -?---Correct.

- - - at his house?---Correct.

Did that eventuate?---No.

10

Do you know why that was?---I think he just didn't go ahead with that duplex.

Right.---Yep.

Did you do other building work for him?---No.

If we could bring up volume 5.1, page 48. Now, this is not a document that you prepared. You can see it's an email from Mr Laphai to Mr Nguyen.

20

---Yep.

Attached to it is a spreadsheet. If we could go to the following page. You'll see here there are various projects listed. Have you seen this document before, Mr Nguy?---Yeah, I think so, yes.

You think so.---Yep.

Do you know how it is you've come to see it before?---It was on SDL.

30

I'm sorry?---It was on the SDL shared folder.

Right. You'll see there's a number of jobs listed there and the number 3 job listed there is Seaview.---Yes.

If you can go back to MFI 5 that's in front of you.---Yep.

Seaview was in fact a Constructicon job.---Yep, so from memory, Constructicon won the job and I, I built it, I did the job and then I, SDL invoiced me the full amount.

40

SDL invoiced you?---So as soon as it got paid into Constructicon - - -

That is you paid SDL for it?---Correct.

Do you know why that was?---That was the arrangement with Seng because I was working at SDL, I was using all, yeah, their resources.

So it was your arrangement with Mr Laphai?---Yeah, correct.

10 That if there was Constructicon work that was done, you would pay him for it - - -?---Correct.

- - - and, what, then what happened in relation to the agreement with Mr Nguyen?---I think it was 10% of the contract sum.

All right. So if you look at item number 3 here - - -?---Yep.

- - - for Seaview you see there's a total cost figure shown of \$86,000 with a net profit of \$15,000 - - -?---Yep.

20 - - - and Mr Nguyen to receive \$10,208, which is not 10% of the contract. Well, it seems to be 10% of the total invoiced amount. Is that your - if you look at the third column in from the left, there's a total invoiced amount. ---Yeah, 10% of the total contract sum.

Right. And so do you know whether that was paid to Mr Nguyen by Mr Laphai?---Not too sure. Seng, Seng handled all the money.

30 Right. Well, I think you gave evidence yesterday that you'd been part of speaking to Mr Laphai about the arrangement and how much Mr Nguyen would be paid for SDL work.---Correct.

And I think you said you'd seen this on the shared drive at SDL.---Correct.

That was while you were working at SDL?---Correct.

And so you understood, did you, from seeing this document, that Mr Laphai was keeping track of payments due to Mr Nguyen?---Correct.

40 Were you part of delivering those payments at any point?---No.

Were you aware of how Mr Laphai was paying Mr Nguyen?---My understanding was cash.

And you saw the messages yesterday when Mr Nguyen said to you he only wanted cash?---Correct.

Did you ever give cash to Mr Nguyen on behalf of Mr Laphai?----No.

10 You indicated that there were Transport jobs or train, railway jobs - - -?
---Correct.

- - - that Mr Nguyen became involved in. Do you recall when you first heard about those jobs?---Yeah, it was Maitland.

It was Maitland?---Maitland Station, yep.

20 All right, can we have volume 18.4, page 20 brought up on the screen?
Perhaps the previous page, 19. I'm sorry, 18. This is a message or a series of messages between you and Mr Nguyen in June 2017.---Yep.

He says, "Maitland Station." You say, "So far," and ask him whether it would be worth it. And he says to you, "Trust me, it will be worth travelling." If we can scroll to the next page, you say, "Hmm," to which he says, "I'm talking \$\$\$." You say, "KK." He indicates, "I'll help you out." And then if we can go to page 20, "I am back onboard next Monday." And he says, "If we can pull this off, then there will be more like that," and then there's discussion about catching up.---Yep.

30 Do you recall this series of messages?---Yes, I do.

Is this the first time you'd heard about the Maitland Train Station?
---Correct.

And do you recall catching up with Mr Nguyen to discuss the Maitland Train Station?---Yeah, I think we actually went onsite. I think I met I think with Seng and we met, or with Tony and I think Raj was there, Raja.

Was it Raja Sanber?---Correct.

40 And what do you recall Mr Nguyen telling you about the job in Maitland?
---It was a, yeah, a TAP, TAP program and the scope was building works to

the platform, doing the, the master, master room and FAT and the comms room. They were building works, yeah.

And when he said to you, “If we pull this off there will be more like”, did he explain in your later conversations about it what he meant by that?---Yes, he did.

And what was that?---That he knew someone in Transport, yeah.

10 And what did he say about that person in Transport?---Yeah. He said Nima, Nima in Transport and he can get the budgets for it, yep.

And what did you understand that to mean in terms of making money out of the project?---Yeah. So in terms of we would just price it up and then he would be able to get the budgets and we can inflate the price.

When you say, “We just price it up”, is that you as Constructicon pricing it up?---SDL, SDL.

20 SDL.---At the time I was working at SDL.

Did you do work ultimately on the Victoria Street Station?---Yes, I did. Yep.

And what capacity was that in?---I was pretty much the project manager. So I was onsite every day, yep.

Were you, in your capacity as the project manager, managing workers who were onsite there?---Correct, correct.

30

And they were SDL’s workers or SDL subcontractors?---Correct.

Can we go to volume 18.4? The page number is 1161 using the page numbers on the far right.

THE COMMISSIONER: Whilst we’re getting that, you said you were the project manager at Victoria Street. Whilst you were the project manager for that job how regularly did Mr Nguyen visit the site?---I would say probably, like, once, once a month. Yep. Tony did all the safety docs and inductions and pre-starts to get us up and going.

40

How long was he there for to do that?---No, this was all administration work.

I'm sorry?---This was all administration work, paperwork.

So he wasn't onsite doing that?---No.

Yes, thank you. What about Mr Abdi, did he come onsite at all?---Nima, I saw him, yeah, I think Victoria Street I didn't see him much. Again,
10 probably at the, the site meetings, TCG meetings.

What about Sanber?---Sanber I only saw him probably once at the start.

I see. All right. Is there some issue?

MS DAVIDSON: I'm sorry, Chief Commissioner.

THE COMMISSIONER: That's all right.

20 MS DAVIDSON: If we might just have a moment to bring up the correct page. I'll continue, Chief Commissioner, and we can come back to that. Were you aware, after the Maitland Train Station, of Mr Nguyen seeking to gain other work at train stations?---Yes.

Was the next project that you were aware of him being involved in the Central Station project?---No. I wasn't involved in that one. Seng was involved in that one.

30 Were you aware of Mr Nguyen using a Constructicon email address, an alias, in relation to preparing a bid for the Central Station project?---I don't think I, I'm aware of that.

If we could have the page brought up? So this is a series of messages between you and Mr Nguyen in August 2017 - - -?---Yeah.

- - - if you see the date there, 14 August at the bottom of the page?---Yeah.

If we can scroll from page 261 to the following page? Do you remember August 2017 being a period of time you were working at Maitland?
40 ---Sounds familiar, yeah.

Could we have the following page brought up? “Any chance of getting one more tiler,” this is you asking Mr Nguyen “Downer inducted for tomorrow or too less time?” If we can go to the following page? Mr Nguyen says, “Shit, eh? It’s hard ‘cause I’m back at work.” And then you ask, “Reckon if he signs in as Wilson, it will be okay.” You see those two messages? ---Yeah.

10 And then the following page, 264, Mr Nguyen asks, “Does he look like Wilson?” You say, “No, Asian, but.” And Mr Nguyen asks, “Who is it?” That’s page 264. If we could go to volume 18.4, page 265, you say, “It’s Johnny’s brother.” I’m not quite sure how to pronounce that but his first name seems to be D-u-c?---Yeah.

20 Mr Nguyen asks, this is the bottom of page 265, “When the boy signs in, does a photo printout on the sticker?” And going to 266, you say, “Yes. Reckon Downer will check the photo.” And Tony says, “Not really. Have they checked yours since you started?” This is the bottom of page 266 and the top of page 267. But you say, “No, I’m going to just let him sign in as Wilson.” Do you recall having this discussion at all?---Yeah. Vaguely.

Firstly, does it relate to the question of asking one of your subcontractors or SDL’s subcontractors to sign in, despite not having been inducted onto the site by Downer?---Yes.

And, in fact, using somebody else’s name to sign in, that is, somebody called Wilson?---Yes.

30 And the discussion about checking the photo related to your knowledge of the sign-in practices and whether anybody was being checked as they signed in, is that right - - -?---Correct. Correct.

- - - on the Maitland site? And was there somebody from Downer who you understood was supposed to be responsible for checking the sign-ins?---No. I think it was just that machine that we did the sign-ins, yeah. And it was a sticker, it was just a sticker that you put on your uniform.

40 THE COMMISSIONER: Sorry? It was a what?---It was just a sticker from a machine that you’ll stick on your uniform every morning when you do the sign-ins.

So it just produces a sticker. Okay.

MS DAVIDSON: 'Cause you were, in fact, working at Maitland according to your evidence yesterday under a different name, weren't you?---Correct.

So do you remember whether your sticker, in fact, had your alias name on it?---I think it, I think it had my real name, from memory.

But you were sending emails and presenting yourself to Downer staff using your alias name?---I think so.

10

Were you concerned about that discrepancy being picked up?---I honestly can't, can't recall.

I'd asked you a question about Central Station - - -?---Yeah.

- - - and you said you weren't aware of Constructicon being used for bidding at Central Station?---Yeah.

Would you be surprised if that was the case?---No.

20

Did you remember discussing with Mr Nguyen him using his Constructicon alias to make a bid at Central Station?---No.

But you understood him to effectively be able to do that?---Yeah. I knew he had free, free reins to use that email address.

Right. And free reins included not just in relation to Inner West Council work, but other work, as well?---Yes.

30

Right. Did he tell you afterwards that he'd used Constructicon - - -?---For, for Central?

- - - for Central?---I can't, I can't recall.

Did you do any work at Central Station?---I think it was SDL, yeah. I, I didn't personally do any supervision there, no.

Did you attend there at any time?---No.

To the extent that you were listed on work documents in relation to Central Station, that is your name, did Mr Nguyen discuss that with you at all?
---No.

Did Mr Laphai discuss that with you at all?---No.

Was that at a time when you were still working for SDL?---What was the date?

10 It was early 2019.---Yes.

Were you aware at that point that SDL was doing work on Central Station?
---I think so, yes.

But you didn't get involved in that, is that your evidence?---No, no.

The next railway job that RJS, that is Mr Nguyen's company, became involved in bidding for, was the Kingswood Station job.---Correct.

20 Do you recall that?---Correct, yep.

And do you remember being involved in preparing a quote on behalf of Constructicon for Kingswood?---Yes. That's when I left SDL.

So that was after you left SDL?---Correct.

Or sort of around the time you were leaving SDL.---Yeah. I think - no. I've already left SDL at that time, yep.

30 Do you remember Constructicon being invited to tender for that job?---Yes.

Do you know how that came to happen?---I think that was sent through from Sairam.

That is Mr Pilli?---Correct.

Because Constructicon hadn't done any work previously on - - -?---Any jobs.

40 - - - constructing railway projects, had it?---No.

None at all?---No.

And apart from doing work at Maitland you didn't have any experience in that area?---No.

And certainly Constructicon didn't because that was only you?---Correct.

Did Constructicon ever have any employees?---It was just myself, yeah.

10 And so after the tender went out you, well, Constructicon provided tender response.---Correct.

Was that a document that you prepared?---I think I only did the BOQ, yeah.

So when you say you did BOQ, what do you mean by that?---So, the bill of quantities, I just priced that up, yep, and then I think Tony took it from there.

20 So you priced it up then, what, you gave it, gave that pricing to Tony?
---Correct.

And so did you understand he was going to use that to prepare a bid on behalf of Constructicon?---Yes.

Did you also understand he would use that pricing for some purpose related to RJS?---Yes.

And what was that?---To get three prices.

30 So that he was also preparing a bid on behalf of RJS?---Correct.

Did you ultimately do work on the Kingswood project?---Yes, yes.

And in what capacity did you do that?---Again, I was the project manager. So I managed doing all the building works there.

So where you say you were the project manager, were you doing that as a subcontractor for Mr Nguyen?---Correct.

So is it the case that Constructicon was subcontracted to RJS to do the work, actually perform the building work at Kingswood?---Correct, correct, correct. Yep.

If we can have volume 6.3, page 401 brought up on the screen. Were you paid by Mr Nguyen or RJS in relation to your work at Kingswood?---Yes. I would put an invoice through and, yeah, RJS would pay me.

And did you provide any benefit to Mr Nguyen in relation to that?---No.

10

And was that because you had already priced in a profit for yourself on that work?---Yeah, correct.

This is a statutory declaration that you signed on behalf of Constructicon in relation to the Kingswood Station project.---Yep.

Do you recall signing this document?---Yeah.

It relates to payment of subcontractors and superannuation, that kind of - - -
20 ?---Yes.

That mind of material. It was witnessed by somebody called Anthony. Again, the surname is the same as the one we were discussing yesterday, H-u-y-n-h.---Yep.

Do you know who that person was?---That's my accountant.

So that's a real person?---Yeah, correct.

30 Were the contents of this statutory declaration true?---Yes.

Were you aware in relation to working on Kingswood that Mr Nguyen had contractual arrangements with Downer, that is RJS?---No. The only, only person that I, I knew was Nima that he had a relationship with, yeah.

Right. But you were aware that he was doing it under a subcontract with Downer?---Yeah. Correct. Correct.

40 That is Downer had been contracted by Transport for NSW, the head contractor?---Correct. Correct.

And they had subcontracted the work to RJS?---Correct.

Did you ever have any discussion with Mr Nguyen about what his contractual arrangements to Downer were?---No.

If we could bring up volume 22.11, page 11? Did you ever see his contractual document with Downer?---No.

10 I don't expect you in that case to have seen this document but I'm going to show it to you. Now, this is an example of a contractual document and the clause in relation to subcontracting. This isn't, in fact, the Kingswood Station contract but it's a contract between Mr Nguyen and Downer.
---Yeah.

The clause that you see here, 10.2 in relation to subcontracting, were you aware or did you ever have any discussion with Mr Nguyen about him obtaining permission for subcontracting to you, that is, Constructicon?---No.
No.

20 If we can go to page 43 of the same volume? Chief Commissioner, I'm informed there's a technical issue with Webex at the moment and to request a five minute adjournment, so that that issue can be resolved?

THE COMMISSIONER: Yes. All right. We'll just stand down for ten minutes, Mr Nguy, while we sort out - - -?---Okay.

- - - some technical problems that we're having. The Commission will adjourn.

30

SHORT ADJOURNMENT

[10.52am]

THE COMMISSIONER: Yes, all right. Are you ready to resume?

MS DAVIDSON: Yes. I understand the technological issue was resolved.

40 THE COMMISSIONER: Yes, all right. Thank you, Mr Nguy. You're subject to the same affirmation you took at the commencement of your evidence to say the truth, understand?---Yes.

Thank you. Yes.

MS DAVIDSON: Could we have volume 1.5, page 46 brought up on the screen? Mr Nguy, just while I'm having this brought up, this, contrary to the document I was taking you to just before the technological adjournment, is a copy of the subcontract between Downer and RJS in relation to the Kingswood building project.---Yep.

10 Can you see there a special condition 26 refers to - well, firstly I think your evidence was that you hadn't seen any document between Downer and RJS, that includes in relation to, any contractual document that is, that includes in relation to the Kingswood project, does it?---I believe so, yeah, from what I can recall.

Can you see there special condition 26 refers in A and B to some obligations on the subcontractor, that's RJS in this instance. If you see subclause C, "Prior to any engagement of the subcontractor by the subcontractor", capital S subcontractor is RSJ, "the subcontractor must obtain a written
20 acknowledgement from such subcontractor that it has received, read, understood and will comply with Transport for NSW's Statement of Business Ethics." Now, you understood Constructicon to be a subcontractor to RJS in relation to the Kingswood job?---Yes.

Were you ever asked to sign any acknowledgement in relation to Transport for NSW's Statement of Business Ethics?---No.

Did you ever discuss Transport for NSW's Statement of Business Ethics with Mr Nguyen?---No.

30

THE COMMISSIONER: No, you need to answer.---No.

MS DAVIDSON: Did you know that Transport for NSW's Statement of Business Ethics existed?---No.

If you look then at special condition 27, the NSW Code of Practice and the NSW Guidelines. Now, this clause refers to the code of practice and the guidelines. They're the implementation guidelines to the code of practice for procurement for building and construction. Do you see the special
40 condition 27, clause 1, the first two of those, again A and B, relate to the subcontractor, that's RJS, and you see C, a bit similar to what we were just

looking at in special condition 26, “Where the subcontractor engages a subcontractor, the subcontractor must ensure that the subcontractor imposes on the subcontractor equivalent obligations to those in these special conditions, including that the subcontractor must at all times comply with and meet any obligations imposed by the NSW Code and the NSW Guidelines.” Were you aware of being asked to agree to being subject to the NSW Code and NSW Guidelines in your arrangements with RJS?---No.

10 Were you aware that those documents, that is the NSW Code of Practice for Procurement in Building and Construction and the Implementations Guidelines for that document, existed?---No.

Did you do work on any other Transport project after the Kingswood project?---Yeah. From, from memory it was Maitland and Kingwood.

Just Maitland and Kingswood?---Yep.

20 Mr Nguy, did you ever delete messages between you and Mr Nguyen from your phone?---Not that I recall.

Do you recall any conversation with Mr Nguyen in relation to deleting messages from your phone?---Not that I recall, no.

Chief Commissioner, I seek a variation of the section 112 order in respect of Mr Nguy’s compulsory examination on 3 March 2022, page 719 from line 22 on that page to page 720, page[sic] 32. I can provide you with an additional copy of that?

30 THE COMMISSIONER: Granted.

VARIATION OF SUPPRESSION ORDER: SECTION 112 ORDER IS VARIED IN RESPECT OF MR NGUY’S COMPULSORY EXAMINATION ON 3 MARCH 2022, PAGE 719, LINE 22 TO PAGE 720, LINE 32.

40 MS DAVIDSON: If that could be brought up on the screen? Mr Nguy, do you recall attending a compulsory examination at the Commission?---Yes.

That was last year?---Yes.

You were asked a question in the course of that examination about a review of your phone indicating that there were deleted messages, that there were no messages in WhatsApp between yourself and Mr Nguyen before 2019 in circumstances where you'd given evidence that there were. And you were asked, "Did you delete those messages at some point?" And you gave an answer that you did. Was that answer true?---Yeah. I think, I think the time when Tony actually got raided, he told me to delete the messages.

- 10 Right. So the answer that you just gave now that you didn't recall deleting messages, do you now, having seen this transcript, recall deleting messages?---Yes. Yes.

So what happened?---I spoke to Tony and Tony told me to, yeah, delete all our messages.

Right. So you spoke to Tony when?---I think it was after the time he got, yeah, raided.

- 20 Did he contact you or did you contact him?---I can't remember - - -

So after the time he got raided, did you know that he'd been raided?---I think he came to speak to me.

He came to see you?---Yeah.

And do you recall what he said to you?---Yeah. He said, "They took my laptop and phone, so just delete all our messages."

- 30 And what did you understand the purpose of that instruction to be?---Yeah, just to, just to try to cover, cover everything up.

When you say "cover everything up" do you mean hide the discussions that you'd had with Mr Nguyen in relation to your activities?---Correct.

And who were you hiding them from?---Well, he just, yeah. That's what he told me to do.

- 40 Did you understand that to be in the context of this Commission conducting an investigation?---Yes.

And did you do that?---I did.

And what did you delete?---My WhatsApp messages.

That's your WhatsApp messages with Mr Nguyen?---Correct.

From a certain date?---I think I deleted it all.

You deleted all of it?---Yeah.

10

Did you also delete emails?---Not that I recall.

Did he ask you in relation to deleting any other material?---It's just our WhatsApp messages.

Can we turn to the following page of the transcript? You see about halfway down the page, you were asked, "Did Tony tell you that he's deleted any other material?" "If I have or as he has?" was your question. The answer was, "If Tony has." And you said, "No." You were asked, "Have you deleted any other material in relation to this investigation?" And you say, "Yeah. My emails, yeah." You were asked, "Which emails are they?" "SDL emails." Was that answer true?---Can't recall.

20

So when you were asked whether you had deleted SDL emails or deleted emails, you said you'd deleted SDL emails - - -?---I, I, I think I deleted SDL emails, yeah.

Do you have any reason to think that you gave an untrue answer when asked during your compulsory examination?---No. I think I deleted SDL emails.

30

Do you now recall deleting the SDL emails?---Yes.

And, again, was that as a result of something Mr Nguyen had said to you?---Yes.

And what did he say to you?---Yeah, just, from memory, yeah, "Just delete everything that's got to do with SDL," yeah.

Chief Commissioner, that's the examination of this witness.

40

THE COMMISSIONER: Yes, I understand there's no request - - -

MS DAVIDSON: I understand there hasn't been any request, Chief Commissioner.

THE COMMISSIONER: - - - for any questioning by any of the other parties? In those circumstances, are you seeking for the witness to be released?

10 MS DAVIDSON: Consistent with the approach that's been taken so far, if the witness could be stood down but not yet released.

THE COMMISSIONER: Yes, all right, well, at this stage, Mr Nguy, I'm going to stand you down. You're not released from the summons so that there is a possibility that you may have to be recalled to give further evidence. In the event that occurs, you'll be notified - - -?---Yep.

- - - and you'll have to come back.---No worries.

20 But for the time being you're stood down and you're free to go.---Okay, thank you.

THE WITNESS STOOD DOWN

[11.25am]

MS DAVIDSON: Chief Commissioner, I understand that Mr Cox is the next witness, that he and his legal representatives are available at 12.00, so subsequent to the RAT testing they'd be available to commence at 12.30.

30 THE COMMISSIONER: I see. Okay, all right. Well, just trying to maximise the time.

MS DAVIDSON: Yes, well, that was the basis on which we gave that indication. We did request whether they were available any earlier and apparently that wasn't possible.

THE COMMISSIONER: All right. We'll adjourn.

40 **SHORT ADJOURNMENT**

[11.26am]

THE COMMISSIONER: Yes.

MS DAVIDSON: Chief Commissioner, I tender the extract from the compulsory examination transcript of Mr Nguy that was brought up on the screen during the course of his evidence. That will become, following the sequence, if it were to be marked as Exhibit 58.

10 THE COMMISSIONER: Yes. Excuse me one moment. Do you have another copy there?

MS DAVIDSON: Yes, we've got an additional copy.

THE COMMISSIONER: Thank you.

MS DAVIDSON: I can also tender some additional volumes of the Nguyen brief now.

20 THE COMMISSIONER: First of all I'll just mark this document, which is the extract of page 718 to 720 of the compulsory examination of 3 March 2022 of Mr Nguy, lines 20 on page 719 to line 32 on page 720. That will be Exhibit 58.

#EXH-058 – EXTRACT OF MONTY NGUY'S COMPULSORY EXAMINATION TRANSCRIPT DATED 3 MARCH 2022 PAGE 719 LINE 20 TO PAGE 720 LINE 32

30

THE COMMISSIONER: Yes.

MS DAVIDSON: There are some additional volumes of the brief in relation to Mr Nguyen that are now able to be tendered. The first of those is volume 1.10A.

THE COMMISSIONER: Sorry, 1?

MS DAVIDSON: 1.10A, the Wollstonecraft Station Nguyen brief.

40

THE COMMISSIONER: That'll be Exhibit 60.

MS DAVIDSON: 59, I think.

THE COMMISSIONER: Sorry, 59 rather.

**#EXH-059 – PUBLIC INQUIRY BRIEF VOLUME 1.10A –
WOLLSTONECRAFT STATION NGUYEN BRIEF**

10

THE COMMISSIONER: Yes.

MS DAVIDSON: I next tender volume 1.15, which is the Financial Brief
RJS and Sanber to SDL.

THE COMMISSIONER: Yes.

MS DAVIDSON: If that could be exhibit 60.

20 THE COMMISSIONER: That will be exhibit 60.

**#EXH-060 – PUBLIC INQUIRY BRIEF VOLUME 1.15 - FINANCIAL
BRIEF RJS AND SANBER TO SDL**

THE COMMISSIONER: Yes.

30 MS DAVIDSON: Volume 1.16, I tender the Financial Brief RSJ to
Ballyhooly.

THE COMMISSIONER: Exhibit 61.

**#EXH-061 – PUBLIC INQUIRY BRIEF VOLUME 1.16 - FINANCIAL
BRIEF RJS TO BALLYHOOLY**

40 MS DAVIDSON: And I tender volume 1.17, the financial brief, RJS to
Constructicon.

THE COMMISSIONER: Exhibit 62.

#EXH-062 – PUBLIC INQUIRY BRIEF VOLUME 1.17 - FINANCIAL BRIEF TO RJS CONSTRUCTICON

MS DAVIDSON: There are then a number of volumes from the brief in respect of Mr Cox, who's the forthcoming witness. I tender volume 7.1, the
10 Cox Marble Arch brief.

THE COMMISSIONER: Exhibit 63.

#EXH-063 – PUBLIC INQUIRY BRIEF VOLUME 7.1 - COX MARBLE ARCH BRIEF

MS DAVIDSON: I tender volume 7.2 of the Cox Marble Arch brief.
20

THE COMMISSIONER: Exhibit 64.

#EXH-064 – PUBLIC INQUIRY BRIEF VOLUME 7.2 - COX MARBLE ARCH BRIEF

MS DAVIDSON: I tender volume 7.3 of the Cox Marble Arch brief.

30 THE COMMISSIONER: Exhibit 65.

#EXH-065 – PUBLIC INQUIRY BRIEF VOLUME 7.3 - COX MARBLE ARCH BRIEF

MS DAVIDSON: And finally I tender volume 7.4, the financial brief, Marble Arch.

40 THE COMMISSIONER: Financial brief?

MS DAVIDSON: The financial brief, Marble Arch.

THE COMMISSIONER: That's Exhibit 66.

**#EXH-066 – PUBLIC INQUIRY BRIEF VOLUME 7.4 - FINANCIAL
BRIEF MARBLE ARCH**

10 MS DAVIDSON: Thank you, Chief Commissioner.

THE COMMISSIONER: Yes.

MS DAVIDSON: Mr English will take the next witness.

MR ENGLISH: Chief Commissioner.

THE COMMISSIONER: Yes.

20 MR ENGLISH: Mr Cox is in the well of the Commission. Might he come
up to the witness box.

THE COMMISSIONER: Yes, Mr Aidan Cox, would you come forward,
please. Authorisation to appear on behalf of Mr Cox has been granted to Mr
Schaudin of counsel and Ms Sten, who I notice are present.

MR SCHAUDIN: Yes, your Honour.

30 THE COMMISSIONER: Yes, all right. Mr Cox, do you take an oath or an
affirmation?

MR COX: I'll take an oath.

THE COMMISSIONER: An oath. Yes, all right, the witness can be sworn.

THE COMMISSIONER: Please take a seat. Mr Schaudin, have you explained to the witness the provisions of section 38 and does he wish to avail himself of the benefits of that section?

MR SCHAUDIN: Yes and yes.

10 THE COMMISSIONER: Yes, thank you. Thank you, Mr Schaudin. Mr
Cox, as a witness you must answer all questions truthfully and produce any
item described in the summons or required by me to be produced. You may
object to answering a question or producing an item. The effect of any
objection is that although you must still answer the question or produce the
item, your item or the item produced cannot be used against you in any civil
proceedings or, subject to two exceptions, in any criminal or disciplinary
proceedings. The first exception is that the protection does not prevent your
evidence from being used against you in a prosecution for an offence under
the ICAC Act, including an offence of giving false or misleading evidence,
20 for which the penalty can be imprisonment for up to five years. The second
exception only applies to New South Wales public officials. Evidence
given by a New South Wales public official may be used in disciplinary
proceedings against the public official if the Commission makes a finding
that the public official engaged in or attempted to engage in corrupt conduct.

Now, Mr Schaudin has told me that he's explained what I've just said to you
and you've asked through him that a declaration be made that all answers
given by you and all items produced by you will be regarded as having been
given or produced on objection. This means that you won't have to object
30 in respect of each answer or the production of each item. You understand?
---Yeah.

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

40

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

THE COMMISSIONER: Yes. Mr English.

MR ENGLISH: Thank you, Chief Commissioner. Sir, can you just state your full name and age, for the record, please?---Aidan Cox, 40 years old.

Okay. And that microphone is recording and amplifying. Can you just come a little bit closer, so - - -?---Yeah.

20

- - - so everyone can hear, please, Mr Cox? Thank you. You hold some tertiary qualifications?---I do, yes.

What are they?---I have a Masters Degree in Civil Engineering.

And where did you obtain that qualification?---Queen's University in Belfast.

Is that where you were born?---I was born in Enniskillen in, in Northern Ireland.

30

And you came to Australia at some stage?---I came to Australia in I think 2007 and then, for a year and then came back in 2010.

Do you hold any other qualifications?---I don't think so.

I've got here that you've got a Certificate IV in Project Management. Is that right?---Yeah. I do, yeah. Yeah.

Okay. What about a Certificate IV in Frontline Management?---Yeah, I would have done frontline safety management and, yeah.

40

Do you hold that certificate?---Yeah.

A Certificate IV in Work, Health and Safety. Is that right?---Yeah.

Okay. Who have you worked for since you obtained your Masters in Civil Engineering?---I worked for a number of companies overseas. Do you want me to name them?

10 Yeah. Sure.---So I worked for a company Ligon - - -

THE COMMISSIONER: Would you mind just keeping your voice a little bit up?---Sorry. I worked for a company, Ligon, overseas and then I worked for a company McMahon Construction when I came over in 2007 - - -

MR ENGLISH: All right. I'll just hold you up there. What type of projects did you work on for Ligon?---Civil and building.

20 And what type of, were these infrastructure projects?---Yes.

What were they? Can you tell the Commissioner, please?---There was a gas pipeline, I think, immersed tube tunnel, like, prior, you know, prior to graduating, I would have worked with other companies, as well. Like do, like, how far back do you want me to go or - - -

No, no, no.---Just since - - -

30 Just since you obtained your qualifications, that's okay.---So, yeah, gas pipeline, immersed tube tunnel, windfarms - - -

So large scale infrastructure projects. Is that right?---Yeah.

What about, you said McMahon. That's in Australia, isn't it, in New South Wales?---Yeah.

What did you do for McMahon?---I did a bridge over the M4 back in 2007. It was like precast segmental bridge that was built across a live motorway - - -

40 The which motorway, sorry?---The, the live motorway. It was built, you know, in a live road environment. And then I did some work up on a desal

plant up in Queensland, just, not, probably not even on a CV but I worked up there for a while, just when I was travelling, I did the whole backpacker thing. So I worked up there, Robina. And then when I came back to Australia, I worked for McMahon on Glenfield Junction Alliance and so that was a real project, a brownfield rail project where I did multiple different things on it, was working sometimes on station works, sometimes on the landscaping, streetscapes, the, all the works in relation to the, the civil works related to the, the roads - - -

- 10 Can I just hold you up there just for a moment. Glenfield. Is that a Transport Access Program piece of work?---I don't think it was Transport Access, I don't think, it's, it was, it was, it was part of the, I think they called it the South West Rail Link.

South West Rail Link.---It was do with, is was something to do with a new station in Leppington or something.

- 20 And can I ask you this? You mentioned brownfield sites. What's a brownfield site?---So greenfield is - I'll explain brownfield by explaining greenfield. Greenfield is out in the paddock just building things in a green, you don't have anything around you. Brownfield is, especially in rail, brownfield is like a bomb. You know, you've got - - -

- 30 Did you say a bomb?---It's, it's, you've got, like, services, you've got unknown services, you've got potential for structures. You've got the, the ground conditions. You've got all sort of constraints that you don't have when you're working in a greenfield site. So it's, it's, it's different, it's a different environment to, a much harder environment to work in. The other thing about brownfield rail environments is you've obviously got a railway line. So that's the difference between brownfield and, brownfield and greenfield.

And that brings with it safety considerations, does it?---Yeah. Say, well, it, it makes everything, it just makes everything more complex and it makes, you have to, you have to really know what you're doing.

- 40 And you've got particular expertise in civil construction work at brownfield rail sites, do you?---Yeah. So when I came back in, like, because I suppose the time I spent overseas would have all been sort of greenfield-type environment but from around 2010 to close to 2016 pretty much everything that I was doing was in a brownfield rail environment. So, at Glenfield was

doing all the, the services, the adjustments and the tie-ins to the stations, all the streetscapes, all that sort of work and doing a lot of, like, earthwork-type disciplines and then when I worked on North Strathfield, NSRU, North Strathfield Rail Underpass, there was, I was basically responsible for doing all the adjustments to existing structures. So, like, you know, there might have been a bridge that I had to extend while keeping traffic on it and trains underneath it, upgrading the parapets and, you know, so, so it's all complicated sort of stuff.

10 Yep---I've done lots of it.

Now, you know someone by the name of Tony Nguyen, don't you?---Yeah.

Where did you meet Tony Nguyen?---So, when I was on Glenfield there was a part of the project, the southern, southern junction Glenfield, southern junction, and Tony and I were, well, he was reporting to a guy Aurelien - - -

Sorry, say that again, sorry?

20 THE COMMISSIONER: Sorry, say that - I'm struggling to hear you sometimes. You're dropping your voice.---Sorry. Yeah - - -

You've got to project it. See, it's a big room?---Sorry. Tony was reporting to a guy Aurelien and I was reporting to, Aurelien and I were the same level, we both reported to a guy Jean-Baptiste.

MR ENGLISH: So were you working for the same employer, both you and Mr Nguyen then?---Yeah.

30 Which employer was that?---Well, in 2010 it was McMahon but was sold at some stage to John Holland. So, it became John Holland.

So Mr Nguyen reported to a manager who was at the same level as you at McMahon or John Holland, is that right?---Yeah. I, well, I was, I think I was a project engineer.

You were a project engineer then, were you?---Yeah.

40 And did you strike up a friendship with Mr Nguyen at that time when you were working with him or was it purely professional?---I think we always got on but it was, you know like, we never went out on the weekends or

anything like that. You know, it was, I suppose it was professional but we got on.

And did you ever come across Nima Abdi back then at Glenfield?---No.

What about Raja Sanber?---Never came across him.

10 Did you ever see Mr Nguyen conversing with either of those two gentlemen?---No. Never did. So we were, we were (not transcribable) so the initial 12 months on that project for me I was based in the main office doing the work around the Railway Parade upgrade, and so we're based in the main office. But after that we were moved to the southern junction office, which was remote from the main office, so I never really - you know, there was a team of about eight or ten people that I were seeing all the time. There was nobody other than the delivery staff for the project.

20 And in your interactions with Mr Nguyen on that site, did anything stand out about them or was he just a regular co-worker as far as you saw him back then? And I'm focussing - when was that, back in 2014, was it?---Oh, I, can I have a second? Just I think, I think I left Glenfield in 2013 to go to North Strathfield. So I did, I think I did three years. The first year was in the main office and the second two years were the Southern Flyover or the SFO, the GSJ. So, sorry, what was your question?

So just is there anything you remember about Tony Nguyen in particular when you met him at that worksite or was he just a regular co-worker?---He was a regular co-worker.

30 Okay. Did you find out at some stage that Mr Nguyen had gone to work for Inner West Council or - I withdraw that - Leichhardt Council?---Yeah.

Can you tell the Chief Commissioner how you found out about that?---Well, I actually, I went, after North Strathfield I went to NorthConnex, and I was at that stage, I'd been an SPE on North Strathfield and at that stage - - -

What's an SP?---Sorry, a senior project engineer.

40 Okay.---And then I was trying to build a team for, for the project that I was working on, and I actually asked Tony - - -

Is that at NorthConnex?---NorthConnex.

Yep.---And I asked Tony - - -

Who was that for? Who was your employer there?---Bouygues.

Okay, go on, sorry.---So I actually asked Tony if he would work for me on that job 'cause he was a good worker, like. So, but I think he said he, he was going to go work with council.

10 Okay. Did he at any point ask you to provide a reference for him - - -?
---Yeah.

- - - for council?---Yeah.

And did you do that?---I did. I gave him a reference.

And to the best of your recollection, was it a generally positive reference?
Was there anything in particular about it?---I think it was, it would have
been a good reference.

20

You've said he was a good worker. Would you have conveyed that to Inner
West Council?---Yeah.

And you'd seen nothing of his conduct up until - - -

THE COMMISSIONER: Is this Inner West or Leichhardt?

MR ENGLISH: I'm sorry, thank you, Chief Commissioner. Leichhardt
Council, was it?---Possibly Leichhardt, yeah, or - it's not the same?

30

Well, there was an amalgamation, so it was probably, the Chief
Commissioner's probably - - -?---Right, okay. Well, then, it was whatever
the council was at the time I would have gave him a reference for.

And insofar as you'd been interacting with Mr Nguyen up until some point
in 2013, you hadn't seen anything untoward in his professional behaviour,
had you?---No.

40 Okay. All right, if Exhibit 63 volume 7.1, page 142, can be brought on-
screen, please. This is the company extract from Marble Arch Pty Ltd.
You're familiar with that company, aren't you?---Yes.

You can see there the registration date is 19 February 2018, and if we scroll down to the next page, it confirms you're the director of that company, and down onto the next page you're the sole shareholder as well. Now, if we can just go back to page 142, please, which was the first page. How was it that in February 2018, and this records the day as the 19th, that this company was registered? Can you tell the Chief Commissioner, please.

---Yeah, so I was working on NorthConnex and so basically I was burnt out. It was three very tough years. I was exhausted. I think my wife had been
10 brought to hospital with, for bed rest from, and I just decided that I wanted to do something different and I actually decided - so actually before this I, I rang Tony one night out of the blue. Basically I'd had enough of doing tier 1 contract and was doing 70/80 hour weeks. I wanted to try something different and I had a idea that maybe I'd set up a company and I was going to do maybe plant hire or, you know, something like that there. So I rang Tony and the reason I rang him was because he had a good way about him, you know. People like him. So I thought plant hire might be an option. Look at trying to get some machines in on a job or something. So I made, I think I rang him or something or texted him or something and then I caught
20 up with him and he said he had no interest in doing something like that but that if, if I wanted, you know, set up a company and I could maybe tender a bit of work for him.

And when you say tender a bit of work for him, was that in connection with his position at the council?---Yeah.

Okay. And well, there must have been a bit more to the discussion than that. What else can you recall was said in that conversation? I mean, did he tell you what type of works for example you might be able to do for
30 council? Did he give you any other details about how this could potentially work as a business arrangement?---At that stage I, to be honest I can't really remember exactly what was said but at that stage it was just, the gist of it was that I'd be able to price some work for him. He said that the type of work would have been like, you know, just managing a couple of trades. That was, at that stage that was the gist of the conversation.

Okay. And - - -?---And at that stage I was planning on setting something up anyway.

40 Yeah. And was that around this date that we see here on the screen, 19 February 2018?---Yeah.

So I just want to just drill down a little bit with you because you said in your mind you're thinking I could set up a company to do machine hire and you said you called Tony and Mr Nguyen said to you, "I've got no interest in machine hire." Is that right?---I think he'd already, I think he told me that he'd already tried something like that previously.

Okay. But he said that you could price up jobs and get trades in and do this work for presumably the council, correct?---Correct, yeah.

10

All right. And what, very shortly after that was this company incorporated, Marble Arch?---I, I don't know which happened first. I, probably shortly after that I would have set this up.

All right. But at that stage did you have any prospective clients for Marble Arch or was your only prospective client the council that Tony worked for? ---I didn't have any prospective clients.

20 Okay. So you set up this company solely on the basis of your discussion with him and him indicating to you that he might be able to get you some work at the council.---Yeah, but also in the industry I work in like there's a lot of people that set up companies and, you know, you can, there's plenty of work that you can do outside of, like if that hadn't of eventuated then, you know, I could have done freelance project management or, you know, there's, it's, it's a vessel with which you can use it to do work.

30 And so was it in your mind, I can get some work of Tony and if that doesn't work, or even if it does work, I can approach other people I've met in the industry to try and get other work as well?---It was just, yeah, it was just set something up and see where it, see, see where it takes me. I was done with tier 1 contract and, and the early-hour wakes and the stress and everything else. It was just trying to change something up, that was it.

So when you started this company, did you have a builder's licence?---I think - no, I didn't. No.

And when I say you, you didn't personally have a builder's licence?---I personally did not have a builder's licence, no.

40 And the company didn't either?---No.

What about insurance?---No, I didn't have insurance.

And how long, to your recollection, was it after you set up the company that you got your first job from the council?---I'm not sure.

Well, I'll just suggest to you, and we'll come to this in a bit more detail, that - perhaps actually if exhibit 65, volume 7.3, page 59 could be brought on the screen, please? This is an email, it's got the Marble Arch logo. Do you see that?---Yep.

And it says it's from Laura Donnelly. I'll come back to Laura Donnelly in a moment but it says, "Hi Tony. I'm pleased to submit a quote for War Memorial Park toilet refurbishment works. Should you have any questions, please do not hesitate to contact me" and the date of the email is 12 April, 2018.---Yep.

So some two months after the company is set up the first quote's been submitted. And if we can just scroll down, please, just so you can see the quote. If we just go down, please, scroll down through – you can see your signature there?---Yep.

So this is an Inner West if we can just go up one. So this is some information about industrial relations that you had to supply to become a supplier to Inner West Council, was that right?---Yeah. Obviously it is, yeah.

If we scroll down again, scroll down again, please. Here's another quality assurance that you had to provide and answer some questions on the form. And if we scroll down again, please, you can see your signature there and like the previous form it's dated 11 April 2018. Do you see that?---Yeah.

If we go down again, please. And here's the quote for these works at the War Memorial Park toilet refurbishment. There's the first page and the quote's dated 12 April 2018 and if we go down to the next page you can see the value, which is \$139,183 inclusive of GST. Do you see that?---Yeah.

Now, that was a job that was awarded to Marble Arch, wasn't it?---Yeah.

And you carried out those works on behalf of the company for the council, is that right?---Yep.

How did you do that without any licences or insurance?---Tony told me that I didn't need them because it was covered by the council's head insurance. I actually asked him and he said I didn't need it.

But you've been in the industry a long time, right?---Yeah.

10 Have you ever heard of the customer paying for insurance other than maybe in a home residential scenario?---So, if I was working on that job and I fell off a ladder and I broke me back, I would want to be insured. If I, if I thought I needed insurance I would have got it.

What about if your work was not up to proper workmanship and there was an issue. Who would be responsible then?---I guess, yeah, although the type of insurance is public liability insurance that you need for this. I just thought it was covered under the council's.

20 Yeah, sure, but just coming back to it, what about professional insurance for the quality of work? What would happen if something went wrong, if something you built fell down, who would be responsible then as you understood it?---Yeah, I, I'm not, I'm not really sure, to be honest.

Okay.---I think there's (not transcribable) I don't know.

Okay. Did you turn your mind to this at all when you embarked on performing work for the council?---My mind at that stage, on the date of that there, I would have been going in and out of hospital, you know.

30 All right. Does that mean, no, you didn't turn your mind to it?---I didn't, I didn't.

Okay. If we can just go back, please, to Exhibit 63, volume 7.1, page 142, the company.

THE COMMISSIONER: Sorry, just before you move on to that, you said that Mr Nguyen said to you that he was going to provide some insurance I think through council. Is that the case?---Yeah, he told me that the work would be covered under the council insurance.

40 Did you ask to see that insurance?---No.

No, you didn't. Did you ask him where the insurance was from?---I don't know why he'd, you know, I just thought it was, he told me and I just believed it at face value.

What sort of insurance did you think it was that council was providing?---I just imagined that the - - -

Sorry?---I thought there might, I thought there might have been maybe like a blanket public liability insurance in relation to council works. I don't
10 know. Honestly did not think twice about it.

MR ENGLISH: Can I ask you this, do your answers mean you'd taken out no insurance to protect yourself at this time against anything that might have personally happened to you?---(NO AUDIBLE REPLY)

You're nodding. That's a yes?---Yeah, yeah, yeah.

Okay. So if Exhibit 63, volume 7.1, page 142 can be brought on the screen, please. So this is just the company search. If we just go down, please, at
20 page you see there "share structure, \$100", do you see that?---Yeah.

At the time through this company you contracted with the council, that was the total value of the shares in the company, wasn't it? \$100.---Yeah.

So if something went wrong and the council had to seek some sort of, or make some sort of claim against Marble Arch, there's nothing really in the kitty that it could have claimed against, was there?---No.

All right. Now, can we go back, please, to Exhibit 65, volume 7.3, page 59.
30 So this is the email we were looking at a moment ago that included the forms that you signed and the quote. You're copied in there, do you see there? CC aidan@marblearch.com.au.---Yeah, yes.

Can I just ask, did Mr Nguyen assist you in setting up that company or did you do it all yourself or through an accountant or something like that?---I think I set it up through an accountant.

He did?---No, I did.

40 You did, okay. And what's this Laura Donnelly, project coordinator?---So at some stage Tony told me to create another email address. Basically, what

he, initially what he told me was it was to just make the company look bigger. So that was the initial purpose and then at some stage he wanted access to the email address. So it was basically, it was just an email address that he used.

All right. So he must have got that access, mustn't he, by 12 April 2018.
---Probably, yeah.

10 Well, he must have, mustn't he? You weren't sending emails using the name `laura@marblearch.com.au`, were you?---I may have some, so I don't know if it was-- honestly, this is a long time ago. I can't remember whether that was me or him sent that email in.

All right. So you think it's possible that you could have sent the email using the name `laura@marblearch`, copying yourself in and sending it to Tony Nguyen?---Making it, making it look bigger, making the company look bigger. I know none of this is very sensible, like, but possibly it was me, possibly it was, I don't know.

20 Okay. And how's the purported existence of a project coordinator, did you think that that might fool someone into making this company look much bigger?---Look at the logo. It's not exactly, you know - - -

THE COMMISSIONER: Sorry?---Even look at the logo. It's not a very, it's not a very slick looking company, like, with the benefit of hindsight, you know, it's all just stupid, like, you know?

30 All stupidly, did you say?---This, this is, you know, this is nonsense what, the, the whole thing is silly, like, I should never have done it but, you know, it doesn't make any, it doesn't make any sense.

Well, if it doesn't make any sense, why did you do it?---I don't know.

40 MR ENGLISH: So if Mr Nguyen, I mean, just seizing on what the Chief Commissioner's asked, Mr Nguyen's come up to you and said, on your evidence, "I can get you to price up some work. You just have to organise the trades but you should" just hear me out "but you need to make up a fake name for your company and you need to make up an email address for that fake name and you need to give me the access codes for it." Didn't that ring any alarm bells for you back then?---Yeah. I think, I, it's, it was, with, with the benefit of hindsight, yeah, it was really, it, it was, I was just, I didn't

think about it, really, so clearly at the time, you know? Looking back, obviously, this isn't very, none of this is very smart. But, at the time, I don't know where my head was at, but I didn't really think about it.

And you're also being told by the person that's asking you to do this that you don't need insurance. You must have known that was wrong, didn't you, at the time?---No, like, insurance isn't that expensive.

Yeah. So why not get it?---I know.

10

And you know that New South Wales has a system where builders have to be licensed and that there's a system you can check on builders to see whether complaints have been made. You're aware of that, aren't you?---I think you need a licence for residential but for, I don't believe that you need a licence for, I think it's only for residential that you need the builder's licence.

You didn't think you needed a contractor's licence?---I wasn't aware of that.

20

THE COMMISSIONER: Were you aware whether Inner West Council or Leichhardt Council required you to have insurance?---I don't know. I, I was told it wasn't, Tony told me I didn't need it.

MR ENGLISH: Did Tony tell you anything about how he was going to be able to get you this work if you priced it up for him? Did he tell you he had some way that he could do it or ensure that you'd get some?---I didn't know what way he was, I'd no idea what was going on. I remember this much. When he told me I got that job, I was over the moon, I was really excited.

30

THE COMMISSIONER: Sorry? You didn't know what was going on? ---So when I priced that work, when he told me I'd won it, I was really excited, you know, so, look, I don't really have a good answer to any of this. It's - - -

40

Look, you left your previous job because you said that you needed a change. You set up a company which you're the director and shareholder of. You contact Mr Nguyen about it. He supplies work to you but requests you to provide another name for someone who didn't exist and an email for someone who didn't exist and you don't have to worry about the insurance because Inner West or Leichhardt Council had insurance. What did all that

mean to you?---Obviously, when you say it now, and I look back at it, it's all very - - -

Well, what's different about it now to then?---I don't know. I didn't, I honestly didn't think about it.

MR ENGLISH: I might just - I note the time. Can I just ask, or Commissioner, would you like to take the - - -

10 THE COMMISSIONER: No, it's all right.

MR ENGLISH: I'm in your hands.

THE COMMISSIONER: No, you ask I think.

MR ENGLISH: Can volume 7.2, which is exhibit 64, page 326 be brought on the screen, please? So this is the creditor details form, new creditor application form. Can you see that?---Yes.

20 And it's got your signature on it. Do you see that?---Yes.

And you filled that out by - do you recall filling the form out?---It's got my signature on it so I probably did.

But do you recall it?---No.

And you've provided there your email address, your phone numbers. Do you see that?---Yes.

30 And your bank details. Do you see that?---Yep.

And you've crossed, "I have read council's general purchase order conditions". Do you see that?---Yeah.

And you've crossed, "I can declare that I do not have a personal or business relationship with a council officer or councillor" and you've crossed that?---Yep.

40 And you've crossed, "I have read council's statement of business ethics and confirm I do not have a conflict of interest" and you've crossed that?---Yep.

The first one, had you read council's general purchase order conditions?
---No. I doubt, well, I wouldn't think so.

And had you read council's statement of business ethics?---Probably not.

And you knew you had a personal or business relationship with a council officer, being Mr Nguyen, didn't you?---Yes.

But you ticked that anyway?---Yeah.

10

And did you know at the time you therefore had a conflict of interest?
---Look, I obviously, you know, it was a conflict of interest.

So why did you tick these boxes, or cross them, as the form indicates?---I don't know.

Did you raise it with Nguyen about having to do this, to say, "Hey mate, look, we actually do have a business relationship or a personal relationship, what should I say here?" Did you have any discussion like that with him?

20

---There probably was.

When you say "probably", I just want you to focus on your memory.---Oh, okay. Let me have a think. I think, I think I did. I think, I think I filled this form out. Like, for the bank details I would have had to fill this out and the thing about the conflict, I think he would have said, "Don't worry about it. Everybody fills this out."

Well, you're saying again you think. Do you have an actual memory of that or are you just - - -?---I, I, I think, I, I do have, I do have a memory of it.

30

THE COMMISSIONER: So this was another thing that was said to you that you have a memory of?---I have, I have a memory of this.

Did that - - -?---Of the, you know, memory.

Did that signal anything to you?---Look, it should have but it didn't.

MR ENGLISH: Just before the - I'm sorry, Chief Commissioner. Do you have a question?

40

THE COMMISSIONER: That's all right. No.

MR ENGLISH: Just before the luncheon adjournment. You were working at tier 1 big building companies.---Yeah.

We've just gone through a series of what I suggest are red flags before you started working at the council. Was that something that you were used to seeing, those sort of red flags when you were working in these tier 1 building companies, or was this something brand new that you just saw as soon as you embarked on these projects using Marble Arch?---Well, the tier 10 1 contractors, you normally have a Commercial and Procurement Team that does all this sort of stuff and the engineering side of things is your focus. So in terms on onboarding the contractors it wouldn't have normally been, this sort of stuff wouldn't have normally in my remit.

So this was new to you, was it?---It wouldn't have been my, it wouldn't have been, like, not my, my area of expertise.

Is that a convenient time, Chief Commissioner?

20 THE COMMISSIONER: Yeah. Just a moment. Yes, all right. We'll resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.05pm]