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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 27 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: Yes. All right. Yes.

MR ENGLISH: Chief Commissioner, Mr [REDACTED] is up the back.

THE COMMISSIONER: Yes.

MR ENGLISH: Might he come up to the witness box.

10 THE COMMISSIONER: Yes. Yes. All right. Mr [REDACTED], you can be re-sworn.

FEMALE SPEAKER: Affirmation?

THE COMMISSIONER: No, I think he was sworn. Do you wish to take an oath?

MR [REDACTED]: Bible. On the Bible.

20 THE COMMISSIONER: Yeah, on the oath.

THE COMMISSIONER: Please take a seat. Now, Mr [REDACTED], your evidence is subject to the same section 38 declaration that I made on a previous a previous occasion. Do you understand?---I understand, Chief Commissioner.

All right. Yes. Thank you. Yes.

10

MR ENGLISH: Chief Commissioner, Mr [REDACTED] has prepared a document, could be referred to as a statement or an explanation by reference to some of his evidence given on the previous occasion. If I could hand that up and tender it, please.

THE COMMISSIONER: That document will be exhibit 191.

20 **#EXH-191 – NOTES PRODUCED BY [REDACTED] TO
THE COMMISSION ON 26 APRIL 2023**

MR ENGLISH: Thank you. If that could be brought on the screen, please. Might come to some particular sections of that in due course, Mr [REDACTED], but you came before the Commission on the last occasion on 11 April and gave evidence.---Yes.

When you appeared on 11 April you had prepared notes on various topics, some of which you read onto the record, correct?---Correct.

30

And you've been careful to prepare those notes as accurately and fulsomely as you could knowing that you might need to read them onto the record? ---They were just notes and my memory is not, wasn't very good so I referred to them.

Yeah. And you prepared them carefully, correct?---As best I could.

Yeah, you didn't want to mislead the Commission, did you?---I, I didn't want to mislead the Commission.

40

So you took the time to prepare those notes and read over them before you brought them in, correct?---Yeah.

And you made some handwritten annotations to those notes where necessary, correct?---Yes.

And did you prepare that, what, leading up to 11 April, did you?---Yes. From the evidence that was provided through the restricted portal, yeah.

10 All right. You now accept, do you not, that you told lies in your compulsory examination about three matters, is that right, and I'll take you to those matters in a moment?---They, they were, okay. I need to clarify that, you know, which ones.

Okay. I'll tell you. So one by one, you made a false assertion that you performed work in exchange for the money paid to you by Chandler Macleod. That was a lie that you told in your compulsory examination, wasn't it?---It was untrue because I feared, well, I, I was paranoid. My own paranoia feared me about retributions from other people.

20

Well, when you gave that evidence in your compulsory examination, you knew it was untrue at the time, didn't you?---But I was influenced by my own paranoia.

I'm not asking you for an explanation as to why you say it was untrue. You knew it was untrue, didn't you?---It's fair to say that, yeah.

Okay. You also made a false assertion that you did not share any of the money paid to you by Chandler Macleod with Mr Abdi or Mr Aziz. That
30 was another lie you told in your compulsory examination, correct?---Again, my paranoia got the best of me and it is fair to say that.

Okay. You also made a false assertion that Mr Abdi may have received the bills of quantity which I took you to on 11 April from the R drive at Transport for NSW as opposed to you having provided them to him.

---Okay. So I, I wasn't clear on this because I, I did state that on 6 August that I did send him those, but the previous ones early in August, I think from recollection that you showed me on the screen, 3 August and then sometime in July, maybe the 25th, I don't recall sending them but that - because I
40 can't remember the act. The act that happened on the 6th I do remember because I was quite emotive about it and it was clear in my mind.

Well, you made an assertion in your compulsory examination that Mr Abdi may have received those bills of quantity from the R drive at Transport for NSW as opposed to you having provided them to him. Do you recall that?
---I recall reading it, yes.

And that was untrue, correct?---But which ones, which, which date are you referring to? I, I, I just don't know which date you're referring to.

10 All right. We'll come to it, Mr [REDACTED].---So I, I've got to state that I tried, I, I wanted to correct my evidence before the public hearing and I sent an email, well, my lawyer sent an email to that effect and I was told that I could do this during the public hearing.

And you were given that opportunity when you attended on 11 April, weren't you?---I did that first time.

20 Yes, that's right. Now, those notes that you read onto the record on 11 April and which were marked MFI 15 and MFI 16 addressed those three topics that I have just taken you to, that's right, isn't it?---They addressed the work, the Chandler Macleod.

The Chandler Macleod.---And then addressed the 6 August BOQs that I sent to Nima.

30 And they addressed the Chandler Macleod - I withdraw that. Now, in those notes that you read onto the record on the last occasion on 11 April, nowhere did you state that you felt the need to lie in your compulsory examination in relation to any of those issues owing to a sense of paranoia or fear of retribution, do you agree?---No, but I stated it during the public hearing.

We'll come to that. Focus on the question, please. When you prepared your notes in relation to Chandler Macleod and the bills of quantity being provided to Mr Abdi, nowhere when you read those notes onto the record did you refer to paranoia or a fear of retribution, correct?---Yeah, but that, but that was - - -

40 THE COMMISSIONER: Mr [REDACTED], listen to Counsel's question and respond to the question, okay?---I am, Chief Commissioner.

All right. Well - - -?---I'm responding to the question.

MR ENGLISH: I'll ask it again. Nowhere in the notes that you read onto the record on 11 April in relation to the money you received from Chandler Macleod and the bills of quantity that you provided to Mr Abdi did you refer to any sense of paranoia or fear or retribution. Do you agree?---I agree but, but it doesn't mean that it didn't, I didn't experience that just because they weren't on the notes.

10 On 11 April the only time you mentioned retribution was in relation to your evidence where you said you gave Mr Aziz the passwords in relation to the Chandler Macleod timesheets. Do you recall that?---I don't recall, no, but - - -

Well, if transcript page 1249 can be brought on the screen, please? You can see here from line 27, Mr [REDACTED], the question, "All right. You've come before the Commission and admitted essentially that in relation to the Chandler Macleod invoices that you did no work but received the money that was paid to you pursuant to the time sheets that you say were altered by
20 Abdal, is that right?" And you said, "Yeah, I'm, yeah, I think he must have changed, I think he must have changed them." Do you see that?---(NO AUDIBLE REPLY)

And it goes on. Do you see - - -?---Yeah.

- - - a question, "Well, you think. Do you know or do you just think?" And you said, "Well, I gave him the password so if you read my statement I gave him the password, right, and he started changing the time sheets".---Yes.

30 Next question, "Well, you came before this Commission on 19 October 2022. You didn't say anything about Nima giving Abdal a password, did you?" And you said, "No, because it was, they were quick questions in succession and we were running out of time." And then you were asked this question that you can see on the new page, "Is that your reason on your oath for not disclosing the issue with the password, is it?" And you said, "No. I was scared, scared on any retributions." Do you see that?---Yeah.

So on the last occasion, that is on 11 April, the only time that you mentioned retributions was in relation to this issue of providing the passwords to Mr
40 Aziz. Do you accept that from me?---Yes, but it doesn't mean the other occasions I wasn't paranoid and feared retributions either.

Yeah, but the point is it's taken you now three trips before this Commission to raise, in relation to the three issues I took you to just a moment ago, you having any fear of retribution or sense of paranoia. Do you accept that?
---Well, could you ask that question again? I can't understand it.

10 I took you to three issues earlier. One was your false assertion that you performed work in exchange for the money paid to you by Chandler Macleod, right? Do you remember I asked you questions about that?---To that effect.

Secondly, your false assertion that you did not share any of the money paid to you by Chandler Macleod with Mr Abdi or Mr Aziz. Do you remember I asked you about that?---To that effect, yes.

20 And thirdly what I say is your false assertion that Mr Abdi may have received the bills of quantity from the R drive at Transport for NSW as opposed to you having provided them to him. Do you remember I asked you about that?---Vaguely but I take your word for it.

Okay. Nowhere have you raised, until today, any sense of paranoia or fear of retribution in relation to the answers you previously gave on those topics, have you?---Okay, so before I entered the private inquiry, I did talk to someone from ICAC about this. Before, before I entered the private hearing.

All right.---Now, I contained myself during the private hearing. It doesn't mean that I didn't experience paranoid and, paranoia and fear of retribution.

30 Mr [REDACTED], on 11 April, when you appeared on the last occasion before this Commission, I'm right, am I not, that you did not make any complaint about any physical or mental ailment that was impacting you or your ability to give evidence?---I sent information to the Commission through my lawyer.

No, when you were here on 11 April, you didn't raise it as a concern, did you? Before the Chief Commissioner.---No, I didn't.

40 If Exhibit 191 can be put back on the screen, please. And if we could go to page 6, please. Here, Mr [REDACTED], you're referring in the left column to evidence you gave on 11 April, correct?---Yeah.

Okay. And the first, or the upper cell has a page number 1255. I can tell you that the lower cell comes from transcript page 1257. And you can see there you're being asked some questions about assisting Mr Abdi to have Mr Gayed removed from the Wollstonecraft project so he could be replaced with Mr Aziz. Do you see that?---Yeah.

10 You go on to say, "Nima was a bit upset that Gayed was on the project." And you're asked, "And so you assisted him in seeking to have Mr Gayed removed from that project, is that right?" And your answer was "I tried to, yes." Do you see that?---Yes.

And then the next question, commencing line 11, "Okay. And that was at Mr Abdi's direction, was it?" And your answer was "I think it was twofold. It was, it was him and also, based on my understanding of his past, what risk the project was." Do you see that?---Yes.

20 Do you accept that evidence there is an acknowledgement by you that you were acting at least in part on Mr Abdi's direction or instruction to have Mr Gayed removed as project manager from the Wollstonecraft site?---No, and this, no, and this is why I need to clarify. I did not know that other plan. When I mentioned twofold, I should have explained myself and said the twofold was me there trying to de-risk the project because I knew of the understanding of the history of Mr Gayed told to me by other project managers, and that was my, that was my goal. Now, whether there was an alternative plan from Nima, I did not know about it.

30 So this is you trying to walk away from the evidence that you gave at transcript page 1257 under oath on the last occasion, is it, Mr [REDACTED]? ---I'm, I'm trying to explain what I should have said before because I was on medication at that time.

All right.---And had adverse effects.

40 And are you trying to explain this now because you realised that you have admitted to conduct that could be found by this Commission to be corrupt? ---I'm not. I'm trying to clarify that this wasn't the case. My objective was to de-risk the project. I wanted a project manager because it makes it easier for me. It makes it easier for a PM on the Transport side to complete his work. You ask anyone. We've got no control. We're administrators. We just shadow the contractor and the contractor feeds us information, and that

information I have to transpose to my manager and then put reports together, but I'm only as good as that person, and this is my first job, first leadership job, you know? I was pretty nervous about the whole thing. No control. I was asking for information for a period of time. I wasn't receiving it. And then, you know, and that was one of the things that Nadine wanted me to understand or put forward to me, that, you know, "Do you know who the project manager is?" when I first got the, called up for the job. And I said, "No." And she goes, "Well, it's important to find out." I found out. I found out who it was, asked questions, and had some
10 negativity about it all.

If we go to page 7, please. Here, Mr [REDACTED], is some further evidence from you, this time in relation to the bills of quantity. Do you see that?
---Yep.

And you say, you're asked – I withdraw that. It said that "it may be submitted against you that each time you sent the materials to your Hotmail address," and that's a reference back to the materials you were taken to earlier in the morning, that "that was at Mr Abdi's request" and you said, "I
20 just remember that one that I discussed, the last four BOQs, but I can't remember the previous ones or whether it was his request for not." And then you're asked, "Well, you don't have any recollection of honestly reviewing any of those materials I took you to at a library, do you?" And you say, "The Wollstonecraft and Canley Vale ones, yes." Do you see that?---Yes.

And then you're asked, "At an actual library you had a look at those, did you?" And you said, "Well, whether it's a library or home on a computer," do you see that?---Yeah.

30 And then you're asked this, "Whether or not you might have had a look at home or at a library, you still passed them on to Mr Abdi. Is that fair?" And your answer was, "I, I did, yes." Do you see that?---Yes.

That's an acknowledgment by you that each of the documents I took you to on the last occasion, which you were shown to have sent to your Hotmail address, you actually passed on to Mr Abdi, correct?---No. No. No. No. I passed on the BOQs, okay. Now, the REF, I sincerely used to pass on information to my Hotmail address to review certain materials, and that
40 included the BOQs. I did send the BOQs to Nima, right. Now, you pointed me to a REF from Andrew Smith. Andrew Smith forwarded that on to me

on a Friday afternoon because he found out that I was a PM and he wanted me to address some questions, right. I forwarded it on to my Hotmail email address so I can have a review of them over the weekend, either at the library or at home, without much pressure, and maybe address them. I don't think I actually did address them. I did have a look at them. Now, the REF, the requirements of environmental factors, they're publicly available documents. If you go google it you will find it, okay. And those, and that's, there's no value of all those documents that were Andrew Smith's emails for Nima or anyone. It was in December. The design hadn't even started
10 in, because it takes about 12 weeks and I think the design finished in July. It was guesswork at that time when you do a requirements for environmental factors, so you can pass it through and get feedback from whatever department, which provides an input to the design. And it, it just doesn't make sense to me that those documents - and when you referred to Transport for NSW documents, the BOQs to me are Transport for NSW documents because they're passed on to Transport. They're, they're the, they're the owners now. They did the work. Transport paid for them and that's their Transport documents. So my, my confusion is genuine there.

20 All right, Mr [REDACTED], just a moment ago in your answer when you first started, you said, "I did send the BOQs to Nima." That's true, isn't it?--- The BOQs on the, I remember sending the BOQs on 6 August to Nima, yes.

Well - - -?---'Cause that was the last correspondence, that was the last correspondence I remember because I was emotive during that correspondence with him.

Well, you don't honestly say that any of the BOQs I took you to on the last occasion, which you saw Mr Abdi forwarding on to Mr Nguyen, that he
30 received from any other source other than you, correct?---I'm, I'm not denying it, Mr English. I just can't remember. Okay? That's, that's the distinguish, that's the - I just can't remember the act of doing it, okay? But I do remember a hundred per cent the last ones that I sent, which was the BOQs on the 6th.

That's the examination, Chief Commissioner, thank you.

THE COMMISSIONER: Thank you. Is there any requests for examination or cross-examination? No requests?

40

MR ENGLISH: No, there's not. Mr [REDACTED] can be released from his summons if that's convenient to you.

THE COMMISSIONER: Yes, all right. Mr [REDACTED], you're released from your summons and discharged. You're free to go.---Thank you.

You can step down.

10 **THE WITNESS EXCUSED**

[2.27pm]

MR ENGLISH: The next witness is Mr Stanculescu, and Ms Davidson will be taking his further examination.

THE COMMISSIONER: Yes, thank you. Mr Stanculescu, would you come forward. Ms Lewer, you appear for the witness?

MS DAVIDSON: I'm sorry, Chief Commissioner?

20

THE COMMISSIONER: Ms Lewer appears for the witness?

MS DAVIDSON: Yes.

MS LEWER: I do.

THE COMMISSIONER: Yes, all right, thank you. Mr Stanculescu can be re-sworn.

30 MR STANCULESCU: Take an oath, please.

THE COMMISSIONER: Yes, all right. You can be re-sworn.

THE COMMISSIONER: Yes, all right. Mr Stanculescu, your evidence will be subject to the same direction which I made under section 38 of the Independent Commission Against Corruption Act. So you're subject to the same declaration.---Understood.

Thank you, yes.

10

MS DAVIDSON: Mr Stanculescu, what was your role in relation to the Birrong project?---Commissioning manager.

Commissioning manager?---Correct.

So that was the same capacity that you'd worked on a number of the other stations while you were project manager at Kingswood and Banksia, is that correct?---Yes.

20 So is it true that as at the point that the Birrong project tender was going on, Downer still hadn't found a replacement commissioning manager or somebody else to step into that role?---Yes, correct.

All right. Did you author documents on behalf of Dalski in relation to the Birrong tender?---No, I don't remember.

Well, is that no or you don't remember doing it?---Apologies. I don't remember.

30 Right. Are you aware of Dalski's invest – I withdraw that – of Downer in the course of conducting an investigation into your conduct having made findings in relation to your authorship of documents on the Birrong tender?--Yes, I am.

Are you aware of those findings including your authorship of documents on the Birrong tender?---Yes, I am.

Do you have any reason to doubt the accuracy of what was found in relation to that?---I haven't looked at them specifically but, no, I don't.

40

All right. Well, I can take you to a document. Could we have volume 12.2, page 211? This is a pricing sheet submitted in relation to the Birrong tender, that is submitted to Mr Gandhi at Downer Group by Mr Sensicle. If we scroll to the following page we'll see - if we continue to scroll, I apologise - you'll see the email chain and then the document eventually follows. This is the document. See the pricing schedule in relation to the Birrong package? If we go to page 223, which is at the end of this document, you will see this is the metadata in relation to the spreadsheet and indicates that you're the last author of it. Does that prompt your memory in relation to authorship of that document in relation to the Birrong - - -?---As far as last author, yes. I, I don't remember authoring that particular document though.

But you would agree that so far the metadata suggests that you don't have any reason to challenge the proposition that that reflects your authorship in relation to, or at least you being the last author, in relation to that document?---Only to being the last author, correct.

Which would indicate some input in relation to the document, that is authorship-type input, would it not?---Correct.

There are also other documents, for example, that were the subject of Downer's investigation, for example, the tender capability statement. Do you recall having authorship of the tender capability statement on behalf of Dalski in relation to the Birrong tender?---I do.

You recall authoring that document?---Yes.

Those documents were then submitted by Downer on behalf of - I withdraw that - by Dalski to Downer. Do you recall having access in your Downer capacity, or using the access that was available to you in our Downer capacity, to the Birrong bill of quantities?---Yes.

Did you extract that from Downer's Candy system?---I did.

Did you then save that to your OneDrive account that was provided by Downer?---I did.

And did you then use that in relation to the preparation of the pricing submission that I have just taken you to in relation to the Birrong tender? ---No. I don't believe I did.

What was the purpose then on your evidence of having access to that document?---I don't, I don't remember.

Could we have volume 12.2, page 37 brought up on the screen? This is an extract from, or a page from, the investigation report prepared by Downer. If you see the third paragraph under Budgeted Expenditure and Dalski's Pricing Submission beginning "Mr Stanculescu saved the bill of quantities." Do you see that there?---Correct.

10

Have you read this page before?---I have.

That reflects timing of the saving onto your OneDrive account as being 11.37 on 22 November 2020. Do you have any reason to doubt that timing?---No.

20

And subsequently the price submission document, which is a document I took you to, the metadata reflecting authorship, or at least last authorship the following day, 23 November at 12.32pm, do you have any reason to doubt that timing?---No, not the timing.

Right. So the coincidence of the timing would seem to reflect - that is, the coincidence of the timing and also the fact that the pricing submission used identically costed line items to the bill of quantities would seem to suggest use of the bill of quantities on your part to prepare the pricing submission, would it not?---It would suggest that, yes.

30

Right. Do you have a reason to disagree with the inference that would be drawn about that? That is that you did use the bill of quantities to prepare the pricing submission?---No, I think in this instance I didn't. I think in this instance that the timing is too close and that I didn't actually contribute to, to the build-up of that price. And when you look at the, at the spreadsheet, it's got a different, different look and feel to how I normally set up spreadsheets. So to me that - 'cause I don't remember, but having looked at these documents, it looks like this was actually put together genuinely.

40

All right. And when you say put together genuinely, the identical use of the amounts would tend to suggest that it's not put together genuinely, would it not?---That shouldn't be the case in this instance, I don't believe.

Well, to the extent that the amounts are identical to what the bill of quantities shows, though, that does seem to reflect access to the bill of quantities, does it not?---Not if the quantities are accurate.

Is it your proposition that Dalski independently, or someone at Dalski independently came up with identical prices in respect of line items on the bill of quantities?---I, I don't, I don't recall. I don't know.

10 I suggest to you that the conclusion that was drawn by Downer was the accurate conclusion. That is there was you or somebody else at Dalski referring to and using the bill of quantities in preparing the price submission for Birrong.---Granted, it may have been, but I don't recall.

All right. Do you recall whether you provided that bill of quantities to anybody else at Dalski?---I, I don't. I don't remember.

All right. Well, who at Dalski would have been the person, if it wasn't you, involved in building up that price submission? Was it Mr Sensicle?

---Correct.

20

Right. So is it possible that you provided the bill of quantities document to Mr Sensicle and he then used it for the purposes of preparing the price submission?---Yeah. It's, it's possible but I genuinely don't remember that.

Okay. Could we go to the following page within this document, page 38 in volume 12.2. You'll see here under the heading E, this is still part of Downer's second report in relation to you, that there were additional identified breaches of policy. The first set relate to the Mortdale facilities upgrade and you awarding packages of work to Dalski as variations,
30 including the painting of a gantry crane, signage and line marking, and you see the amounts there. Do you agree that you awarded those additional packages of work to Dalski?---I agree.

And do you agree that you did that without obtaining three written quotes?---I agree.

Were you aware of a requirement to obtain three written quotes, as indicated by Downer in the table that you see at the top of this page?---No.

40 You weren't aware of that requirement?---At the time I was a new project manager thrown into a project that had not been set up correctly by the

business, and there was very minimal or no support, but the expectation to progress works. And so probably at the time my decision-making was to progress the works and it was purely, purely that.

Is it the case that you didn't check what the requirements were in respect of obtaining more than one written quote prior to agreeing to variations in relation to those packages of works?---Absolutely. However, I would like to say that in that particular project I was on three different roles. Three different roles that Downer put me in.

10

What were the roles that you were performing at that time?---Project manager, design manager and commissioning manager.

In relation to the second paragraph, you see under the heading E, Identified Breaches, we've discussed the engagement of Dalski. In your evidence on 18 April, you indicated that Dalski was engaged in relation to performing works at Kingswood prior to your appointment as project manager. Does that remain your evidence?---Correct, yes, it does.

20

So to the extent that Downer found that it was your engagement of Dalski via a purchase order in 2019. That would appear to be inconsistent with the evidence that you gave in relation to Dalski having previously been engaged. Are you able to explain that inconsistency?---I think Downer's facts are incorrect in this instance.

To the extent that you subsequently approved a purchase order, that is for the payment, does that reflect your discussions with Martin that you gave evidence in relation to about what had occurred on the site that was the subject of questions and answers on 18 April?---Correct. Yes.

30

And so to the extent that the purchase order was issued during the period that you were project manager, does that reflect a subsequent engagement of Dalski or does it reflect deficiencies in documentation, that is the timing of documentation, along the lines of those that you'd referred to in your evidence in relation to subcontractor recommendations. Are you able to throw any light on that?---Correct. So the works were undertaken in mid-February and I joined the project sometime mid to late March 2019, and at that point these works had already been performed, so it was very difficult to backtrack and find records. There was very minimal records. And all I

40

remember was having contractors, including Dalski, coming to me and

saying, "We've performed works. We sent you a quote. You engaged us based on this. You need to pay us," basically.

Did you understand that engagement not to have occurred by means of the formal issue of a purchase order at that point?---Correct.

And so it was necessary, was it, on your evidence, for a formal purchase order to be subsequently issued?---Correct. Downer's systems prevent payment without a purchase order.

10

Do you recall in 2019, subsequent to your commencement as project manager, the request to issue a purchase order, that is, you making such a request, in relation to the engagement of Dalski?---Sorry, could you repeat that one again.

Do you recall, subsequent to you becoming project manager, you making a request in relation to a purchase order for the payment of Dalski?---I'm, I'm not sure. I, I don't remember.

20 All right.---Yeah.

But if that's what occurred, is it your evidence that the reason for it was that you were unable to find one that had previously been issued?---Correct.

But to your understanding that should have occurred earlier. Is that right? ---Absolutely, yes.

30 You seem to recall the conversations that you had with Martin in relation to clarifying what had occurred. Would you expect that it was following that that you issued a request for the purchase order? I'm just trying to test your understanding of the sequence of events.---Yes. So Martin phoned Andrew Gayed in the first instance, I believe, following up on payment for the works, and Andrew deferred Martin onto me as the new project manager, and from that point on I started dealing with Martin on this project. So Martin initiated discussions around payment and then I had to go and backtrack and find out what contracts were in place if any, what designs were in place. This is fairly complicated safety-critical work adjacent to a live railway so - - -

40 This is the hoarding work?---The hoarding work. It's very, you know, 12, 15 metres up in the air, towering over the, or adjacent to the overhead

wiring. So it was a high-risk portion of work. There was no documentation that I could find in terms of design detail, sign offs by engineers, and then purchase orders naturally flowed down from there into, you know, engagement agreements and, and purchase orders.

And so when you say it naturally flowed on from there in relation to engagement agreements and purchase orders, they were steps that you subsequently initiated.---Correct.

- 10 Did you consider at that time whether any conflict of interest should have been declared in relation to your knowledge of and relationship with those working for Dalski?---I don't believe that I had a conflict of interest at that point.

On what basis did you reach that conclusion?---Looking back now, my conflict of interest started with Jack commencing with Dalski, which was, I'm not sure exactly when but it wasn't at that time. I don't remember Jack being involved with Dalski at that time.

- 20 Could we have the transcript of exhibit 161 brought up on the screen. This is a telephone call between Mr Nguyen and Mr Abdi. It's not a call that you were a part of. Could we go to page 12? You were asked some questions on 18 April in relation to approaches made by Mr Nguyen or Mr Abdi to you in relation to joining RJS. Do you recall that?---Correct.

Or assisting RJS.---I do, yeah.

- 30 And you've given some evidence that as - or in the period between the Kingswood project and the Banksia project you recall only one meeting with Mr Abdi. Do you remember giving that evidence?---Can you please provide some context on that?

Yep. I'd asked you some questions in relation to approaches to you by Mr Nguyen or Mr Abdi in relation to joining or assisting RJS on the Banksia project or other projects.---Oh. Correct, yep.

Do you recall answering questions about that?---Yes.

- 40 And you'd indicated that you recalled you think one meeting - - -?
---Correct.

- - - between yourself and Mr Abdi that occurred in the period you thought, perhaps between the Kingswood and the Banksia projects and that it occurred at Hornsby or he nominated the location as being Hornsby?--- Correct, Hornsby, yes.

You recall that?---Yes, I do.

10 This is a statement made by Mr Abdi on 18 May 2020. I just want to ask you about what Mr Abdi tells Mr Nguyen in relation to his conversations with you because one of the other questions you were asked on 18 April also related to whether you'd had any conversations with Mr Abdi in relation to your involvement with Dalski to which you indicated that you hadn't made any statements of that nature. Do you recall that?---Correct.

20 So if you see down the bottom there, "He keeps telling me like in Kingswood when we kept going out for drinks or, like, for lunch and shit and dinner by ourselves he would say, 'Nima, man, Nima, I've got all this shit set up. I want to bring you in, I want to bring you in. I want, we've got, I'm telling you, Nima, you've got to, like, man, you know like, we've got to do something' and I kept saying 'Nah, Vlad,'" if we could scroll to the next page, "I'm with government. It's too hard", blah, blah, blah, like that. Like I just kept, I just kept playing the straighty-180 shit." Do you recall ever having a conversation, if we could scroll back to the previous page, with Mr Abdi in which you used words to the effect of "I want to bring you in" on arrangements that you had with Dalski?---No.

30 Do you recall him ever saying to you anything along the lines of, "It's too hard. I'm with Transport." If we could scroll to the next page, or "I'm with government, it's too hard"?---No.

Did a conversation of that kind, perhaps not using those words, occur in any meeting that you recall with Mr Abdi in the period between the Kingswood and the Banksia projects?---No. I do remember him saying, however, that Transport for NSW were running very regular corruption training and that he was always attending corruption training. That was an, an active comment that he would make to me.

40 What was the context in which he would make that kind of comment? That seems a strange thing to randomly bring up in conversation, would you agree?---Yeah, yeah. It was more like a complaint that, that he had to continually attend those meetings.

Was that in the context of discussing involvement of Downer personnel or Transport personnel with subcontractors or it was simply a complaint in relation to how he had to spend his time?---No. Just, correct, just a complaint.

And do you recall any particular timing in relation to making that complaint?---Around Kingswood, during Kingswood.

10 This call took place on 18 May but he's referring back to things that occurred during Kingswood. I think you'd indicated in relation to the Hornsby meeting that you thought it was potentially at that meeting that Mr Abdi said to you something about the directors of RJS having been raided or - - -?---Correct.

- - - having had warrants executed?---Yes.

20 Do you recall any more about what he told you about that?---Yeah, he said that he had heard from Ben Vardanega that the directors of RJS's premises were - I don't remember the exact wording, but was effectively raided by the police with a search warrant.

And do you recall whether you asked him any further questions about that? ---I don't remember. I don't, yeah, I don't think so.

Do you recall whether it was in the context of a particular project that he brought that up? That is a discussion between you of a particular project.--- No, I don't, no.

30 Right. Could we have, I'm about to play, Chief Commissioner, I'll hand up the transcript of - this is an intercepted telecommunication session number 02866, a call on 21 May 2020, between Mr Nguyen and Mr Abdi, and I tender that call and seek to play the call.

THE COMMISSIONER: Exhibit 192.

40 **#EXH-192 – AUDIO AND TRANSCRIPT OF
TELECOMMUNICATION INTERCEPT SESSION 02866 FROM
TONY NGUYEN TO NIMA ABDI ON 21 MAY 2020 AT 13:03:55**

MS DAVIDSON: Thank you, Chief Commissioner. If that could be brought up on-screen.

AUDIO RECORDING PLAYED

[2.51pm]

MS DAVIDSON: Now, Mr Stanculescu, this was arrangements that Mr
10 Abdi refers to having made with you on 21 May 2020. Does that prompt
your recollection at all in relation to coffee at Hornsby next Wednesday?
---This would be, this would be the only instance, yes.

Right. But in May 2020 that was some seven months before any warrants
were executed in relation to the directors of RJS. Is it possible that you're
conflating two meetings with Mr Abdi? That is that there was an earlier
meeting that took place in May 2020?---Sorry, I - the only time I remember
meeting with Nima was, was in Hornsby. If there was another time, it's
completely gone from my memory.

20

All right. Is it your evidence that, as you sit here today, you can't recall a
meeting in May 2020, or that you simply can't recall what timing that
meeting in Hornsby took place?---The, the latter.

Is it the case that at that meeting Mr Abdi made an approach to you in
relation to your assistance on the Banksia tender?---He did not.

And did you subsequently have any telephone call, that is in May 2020 or
June 2020, from Mr Nguyen in relation to the Banksia tender?---No.

30

Could we have volume 12.9, page 170 brought on the screen. Do you recall
describing in your evidence on 18 April Mercury Road as a stagnant
company, Mr Stanculescu?---Correct.

And that it traded, you thought, approximately between 2015 or 2016 and
2017?---Correct.

And that it rented out road maintenance equipment?---That's correct.

40 All right. I'll just have this document brought on the screen. This is an
invoice from MRE Pty Ltd to Dalski on 31 August 2021 in relation to

what's said to be supply and equipment of HY Span and delivery to Muswellbrook in relation to the animal shelter project.---Correct.

You've given some evidence for your assistance to Dalski in relation to the animal shelter project. There's an amount similar here invoiced from Mercury Road for \$23,000 in relation to that project. Are you able to explain what this document is about?---Yes. The project was considering importing some materials from overseas and this invoice was drawn up, but in the end Dalski secured the materials themselves directly and there would be a, a cost for these materials from a different contractor, entirely.

All right. So is it your evidence that this invoice is in the nature of a quote? Is that correct?---I'm not sure what you mean by that. It was drawn up as a, as an example document, I guess. We ran through the idea of engaging Mercury. However, I think at this stage Mercury was deregistered. I'm not sure exactly but I wasn't trading through and I wasn't going to reopen the business and pay ASIC fees and engage an accountant for, for a pass-through.

20 All right. So if that was the case, why did you propose doing it through Mercury in that case?---I didn't propose it.

Did somebody else propose it?---Martin. Martin proposed it originally. They, Martin and - - -

How was he aware of Mercury Road? He hadn't had any previous involvement with that company, had he?---No. I mentioned Mercury Road to him.

30 Right.---Yeah.

In the context of the animal shelter project or in the context of something else?---Something else.

Right.---And he came up with the idea to run it through Mercury.

What was the material?---Timber, effectively.

40 Why was it necessary to consider importing timber?---There was a shortage in Australia at the time because of COVID, yeah.

Right. So Martin, can you explain the sequence of events, Martin proposed to you that a company that you had mentioned to him at some point in the past that was yours be used for the purposes of importing the timber.--- Correct.

Do you understand why he was proposing that?---No.

Did you regard that as a ridiculous proposal given that you weren't trading?
---That's that it was, that's why it never eventuated to anything.

10

Did you draw up this invoice?---No.

Did Martin draw up the invoice?---I don't, I don't think so. I don't know.

Who would have drawn it up? If it was your company, surely the only person who was authorised to provide any invoice documents on behalf of Mercury Road was you, was it not?---Correct. Technically Mercury uses Xero and this doesn't, doesn't line up with the format for Xero, so this is a, this is a template that's probably available online for free.

20

Right. So why would Martin have been drawing up a tax invoice on behalf of Mercury Road? I'm trying to understand what - - -?---We, we did have a discussion about running these materials, the import of these materials through Mercury.

And what would have been the reason for doing it that way?---I'm not sure.

Why couldn't Dalski simply have imported the materials?---Dalski did import the materials.

30

Right.---Yeah.

So there must have been some reason that Martin thought this was an alternative way of doing it. Do you have any idea of what that would be?
---No.

There's a reference here to be a payment being received of \$23,947.---Yeah.

Was any such payment ever received by Mercury Road?---No.

40

I'm just struggling to understand why this is drawn up as an invoice if there was no payment involved. Surely it could have been drawn up as a quote.
---Correct. Yeah. It was just a matter of changing the first two words on, on the document.

Right, but it's your evidence that you didn't draw up this document?---
Correct.

It doesn't make a lot of sense, does it, Mr Stanculescu?

10

MS LEWER: I object to the question, your Honour. This witness has answered on a number of occasions he doesn't know, he didn't author it, why - - -

THE COMMISSIONER: The question is allowed. Yes. Yes.

MS DAVIDSON: Are the bank details down the - sorry. Mr Stanculescu, the previous question I think was allowed by the Chief Commissioner.
---Sorry, what was the question again?

20

It doesn't make a lot of sense the explanation you've given in relation to the creation of this invoice, does it?---That's my evidence.

Are those your bank details down the bottom, that is Mercury Road's bank details, down the bottom of the document?---I can't remember. You would have those details already presumably.

30

Do you recall giving some evidence in relation to, that is on 18 April, in relation to the submission of tender documents on behalf of Dalski for the Banksia project?---Correct.

And they included the, well, I think you agreed by reference to the IP addresses, the document that I showed you as to times that you were using an IP address - - -?---I remember, yes.

- - - that you were submitting documents using Mr Sensicle's login for the ARCUS system?---I remember, yes.

40

And you agreed you had access to that and to the extent that there were documents submitted showing the use of your IP address to do that, that

they were documents you submitted. Do you recall giving that evidence?
---Correct, I do.

And that remains accurate to your understanding?---Yes. Limited to only the documents that were listed.

I understand there's an IT issue, Chief Commissioner, that requires a brief adjournment.

10 THE COMMISSIONER: I see, all right. We'll adjourn. Just stand down for a moment.

SHORT ADJOURNMENT

[3.01pm]

THE COMMISSIONER: Yes. We'll resume and Mr Stanculescu, you're subject to the same oath you took at the commencement of your evidence today to say the truth. Do you understand?---Understood.

20

Yes.

MS DAVIDSON: Mr Stanculescu, before that technical difficulty we were dealing with your submission of documents via the ARCUS system using Mr Sensicle's login. Could we have page 12.1, page 57 brought on the screen, please? This is taken from Downer's investigation report and is a more detailed breakdown in relation to the IP addresses used on, well, times at which different steps were taken on 6 October, which was the date we've been discussing in relation to the submission of the Banksia tender

30

documents. Do you see that in the left-hand column of this table?---Yes.

And there's various user details included in the second column from the left, some of which are yours and some of which are Mr Sensicle's.---Yes.

Do you see that?---Yes.

If we could scroll over to the right-hand side of the document you will see there the user IP address is identical for yourself and Mr Sensicle in relation to all the steps that are taken on that day supposedly by Mr Sensicle?---Yes.

40

Do you agree in relation to the identical user IP address indicated that that reflects you taking the steps recorded as being taken by Mr Sensicle throughout that period?---Sorry, do you mind just repeating that question, sorry?

10 Yeah. Do you agree in relation to - this is a document that is similar to one I took you to on 18 April that includes a more detailed breakdown. On 18 April, you agreed that in relation to an identical IP address showing for yourself and Mr Sensicle that that reflected you using Mr Sensicle's login to complete steps. I'm showing you the right-hand column here reflecting an identical IP address for all of these steps taken on 6 October by yourself and Mr Sensicle. Do you agree that that reflects you taking all of the steps that are recorded as having been taken from that IP address on that date?---No. It could have been that we were sharing a, a wireless network but we were doing the submissions together.

20 Well, do you recall Mr Sensicle having any input in relation to the steps that were being taken on that day in ARCUS where you were using an identical IP address?---Input in what sense?

Well, any input in relation to the typing or completion of documents on the computer?---Not specifically, no.

And you do recall, at least according to the evidence that you gave on the last occasion, yourself taking steps in relation to those documents?---Correct. Some documents, not all documents.

30 Well, I'm suggesting to you that in relation to the steps that are shown for the documents that were submitted or edited on 6 October 2020 that those steps were taken by you using Mr Sensicle's profile where they're recorded as having been user Jackson Sensicle?---It's possible but I, I don't think so.

Well, that's the suggestion, that's the inference that arises from the commonality in IP addresses, isn't it?---IP addresses can be shared through hotspotting.

40 Do you recall Mr Sensicle being with you in relation to steps you were taking on 6 April 2020?---Not on the specific date, I don't remember, but it could have been, yes.

Right. So it's no more than a speculation on your part, is it, in relation to Mr Sensicle's involvement in anything that used the same IP address that you were using on that day?---We did do a lot of submissions together so it's, I would say it's a reasonable speculation from me.

But you don't recall anything about that date in particular?---Not specifically, no.

10 I'm suggesting to you that you were the one who took these steps?---That's your suggestion. I've, I've provided my response.

Do you recall in the course of, well, you'll see there's reference in this sheet to a questionnaire document, do you recall editing and submitting the questionnaire document on behalf of Dalski in relation to the Banksia tender?---I, I don't recall, no. Which, where is it?

20 You see from about one-third of the way down, well, it starts in about the fifth row, there's a reference to the questionnaire document being updated, but then there are a number of updates and additions to the questionnaire document you see referenced in the third column.---Oh, correct. Yes.

Do you recall that document?---No.

All right. Chief Commissioner, I tender the document supplied by Downer which is the questionnaire document in relation the Banksia building tender.

THE COMMISSIONER: Exhibit 193.

30 **#EXH-193 – DALSKI PTY LTD DOWNER SUPPLIER COMPLETED QUESTIONNAIRE BANKSIA**

MS DAVIDSON: If that can be brought on the screen, please. Thank you, Chief Commissioner. I'm sorry, Chief Commissioner. That was an inaccurate document just brought up on the screen. This is the correct document, Chief Commissioner. This is the questionnaire document, which has a number of parts to it. Does seeing this document, or the front page, prompt any recollection in relation to your completion of it on behalf of
40 Dalski?---No.

Can we go to page 2 of the document. You'll see there's a reference there to tender terms and conditions and you're asked then to select tender terms and conditions accepted. Do you recall having any regard to the tender terms and conditions in the course of steps taken in relation to this document?---No.

Do you recall whether you ever read Downer's tender terms and conditions?---No. I did not read them.

10 You did not read them?---Correct.

Do you recall submitting a tender terms and conditions document on behalf of - I'm sorry. I withdraw that. Do you recall accepting a tender terms and conditions document on behalf of Dalski?---I don't recall.

But it's possible that you did to the extent that you edited the document and submitted it on behalf of Dalski, is that correct?---Correct, yeah.

20 Chief Commissioner, I tender the tender terms and conditions document supplied by Downer.

THE COMMISSIONER: That's exhibit 194.

#EXH-194 – DOWNER ARCUS TENDER CONDITIONS 2019

30 MS DAVIDSON: If that could be brought up on the screen. I'll just give you a moment to have a look at that. Do you recall ever seeing this document before, Mr Stanculescu?---No.

If we turn to page 4 of that document. I withdraw that. Can we go to page 3 first? There's a reference there, do you see, to conflicts of interest and fair dealing. See that at the bottom?---I do.

40 And going to the top of page 4, B and C, there's a statement there that the tenderer, by accepting the terms and conditions, confirms that they have not colluded with other tenderers or employees or contractors of Downer and they have not engaged in uncompetitive behaviour or other practices which have denied or may deny legitimate business opportunities to other tenderers. Do you see those there?---I do.

They were not statements that Dalski were able to confirm, were they, insofar as it was tendering for Banksia statement – I withdraw that - the Bankia station, it was colluding with you as an employee of Downer, was it not?---You would have to ask them that question.

Well, you would agree, would you not, that in your provision of information to Dalski, that is pricing information in relation to Mainland, you were colluding with them, weren't you?---Yes.

10

And similarly by providing information to Dalski, which in your previous evidence was then used for the purposes of submitting Dalski's price, you were engaging in practices with Dalski which denied or may deny legitimate business opportunities to Mainland, were you not?---Correct.

So to the extent that there was acceptance of these tender terms and conditions they included false statements on behalf of Dalski, did they not? ---I wouldn't agree with that entirely.

20 They were at the very least misleading statements of Dalski, were they not? ---Again, you would have to ask Dalski.

Well, to your knowledge there was collusion between yourself and Dalski, correct?---Correct.

And there was, as a result of that, at least an intention to deprive Mainland of being the cheapest tenderer - - -?---Is that the actual - - -

- - - by submitting a lower price?---Is that the actual outcome?

30

Well, I'm putting to you in relation to the behaviour of Dalski and your submission of documents on behalf of, well, pricing documents, on behalf of them, that there was an intention to deprive Mainland of the opportunity to be the successful tenderer by Dalski submitting a lower price. That was the purpose, wasn't it?---The purpose was to award the works to a contractor that was suited for the work and - - -

The purpose was to award the contract to Dalski, wasn't it?---In effect Mainland were awarded works as part of the building package.

40

Well, I'm not talking what's ultimately happened. The purpose was for Dalski was to win the tender. That was your only purpose at the time, wasn't it?---No, no.

Well, what other purpose did you have in submitting a lower price on behalf of Dalski than knowing that that was a price lower than the price that Mainland had submitted?---To not award to the incorrect contractor.

10 I suggest to you that your purpose was for Dalski to secure the work.---I, I disagree with that, yeah.

I suggest to you that in now proposing that alternative purpose, that at the time that wasn't your purpose in conducting yourself as you did.---Perhaps, yes. I'm willing to concede that.

So therefore in relation to this document, in putting forward the questionnaire document on behalf of Dalski, you were engaged in putting forward a statement that you knew at the time to be false, did you not?---As I said, I didn't read this document.

20

THE COMMISSIONER: Sorry?---I didn't read this document.

MS DAVIDSON: But you would agree it contained a false statement in relation to the collusion?---Correct.

And the purpose of putting it forward was securing Dalski's success in the tender?---Securing the best contractor for the job.

30 Well, and you regarded Dalski as the best contractor for the job, didn't you?---Yes.

If we return to 12.1, page 57. One of the steps that was taken by the user or the person using Jackson Sensicle's user profile on that date - that is 6 October - you see in the third row from the bottom, he's uploading a signed copy of the code of compliance. Do you see that in the third row from the bottom?---Yes. Yes, I see that.

Do you recall doing that on behalf of Dalski?---No.

40 Chief Commissioner, I tender the code compliance document provided by Downer that was signed on behalf of Dalski on 6 October 2020.

THE COMMISSIONER: Exhibit 195.

**#EXH-195 – DOWNER ARCUS REQUEST FOR TENDER CODE
COMPLIANCE SIGNED 6 OCTOBER 2020 FOR DALSKI PTY LTD
RE BANKSIA STATION**

10 MS DAVIDSON: Do you recall ever seeing this document before,
Mr Stanculescu?---No.

If we could go to page 4. You'll see it's signed by Martin and Mr Sensicle on 6 October 2020. Do you recall attending on them or asking them to provide signatures in relation to this document?---I don't remember but it's possible.

20 Going back to page 1 of the document, you see 1.1 there, and in the second bullet point it indicates what the tenderer is acknowledging and agreeing by submitting a tender, including in (a)(iv) that it will comply with, and all of its related companies will comply with the New South Wales code in respect of their building and construction work. And "New South Wales code" is defined as the New South Wales Code of Practice for Procurement. You see that definition there?---I do.

On and from the date of submitting the tender.---I do, yes.

30 You knew as at the date of submitting the tender that you were colluding with Dalski in relation to the pricing information or the supply of Mainland's pricing information on 6 October, didn't you?---Not actively. It was not a, it was not an active thought process.

Well, but you knew that you were providing them with Mainland's pricing information?---Yes.

And that that was information you only had access to - - -?---Correct.

- - - as a person who was an employee of Downer?---Yes.

40 There was no way otherwise that Dalski would have had access to that information.---Correct.

And so to the extent that that pricing collusion reflected noncompliance with the code, Dalski was not complying on and from the date of submitting the tender with the New South Wales code, was it?---Based on this definition, yes, that's correct.

10 Right. And again, in uploading this document I suggest that you submitted a document containing a false statement with the intention of securing the tender for Dalski. Is that correct?---I didn't read this document and the document is signed by two other people, so I acted as a, as a conduit for that document.

You put forward the document by uploading it, did you not?---Correct.

I suggest to you that at that time you were aware of the collusion that you were engaged in with Dalski?---I, with hindsight, yes.

20 If we could return to exhibit 193, the questionnaire document. Could we have page 4 of that document. You see there the key personnel section.---I do.

And the project manager there referred to is a person called [REDACTED] [REDACTED] Do you see that?---I do.

He was not an employee of Dalski as at 6 October, was he?---That's correct.

And you knew that didn't you?---Yes.

30 And in fact he never became an employee of Dalski, did he?---That's correct.

So at the time that you put forward this document, that is the questionnaire document on behalf of Dalski, you knew that it contained a false statement in relation to Mr [REDACTED] as the project manager, didn't you?

MS LEWER: I object to the question. The witness has not accepted that he put forward the questionnaire document.

40 MS DAVIDSON: Chief Commissioner, might I respond to that?

THE COMMISSIONER: Yes.

MS DAVIDSON: He's been taken to the steps that were taken in relation to submission of the questionnaire document on that date, that is, 6 October 2020, as reflected by the IP addresses. I accept that he has offered some speculation in relation to whether Mr Sensicle was using the same IP address, but he has also accepted that there's, that there is commonality in the IP addresses and that he is not able to establish that it wasn't him.

10 THE COMMISSIONER: Well, perhaps you can phrase the question in a way that addresses the concern that's been raised. I think the question's permissible. It just might have to be rephrased.

MS DAVIDSON: I think you'd indicated in answer to the previous question, you knew as at 6 October that Mr [REDACTED] was not an employee of Dalski?---I can't place the timing but I believe there is a document where, where that's, that was the case, yes.

20 You believe it was the case that you didn't know as at -- I withdraw that. You knew as at 6 October that he was not an employee of Dalski? You believe that to be the case?---I understood that he was going to be become and employee for the purposes of delivering the Banksia project. I'm not sure at what point he didn't go ahead with, with the role.

Well, you knew as at 6 October that he hadn't accepted any employment from Dalski. He was not a Dalski employee who was the project manager appointed for this project, was he?---I can't recall. I do believe there is an email from Adam which is in your records where [REDACTED]'s CV was put forward as a potential candidate. I'm not sure when he declined the offer, whether it was prior to this date or after this date.

30

All right, but even if an offer had been made, he was not an employee at any point of Dalski, was he?---Correct.

And so to the extent he was put forward in this document as the project manager, that is, somebody engaged by Dalski for the purposes of the project, that was never the case, was it?---I, again, I'm not sure about the timing with respect of this specific, you know, with regards to [REDACTED], I don't remember.

40 All right. Do you recall giving an answer in relation to the organisational chart, that is on the last occasion that you gave evidence, that you prepared

that document, that is the organisational chart that is put forward as part of the tender document, or tender documents plural, I should say?---Correct. I acknowledged that the metadata of me being the last modified user was correct. I didn't - - -

Do you recall editing that document?---No, not specifically. I would be speculating.

10 Can we have volume 12.1, page 138 brought up? This is the organisational chart document in relation to which you were asked questions on the last occasion. Do you see that too reflects Mr [REDACTED] as the project manager?---Yes. Yeah, I see that.

Does seeing this document reflect or prompt any recollection on your part in relation to edits that you made to it reflected by the fact that you were the last author?---I, I don't remember, no.

Well, if we could return to exhibit 193. Could we go to page 4 again?
---This is a different document.

20

I'm sorry. You're right, it is. Do you agree in relation to page 4 of this document putting forward Mr [REDACTED] as the project manager for this project it is false?---No. At the time there was every intention, I think, to engage him.

Well, there may have been an intention but he was never appointed as the project manager, was he?---He was by Adam and Martin.

30 He wasn't by Adam and Martin because he never agreed to accept any employment with Dalski.---He may not have but Adam put him forward.

Well, he may have been put forward to Dalski, that doesn't mean that he was able to be put forward by Dalski as the project manager in relation to this project, does it? He wasn't appointed or engaged by them.---Correct. Yeah, subsequently he wasn't engaged.

Well, and to the extent that at this time he wasn't engaged, he wasn't engaged at any earlier point either, was he?---Not that I'm aware of.

40 He didn't enter into an engagement with Dalski and then back out, did he?
---Not that I'm aware of.

No. So to the extent this document and the organisational chart puts him forward as the project manager for this project he never was, was he?---No. Evidently he wasn't.

No. So I'm suggesting to you that this document contains a false statement. Would you agree?---No, I don't agree with that.

10 And to the extent that you submitted this document, accepting that your evidence is it's possible that Mr Sensicle did that, I'm suggesting that you, to the extent you submitted it, did so knowing that it contained a false statement.---I don't agree with that.

Do you recall scoring the Banksia tender, that is in your Downer capacity?
---Vaguely.

20 Could we go to volume 12.2, page 1. This is a scoring analysis sheet prepared by Downer, reflecting records, as I understand it, taken from the ARCUS system. Do you see there are various sections indicated there?
And then participant names who are the subject of the scorer who are towards the right-hand side of the document. Do you see that?---I do.

And then further to the right are various people who were engaged in scoring. Do you see that?---I do.

And one of those persons second in from the right is you.---Yes.

30 Do you recall the other persons listed there as to some extent being involved in the scoring in relation to the Banksia project?---Yes.

You'll see looking down - probably easiest to use the section numbers, which are on the left-hand side, the second column in from the left - that key personnel have been scored. Do you see that?---I do.

And the first of those number 7 rows, or the rows that has 7 in the second column, is key personnel in relation to Dalski. Do you see that?---Yes.

40 And there's a score or a possible score available in relation to key personnel of 5. That is the maximum possible raw score.---Correct.

And in relation to the scoring for Dalski, you see that nobody else in that white row - that is not David Hammond, not Gareth O'Brien, not Kevin Brady - provided any score but you did. Do you see that?---Correct.

And you scored them as 5 out of 5.---Correct.

That related to the key personnel information that had been provided in the tender questionnaire. Would you agree?---Yes.

10 Which included the information in relation to Mr [REDACTED].---Correct.

And would you agree that by the time you scored the information in the tender questionnaire - that is scored on behalf of Downer, the information - that you were aware that Mr [REDACTED] was not engaged as a project manager in relation to this project for Dalski?---Yes.

And so in giving a score of 5 out of 5 in relation to key personnel, you were scoring in relation to information that you knew to be false.---No, as I stated, my understanding was that there was a plan to engage him. And the
20 key personnel is not limited to one person. There is a number of people that form that and one of which was Adam Adamczewski, and I'd worked with Adam previously. So when you, when you add it all up in my head at the time, for better or worse, my assessment was that even if it didn't go ahead with, with that project manager, that Adam would be there to support that project.

Well, the key personnel were only Mr [REDACTED] as project manager and Adam, according to the questionnaire document that I've just shown you.---
Mmm.

30

So the project manager for the project was presumably, as the first person listed in the key personnel, regarded as somebody who was critical to the scoring of the personnel for the project?---Correct.

So to the extent that you knew, I think you indicated that you did know by this point of scoring that Mr [REDACTED] wasn't coming on board. You were scoring in relation to information that you knew to be false. Is that not correct?---I don't know that I knew that at the time. I, I can't place the timing. 6 October versus when it transpired that [REDACTED] had not decided
40 to join Dalski. I don't remember that. And like I said, key personnel is

comprised of more than just the project manager, so that the score would be across, across the board.

Well, to the extent that you were giving a score in relation to any other project, you would necessarily have given significant weight to the project manager, would you not?---The team as a whole.

Well, and if information had only been put forward in relation to the project manager and the construction manager, you knew in your Downer capacity
10 that the project manager was critical, didn't you?---Important, yes.

You were scoring in relation to, that is the scoring that you offered for key personnel in relation to Banksia, you would agree was biased as a result of your conflict of interest with Downer, wasn't it - conflict of interest with Dalski, I should say?---I agree.

And beyond that, you applied a methodology to it that you never would have applied to any other contractor?---Not necessarily.

20 That's because you knew that there was a person who had been put forward who wasn't a person who had been engaged by Dalski, put forward as project manager, a very important role.---Sorry. What's the question?

The methodology you applied, I'm suggesting to you, was different as a result of your knowledge Mr [REDACTED] wasn't and had never been engaged as the project manager for this project?---However, at the time, there was a CV presented and I - - -

Well, you knew, and you've indicated and agreed that you knew that Mr
30 [REDACTED], notwithstanding a CV had been presented, had never been engaged by Dalski?---Correct. However, I was told that he would be engaged, and based on his CV and what I saw compared to other tenderers, and, yeah, granted my judgment was clouded by my conflict of interest, so there's merit to that, however, genuinely at the time I acted based on the CV that was, that was put in front of me.

I'm suggesting you were acting based on what you knew to be false in relation to what was being put forward for Mr [REDACTED].---No, that's not
40 the case.

Could we have - just one moment, Chief Commissioner. Chief Commissioner, I do note the time. I'm very nearly finished. I should be finished within five to ten minutes.

THE COMMISSIONER: All right.

MS DAVIDSON: Chief Commissioner, I tender a document produced by Murchisons which is described as a management report for Dalski Pty Ltd for the year ended 30 June 2022.

10

THE COMMISSIONER: 196.

#EXH-196 – DALSKI PTY LTD MANAGEMENT REPORT FOR FINANCIAL YEAR ENDING 30 JUNE 2022

MS DAVIDSON: If that could be brought up on the screen. Mr Stanculescu, do you recall being asked some questions on the last occasion in relation to your provision of \$100,000 to Dalski in November and December 2021?---Yes.

20

If we could go to the page 5 of 6 in this document. This is a document produced by Dalski's accountants in relation to the preparation of its accounts. I should indicate that this is not yet a signed financial statements document, the Commission having been informed that that document, that is the signed financial statements, having not yet been prepared. Is this a document you've seen before? You indicated you had some visibility over Dalski's accounts. Does that continue to be the case?---Correct.

30

Have you had visibility in relation to this document?---No.

You'll see here the balance sheet including various liabilities. You'll see there's some non-current liabilities listed including a director's loan of \$150,000 and a loan amount of \$448,000.---Yes.

Are you aware of a director's loan having been provided in relation to Dalski?---Yes.

40 Does that include the 150,000 – I withdraw that. Does that include the \$100,000 provided by you?---No.

Are you aware of there being \$448,000 of loans incurred by Dalski?---I'm not actually aware of the numbers, the precise numbers of either of those two numbers.

To the extent that you'd indicated on 18 April 2023 that you understood that Dalski's balance sheet would reflect the loan from you - - -?---Correct.

10 - - - how was it that you understood that that would be reflected, or in giving that answer did you have an understanding of how that would be reflected?
---Correct. So within the loan amount there is a further breakdown and that would itemise the individual loans, loan amounts.

Do you understand what the remainder of those loans are?---I, I can't recall off the top of my head.

But is it your understanding that the director's loan refers to amounts not provided by you?---Correct, yeah.

20 You were taken to the date of your initial provision of \$50,000, that is 17 November 2021, the date that you resigned from Downer. You indicated in your previous evidence that that was a coincidence. You also gave some evidence in relation to that being the date that you agreed with Martin that you would provide the amount. Do you recall that? That is there hadn't been a previous discussion of it.---Correct. I don't, I don't recall when, when that took place.

30 But does it remain your evidence that, to your understanding, it was 17 November that you formed that agreement in relation to providing the funds, that is the conversation you had with him didn't precede that date?
---I, again, I'm not sure of the timing. It wouldn't have happened in the space of a day. You don't just move \$100,000 from one account to the other like change.

No, no. I understand the movement of funds took longer than that.
---Correct.

40 Your evidence on the last occasion was that you didn't think there had been preceding discussions, that is the agreement and the movement, occurred on 17 November or around 17 November?---I, look, I, I just don't remember. Around 17 November, yeah.

Was it your intention at the time, that is around 17 November, that the amount of money was not to be a loan but was instead to be you purchasing an interest in the company in relation to you starting to work for them?

---No.

I suggest that that's consistent with the date of you commencing your formal, well, remunerated role with Dalski.---That would be coincidence.

- 10 It's a somewhat surprising coincidence, is it not, that on the very day that you resigned from Downer you're providing \$50,000 to Dalski?---I'm not surprised. And in fact some of that money has been paid back.

Could we have volume 12.9, page 171 brought up on the screen? These are answers provided on behalf of Dalski to the Commission on 28 February 2023. You see at the bottom of that page question 3 and there's a request in relation to financial transactions between yourself and Dalski Pty Ltd. Do you see that?---Yes.

- 20 And there's a reference there at B to the November 2021 \$50,000 payment?
---Okay, yes.

Yep. And then at the top of the next - can we scroll to the next page? Point C, 1 December '21, that's the other \$50,000 of the loan and we've taken you to your bank statements in relation to those transfers.---Yes.

- 30 You'll see that the answer that's provided there above the heading C is that "This money, as the one in subpoint (c), has been received by Dalski from Vlad as a loan to help me run the company at a time when funds were scarce. I'm ashamed to say that to this day I've been unable to repay this loan to Vlad, but I'm hopeful that this situation can be rectified soon." I showed you the date of this document. That was as at 28 February. You suggested on the last occasion that there had been some loan repayment and I think you'd indicated that that was 2022, potentially. That appears to be inconsistent with the answer given on behalf of Dalski to the Commission. Are you able to explain that inconsistency?---Possibly an oversight, yeah.

- 40 \$25,000, which I think was what you indicated was potentially the amount repaid, is a somewhat significant oversight, would you agree?---Yeah, yeah.

If we could scroll up to page 170. I'm sorry, it must be 169. I withdraw that, that's right. In relation to the access that you agreed that on the last occasion and today that you had to the Mainland Roofing prices and your provision of those prices to Dalski for the purposes of their Banksia tender, did you discuss with Mr Sensicle prior to provision of that information that you would access those prices and provide the information to Dalski?---No.

Did you discuss - that is your access to the prices and the provision of information to Dalski - with Martin?---No.

10

Did you receive any request from them in relation to accessing that information?---I don't remember. There may have been.

At the time that you provided it, did you discuss with them using that information for the purposes of coming up with a lower price on behalf of Dalski?---Yes.

And that's in fact what happened?---Correct.

20 And you agreed to do that, I suggest to you, for the purposes of advantaging Dalski in the tender.---Correct.

And also for the purposes of disadvantaging Mainland in the tender. That is, securing Dalski's success over Mainland.---Yeah.

In relation to the Birrong tender submission, do you recall whether you had any involvement in the preparation of the tender questionnaire? We've discussed your authorship of some documents in relation to Birrong.---I don't, I don't recall, no.

30

I'm sorry, you don't recall?---I don't recall. I don't recall.

It's possible that you did, it's possible that you didn't?---I do recall creating some documents but they were, like I mentioned before, org charts and things like that that were fairly generic documents to be submitted with tenders.

40 All right. Chief Commissioner, I tender a copy of the supplier completed questionnaire. I'll show that to the witness, in fairness, to ask whether he recalls any completion of the document.

THE COMMISSIONER: Exhibit 197.

#EXH-197 – DALSKI PTY LTD DOWNER SUPPLIER COMPLETED QUESTIONNAIRE BIRRONG

MS DAVIDSON: Mr Stanculescu, this is the ARCUS questionnaire document that was submitted on behalf of Dalski in relation to Birrong. It
10 forms or takes, effectively, a similar form to that which was submitted that we've been going through in relation to Banksia. Does seeing this document prompt any recollection on your part in relation to your involvement in preparing it or whether you had any involvement in preparing it?---No. All these documents look the same.

I'm sorry?---They all look the same, my apologies. No.

Just one moment, Chief Commissioner. Are you aware, Mr Stanculescu, of there being a very high number of defects in relation to the work that Dalski
20 did on Banksia Station?---I'm aware of the statements of there being defects, yes.

There's been evidence before the Commission that there's in the order of 600 or above defects that were required to be rectified. Are you aware of that?---I'm aware of the statement, yes.

That is, you're aware of the evidence to the Commission but are you aware to any other extent in relation to those defects?---I am aware that Dalski, being on the other side of the fence, received formal correspondence from
30 Downer and the number of defects being in the order of one or two dozen.

That's the examination, Chief Commissioner.

THE COMMISSIONER: Yes (not transcribable) yes.

MS DAVIDSON: I would ask - - -

THE COMMISSIONER: Do you have any requests?

40 MS LEWER: Yes. With the Commission's leave, I have about half a dozen questions I'd seek to ask Mr Stanculescu but I - - -

THE COMMISSIONER: What are the topics?

MS LEWER: One related to the questioning this afternoon regarding the code of compliance document, just to clarify something and the others are relating to the tender of the Banksia process.

THE COMMISSIONER: How long will you be?

10 MS LEWER: Less than five minutes.

THE COMMISSIONER: Yes. All right. Leave is granted.

MS LEWER: Mr Stanculescu, you were asked some questions this afternoon about the code of compliance document that was uploaded onto ARCUS. Do you recall those questions?---Yes.

And, just to clarify, did you read that document before you uploaded it onto ARCUS?---No.

20

You gave some evidence that you assisted Dalski to submit the tender for the Banksia project. That's right, isn't it?---Correct.

And you accepted that you had a conflict of interest that you didn't declare?---Correct.

And you accepted that that clouded your judgement. Is that correct? ---Correct.

30 Now, accepting both of those facts, at the time that you assisted Dalski to submit the tender for the Banksia project, did you consider Downer's interests at all?---I did.

And what did you consider were Downer's interests?---Because I was the project manager looking after Banksia and being responsible for, for the delivery of that project, I wanted to make sure that the, the timing and the budgets and the quality of the project was, was manageable for me as a project manager. And one of the things that I did as a result of that was splitting up the building works package and awarding the works to both
40 Mainland and Dalski. And the packages were tailored to, to suit their skill set. That's, yeah.

So there were only two companies that submitted for that tender. Is that correct?---There were six or seven, however Mainland and Dalski were the two lowest by a significant amount.

You also gave some evidence that after Dalski secured some of the work that you've just described, the split package, you gave them some assistance in terms of variations. Do you remember giving evidence about that?---No, not specifically.

10

On the last occasion, you were asked some questions about variations that were submitted by Dalski. Do you remember that?---Yes.

And you accepted that you may have given Dalski some assistance as part of that process. Do you accept that?---Yes. Yeah.

And, again, you accepted that you had a conflict of interest at the time you provided that assistance. Is that fair?---Correct.

20 And that your judgement was clouded.---Correct.

Again, is that correct?---Yes.

Again, at the time you provided assistance to Dalski with those variations, did you consider Downer's interests at all?---At all times, yes.

And how did you consider Downer's interests?---I think even retrospectively each variation can be, can be interrogated on its own merits, even to this day and, and I'm certain that they would, they would stand up
30 on their own as valid and reasonable variations.

Thank you. They're the questions I have, Chief Commissioner.

THE COMMISSIONER: Yes.

MS DAVIDSON: Nothing arising, Chief Commissioner, other than there's been a further production of documents in the course of this afternoon whilst I've been on my feet and I would ask that, as a consequence of that, the witness not yet be discharged from his summons.

THE COMMISSIONER: Yes. All right. Well, Mr Stanculescu, I'm not in a position at this stage to discharge you from the summons, so we're going to stand you down, the Commission will stand you down and what will happen is that you'll be contacted through your solicitors in the event that it's necessary for you to come back, all right? But, for the moment, you can stand down.---Understood. Thank you.

Thank you.

10

THE WITNESS STOOD DOWN

[4.20pm]

THE COMMISSIONER: The Commission will adjourn.

AT 4.20PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.20pm]

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