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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 TUESDAY 28 MARCH, 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. Thank you. Yes, Mr Wakim, you're subject to the same oath you took at the commencement of your evidence to say the truth.---Yes, I understand, yes.

Thank you.

10 MR ENGLISH: Thank you, Chief Commissioner. Mr Wakim, did you ever make any complaints within Transport NSW insofar as concerns your dealings with Downer?---Complaints in what regard?

Did you ever speak to any of your co-workers from Transport NSW saying for example in relation to the tranche 3 project as to Downer's conduct in your dealings with them in that capacity?---Yeah, I would have had conversations with numerous people at Transport. It was a fairly large team, probably around 20 people with all the functional support teams that were dealing on the Downer jobs so we would have had conversations with
20 my team and my executives about various aspects of Downer's work, and I'm sure amongst all that there would have been concerns or complaints with aspects of the way that they were undertaking their works.

What about with your executive, were you ever given, if you raised something were you given an instruction back from the executives?---Sure. So most of the time that I was in that SPM role my project director was Nadine Bourezg and we would speak regularly about, you know, how we were managing Downer and how that relationship was going. Generally there was a feeling, and Nadine and I had discussions about this, that we
30 were trying to work out ways to improve the relationship between Downer and Transport for NSW. We both felt that Downer were treating Transport with, and, and I guess key stakeholders as well, Sydney Trains, the local councils that we deal with, with a degree of I guess without the sort of due respect that, that we'd come to expect from other contractors and maybe a degree of contempt I suppose.

And were you ever told by anyone whether it was within Transport for NSW or someone external to Transport NSW that you yourself personally were exhibiting a lack of trust with respect to Downer?---Yes. So those
40 conversations were had. I know that the Downer team had complained to the Transport executive that, that I lacked trust. That I was questioning their

decisions. That I was questioning their integrity. I would have had those conversations with both Nadine Bourezg for the main bulk of that but also at the time when I sent that email regarding RJS - - -

That's on 20 October 2020?---Correct. There were quite a few changes in that, in my direct report so the project directors at that time were on a bit of a rotation so each month there was a different project director. I think we had four in the space of four months so I think at that time it was Chris Daffin who was the project director.

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THE COMMISSIONER: Who, Chris?---Chris Daffin.

How do you spell that?---D-a-f-f-i-n.

MR ENGLISH: Can I ask you who from Downer was suggesting you had issues with respect to trusting them?---Would of – Andrew Bedwani.

When you say, you were about to say it would have been. Do you have a memory or do you know?---I wasn't privy to those conversations directly. They would have been Andrew Bedwani or his superior Kevin Brady would have been having those conversations with the project directors.

20

And are you assuming that or did someone from your side on Transport tell you that we've received this feedback about you?---I, yes, that's what happened. I'd received that, that feedback from my project directors.

30

All right. And when you received that feedback from your project directors was there an instruction as to how you should behave in respect of your dealings with Downer?---Towards the end of my time there, a couple of weeks after I raised those concerns about RJS there was a, a site barbecue that was to be held at, at Birrong Station and there was, there was an email sent at that time talking about, from my project director talking about the importance for us to build trust in our, between ourselves and Downer and that was the, the secret ingredient to how to manage these managing contractor roles.

Okay. Can I just circle back to the TBE development process that you gave some evidence before?---Sure.

40

Just how much, when you're having the negotiations or you're given the TBE by Downer, how much visibility did you have over Downer's pricing

at an itemised level?---It was quite detailed. So for each station, they would have presented a bill of quantities which goes through and itemises each aspect of the bill. They would have also provided breakdowns of each person involved with, on the Downer side for - - -

10 That's in the preliminary stage?---In the preliminary stage, yeah. But in the actual deliverable stage, yeah, each, each, each project is broken down into sort of individual elements, like down to how many, how many piles, how many cubic metres of concrete for each element and how much tonnage of steel, how much square metres of roof sheets, that sort of thing.

And in that TBE process, were you told what subcontractor costs were expected to be?---Yes. So they would provide an estimate for each package of works.

20 But then it's up to Downer, isn't it, to perhaps do that work itself or subcontract it out?---Yeah. So the idea with the managing contractor is that they would not self-perform, that they would be managing subcontractors to undertake the works.

In all cases, for all packages, I should say?---That is the intention.

Are you aware of occasions where packages were performed by Downer on its own recommendation?---I can't think of specific examples, but I'm aware that it did occur. And I believe that it has to occur with the approval of the, of the principal.

30 If you just bear with me one moment, please.---To put that in some further context, on the tranche 1 package of works, Downer were much more inclined to let out larger packages of works to some of our other principal contractors to undertake the works - - -

40 THE COMMISSIONER: Sorry? Say that again? In tranche 1?---Yeah. So in tranche 1, Downer employed almost, like other principal contractors, if you like, like some of our specialist delivery partners, such as Arengo and I believe Haslin, to undertake some of the works on their behalf. So they essentially acted, those smaller companies acted as the builder and Downer managed those builders. But in tranche 2 and tranche 3, they wanted to really perform that role of the builder.

MR ENGLISH: Can I ask you about storage of confidential documents on Transport for NSW's internal systems?---Sure.

Was there a package or a software program used for that purpose?---So formal correspondence was sent using an email program called TeamBinder.

10 And how did that work?---So much like any email system, I suppose, so it was essentially managed by Transport for NSW and it was then divided up by, to various projects and, and companies we had working for us, to send, you know, formal and general correspondence between Transport for NSW and our delivery partners.

20 And what did TeamBinder do insofar as security or, to your understanding, insofar as security mechanisms were inbuilt to protect the confidential nature of some of the documents stored within that system?---So I think I mentioned right at the beginning that I'd previously worked in IT. So with my IT background, I identified a flaw, not so much with TeamBinder but in the way that it was managed by Transport for NSW. So with our external contractors, the nature of the building industry is that they move around a fair bit, they move between different companies. We never kept track of that, Transport. So people that have moved from one company to another would still have their old company's login details to TeamBinder.

So, for example, if a Downer employee was granted access to TeamBinder and given login details - - -?---With a Downer email address, yes.

30 - - - that person could move to another building company but still retain the email login details for TeamBinder?---Yeah, I wasn't aware of any process in Transport where we tracked or managed when people left a company and to remove them from the system.

Sorry, what did you say last? To remove them from the system?---Yeah.

40 Okay. And within TeamBinder, was it one access for everyone with a login or were there different levels of access depending on what your login credentials were?---As far as I'm aware, it is, you're limited, if you haven't got a company email address, you're limited to be able to view the correspondence from that company. So, but I don't, I'm not aware that if there are different levels within that as such.

So if that company that someone was working for then goes on to get additional projects with Transport for NSW, theoretically a staff member who had login details but has left the contracting company could log back in and see the correspondence relating to the new contracts that had subsequently been obtained by the former employing company, is that right?---That was my concern. So I raised that with the Commercial and Procurement Team and they questioned whether TeamBinder was the right vehicle for sending the commercially sensitive TBE submission, and I raised those specific concerns and they said it would be best then to send it via email with a password.

And did that happen?---Yes, it did. So the bulk of the TBE submission was done formally, but the, the actual pricing information, the bill of quantities was sent then via email.

Thank you, Chief Commissioner, they're my questions.

THE COMMISSIONER: Just one moment. I just want to have some clarity on when your period as the acting senior project manager stopped, when was that?---So - oh, stopped, 26 October 2020. In the six weeks prior to that I was doing a handover to Jim Hill, who was to replace me as the senior project manager.

So had you communicated any dissatisfaction with the performance of Downer to your superiors prior to the email that you sent on 20 October? ---Yes, I did.

And when was the earliest? Do you recall? And to who was it?---I think - I'm fortunate in my position as construction manager to be able to work with a large number of different contractors, and out of the perhaps ten different contractors that I work with across the TAP program, and the commuter car parks program and MTMS program, the More Trains, More Services program, I generally rated Downer as probably number ten on that list. Although perhaps a fairer measure would be the contractor performance reviews that Transport undertake every six months on our contractors. They are essentially a report card that we do on a number of different criteria, and they would probably give you a fair measure of how Downer ranks against our other contractors in our programs of works.

And who completes those reviews?---So they're generally compiled, collated by the senior project manager in conjunction with, discussions with

the, with their team. So they'll be speaking to the Safety Team, the Enviro Team, the Planning Teams to, to get a picture of how they're performing across different criteria, and then it's sort of ratified by the senior project manager and presented to the project director and then I think shared with Downer. I think at the time, September-October 2020, Downer were quite unhappy with the score that they were provided with for Wollstonecraft in particular.

10 And you completed that report?---I have. They also complained to the project director about it.

Are you aware whether any action was taken on the basis of that, the performance review?---Contractor performance review is then, would have been a point of discussion in the Contract Control Group meetings, which are held monthly between the Downer hierarchy and the Transport hierarchy. By that time I'd stepped down from the role and wasn't privy to those discussions. There would be minutes, though, available.

20 Was it only in the six months or so prior to that review that the performance of Downer was the subject of an adverse report as far as you're aware?---As far as I'm, well, I'm aware I didn't compile the CPRs, as they're referred to, for the previous tranche of projects. They're not information that's widely shared amongst the team so it is difficult to fully compare all the different contractors.

How long was your acting appointment for?---14 months.

Thank you. Ms Heger, you sought leave for 30 minutes.

30 MS HEGER: Yes, I do, Chief Commissioner. Mr Wakim, my name is Heger. I appear for Downer EDI Works Pty Ltd. I'm just going to ask you a few questions about the evidence you've given.---Sure.

First of all in relation to the negotiation of the target budget estimate, now, that takes place between Downer and Transport before a managing contractor contract is entered into between Transport and Downer, correct?--
-Correct.

40 And in that process Downer puts forward its estimate of costs and fees on the project and that's what's called the target budget estimate, correct?
---Correct.

And that has several components set out in the framework agreement, correct?---Correct.

Including what's called reimbursable costs, correct?---Yes.

Which refers to for the costs of trades and materials on the project, correct? ---Correct.

10 Also includes something called a design fee, correct?---Correct.

That's a lump sum payment for the design for the project, correct? ---Correct.

And also something called preliminaries, which includes the costs of Downer personnel allocated to the project, correct?---Correct.

And that's also as provided for under the framework agreement a lump sum, correct?---Correct.

20

All right. And so the process is Downer puts forward a target budget estimate but then Transport can and does negotiate with Downer over that estimate, correct?---Correct. I'm not sure the term that we use is actually negotiating but we, we sort of interrogate the, the figures that are presented and work to satisfy ourselves that it is value for money.

Yes. And once that target budget estimate has agreed, that's the point that the managing contractor contract is entered into, correct?---Correct.

30 All right. And you were involved in those negotiations for tranche 3, correct?---Correct.

And you've said during that negotiation, as is its common practice, Transport engages an independent expert to assess Downer's target budget estimate, correct?---Correct.

Called the independent estimator.---Correct.

40 Which is provided for under the framework agreement as we've seen, yes? ---Correct.

And their job is to advise Transport on whether Downer's proposal represents value for money, correct?---Correct.

And at the time of tranche 3 that role was performed by WT Partners, correct?---Correct.

Indeed it's part of your role in the negotiation process to assess whether Downer's proposal represents value for money, correct?---Correct.

10 And you took that responsibility seriously, correct?---I did.

And Transport formulates its own internal budget for the relevant project, correct?---It does during the early planning stage. I think the budgets for these projects were set in about 2018.

All right. And that's not something that's disclosed to Downer during this negotiation of the target budget estimate, is it?---No, it's not meant to be.

20 All right. And under the framework agreement you're aware that the independent estimator must ultimately sign off on the target budget estimate before Transport can accept it, correct?---Before we award a contract we have the independent estimators review the bill of quantities and the pricing and determine whether it's comparable to market rates.

Yes. And the independent - - -?---And they provide, they then provide a certificate.

30 Mmm. And the independent estimator wouldn't sign off on the target budget estimate unless they considered it represented value for money, correct?---That's, that's the intention, correct.

All right. You mentioned that there was an instance where Downer provided some information that the independent estimator had requested a few days before the deadline that had been set. Is that your evidence?---No. My evidence was that the independent estimators had been asking Downer for quite a number of weeks for information regarding the pricing of the job. Downer said it wasn't ready and they weren't provided until probably week 11 of the, the target budget estimate period.

40 Mmm. Of a 12-week period, is that right?---Correct.

Yes. And you also gave evidence, however, that this phase of discussing the target budget estimate was a very busy time, correct?---Correct.

There was a lot of work to be done both by Transport and Downer, correct?---Correct.

You said there were designers undertaking investigations, survey works, drilling boreholes and geotechnical investigations, correct?---Correct.

- 10 And so if there were some delays on Downer's part in providing the relevant pricing there may have been good reason for that, correct?---The, Downer were falling behind with the, with the works and had requested a two-week extension to the TBE period, but we did feel that whilst accurate pricing would not be available until towards the end, that certainly indicative pricing could be provided at an earlier stage. That is the intention during the TBE period. In fact, they, Downer were required to provide a monthly report detailing their progress during the TBE phase, to give those sort of broad outlines of how the design was developing, what challenges they were facing and what sort of indicative pricing that they were working towards.
- 20 They were never provided.

All right. But my suggestion to you is there might have been good reason for that, given it was a very busy time for all concerned. You'd accept that, wouldn't you?---I would accept that. And there has been some discussions at Transport for NSW that perhaps the 12-week period is too short and that perhaps a 16-week period would be, would be more suitable to, to develop the TBE.

- The 12-week period imposes a lot of pressure on everybody involved.
- 30 Correct?---Look, it does but it is, as with any sort of delivery or construction project, there are always time constraints and always deadlines.

All right. Now, if Transport is ultimately unhappy with the target budget estimate that's put forward by Downer, it has no obligation whatsoever to enter into a managing contract with Downer, does it?---No. Under the framework agreement, we are not obliged to have to proceed with that and, indeed, there is precedents on other MC projects not to proceed with the target budget estimate presented.

- 40 Yes, but not on any Downer projects. That's right, isn't it, insofar as TAP is concerned?---Not on any Downer projects, no.

No. In every instance in which Transport has entered into negotiations with Downer about a target budget estimate, you were ultimately able to agree on that and enter into a managing contractor contract with Downer. Correct?

---Correct. I believe the number is up to about 15 or 16 projects now.

And so it was some other contractor, and you don't need to name them, some other contractor where Transport ultimately decided not to enter into - - -?---Some other contractor, to, to be clear, not Downer, another contractor.

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Yes. And, of course, if the independent estimator thought that they were given information too late by Downer, such that they didn't have time to make an adequate assessment, the estimator could have refused to issue a certificate provided for under the agreement. Correct?---Correct, although there are, as you mentioned, time pressures on everyone, so there are various ministerial commitments and dates that we're reporting to that we're trying to work towards, with the hasty redesign of these projects during that time. To help mitigate that, Transport also reduced our review times on the project. So everyone was, was under a degree of pressure to maintain these truncated time frames.

20

Well, there might be a degree of pressure but under the framework agreement, Transport had absolute discretion whether or not to go ahead with a managing contractor contract for Downer. Correct?---Correct.

And if it was not ultimately happy with the target budget estimate, one option was not to give Downer the project, but another option was to enter into further negotiations with Downer to come up with a more satisfactory target budget estimate. Correct?---Correct.

30

Thank you. Indeed, far from Transport ever deciding not to enter into a managing contractor contract, it's repeatedly given Downer more and more work on the TAP program, hasn't it?---Much to many people's amazement, yes.

Well, obviously, there are people more senior than you at Transport who are charged with making that decision, whether to enter into a contract. Correct?---Correct.

40 And you respect the opinions of those people, don't you?---I do.

All right. So, well, let's go through them. First of all, there was Downer's work in tranche 1 on Victoria Street. Correct?---Correct.

And Downer was also involved in tranche 2 on Kingswood, correct?
---Correct.

And then there were obviously the five stations in tranche 3 you've identified in your evidence, correct?---Correct.

- 10 Yeah, so obviously those at Transport who had responsibility for making the decision whether to enter into a managing contract thought that Downer was doing a good job overall, correct?---Correct, yes. There was a, perhaps a disconnect between upper management and the people that dealt with Downer on the ground.

Yes, in other words, you had one view about Downer but those who were more senior than you had another view, correct?---Correct.

And that was a much more positive view than yours?---Correct.

20

You gave an example of Downer performing poorly on its review for Wollstonecraft, correct?---That's right.

But of course Wollstonecraft was just one of five stations that Downer was contracted to perform in tranche 3, correct?---Correct.

In addition to the other stations that I mentioned in tranche 1 and tranche 2, correct?---Correct.

- 30 Yes. But that's the only example you can give of Downer receiving what you call a less than satisfactory performance review, Wollstonecraft, is that right?---I think it'd be in the interests of the Commission if Transport could provide all the contractor performance reviews and perhaps compare them to the other contractors. I think that would give a much clearer view.

And if I suggested to you that, generally speaking, Downer scores pretty high on its KPIs for each project, you're not in a position to comment on that, are you?---There are performance and, what are they called, P&C payments, performance and - I can't remember what the "C" stands for now.

- 40 Monthly payments made to Downer for, for their performance on their jobs. It was one of the things when we went to extend the framework agreement

that we were hoping to change 'cause we didn't feel that the criteria for which they were being assessed on for good performance was very useful as an indicator to their work onsite. But I was told by the Commercial Team that to change that would actually require changing the framework agreement, for which there wouldn't be enough time to do.

So in other words, Downer was performing well in relation to the criteria that Transport itself had set. You just disagreed with the criteria. Is that your evidence?---You could, you could frame it in that way. The - - -

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Mmm, thank you.---On paper, Downer did deliver their jobs within time and under budget. My concern with that is that they were delivering their jobs a long way under budget so that their gainshare was more than what it should be, because they were becoming very experienced in how to work the TBE system. So at Transport we want our contractors to make a profit, to do well, because otherwise they wouldn't come back to price our work. We don't, however, want them to take an unreasonable amount of money away from the public purse, because we are charged with upgrading the transport network to make it accessible for everyone, so there is a balance that we were trying to find there.

20

Well, you talk about an unreasonable amount of money. I'm just going to test that with you a little bit.---Sure.

You gave an example where you said Downer proposed a TBE of \$100 million, whereas Downer's own internal budget was for \$70 million. Do you recall that?---Sorry, could you just repeat that?

You gave an example in a TBE negotiation where Downer proposed a budget of \$100 million, but Transport's own internal budget was \$70 million. Correct?---They were the approximate figures.

30

All right, but you hadn't told Downer that the internal budget was \$70 million, correct?---Correct.

And no doubt that was one reason for Mr Bedwani's surprise when you told him it was way over budget, because he didn't know what the internal budget was, correct?---Correct.

All right. And you weren't the most senior person negotiating on behalf of Transport for NSW in that particular phase, were you?---No, I was not.

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No, in fact you'd only just come into the role acting as senior project manager, correct?---Correct.

Who were the most senior people involved in that negotiation on the Transport side?---Would have been, the project director at that time was Nadine Bourezg.

And she was your supervisor, is that right?---Correct.

10

And you had no prior experience at all in project management at Downer prior to taking up this acting project manager role, correct?---Apart from a brief three-week stint in 2017.

Sorry, I said at Downer. I meant at Transport of course.---I understand.

And it's entirely possible, isn't it, that in the course of this negotiation of this TBE there were discussions going on at higher levels between Downer executives and Transport executives that you were entirely unaware of, correct?---That's, of course that is possible.

20

Okay. You gave an example of Downer pricing up a new bridge at Banksia Station, correct?---Correct.

All right. And that was, I take it, part of the concept design that Transport had proposed to Downer, that is the building of a new bridge at Banksia Station, correct?---Correct.

And in the negotiation of the target budget estimate, at least initially, it's Downer's role to price the concept that it's given, correct?---I think if, as mentioned in the framework that was discussed earlier, the first item under that was to look at value-for-money options. I can't remember the exact wording of it, but it was essentially to find value-for-money options.

30

I know what you're referring to.

THE COMMISSIONER: Just let him finish his answer, please. Yes.

MS HEGER: I'm sorry, I thought you had. Please continue.---So the concept designs that we had been provided to Downer had gone through what was called a multi-criteria analysis. So Transport, the Planning Team,

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I wasn't totally much involved with this, but the Planning Team had gone through with various stakeholders and subject matter experts and designers, urban designers, heritage people, accessibility experts, to look at the various different ways at which a station could be upgraded, and they were the, I felt that they were the, the best option in terms of overall outcome for the project. There was not a lot of thought, not a lot of diligence put into pricing the various different options.

10 You mean on the part of Transport or Downer?---On the part of Transport at that early planning stage.

All right. And you refer to that provision in the framework agreement that we went to earlier about Downer being required to come up with different options. Those are different options to achieve the concept that it's given, or different designs to achieve the concept that it's given, would you accept that?---Correct.

20 At that initial stage it's not up to Downer to volunteer an entirely new concept, correct?---Incorrect.

Well, I thought you just - - -?---So under the - - -

- - - I thought you just agreed with me that it's Downer's role to come up with options for the concept that it's given, didn't you?---So the idea is in the first couple of weeks of the TBE phase is to sit down with the designers and, and the, the builders and basically kick around some ideas for other options. So they're given the concept, but let's see if we can, as they would say in the room, throw some smarts at it and come up with a better option.

30 Yes, but what I'm suggesting to you is that, at least initially, all Downer can be expected to do is come up with different design options for the concept that it's given. There may be a further stage down the track where Transport says, "Actually, we don't like the concept after all, can you give us some different options?" But at least initially Downer can't be criticised for just proposing designs to address the very concept they've been briefed with. You'd accept that, wouldn't you?---Yes, I would accept that. There was, it was a point of contention later on when we had to go through the redesign phase as to how much, how much time should be spent on working through those, those early concepts. And in a 12-week period it is not a
40 great deal of time to spend exploring radically different alternatives to what's already been gone through a multi-criteria analysis already. So that,

that was certainly a point of contention there. I am inclined to agree with you, though, the concepts were, for these particular projects, were already quite robust. On other projects sometimes they are really quite limited and it just depends on which stage it was. But Banksia for example was quite developed. Roseville was hardly more than a sketch on a napkin.

All right. And when Downer put forward initially this proposed \$100 million budget, one aspect of that was the new bridge for Banksia, correct?
---Correct.

10

And that turned out to be more expensive than Transport had anticipated, correct?---Correct.

Because after, I think your evidence was after doing the relevant geotechnical investigations it was discovered that it would involve drilling 40 metre holes to build this bridge, correct?---That's right.

So then Transport came back and proposed a revised scope that didn't involve a new bridge, correct?---Correct.

20

All right. So that's a good reason why initially the target budget estimate was much higher than you expected because this bridge that Transport wanted turned out to be much higher than expected, correct?---Absolutely. That was, that was an unforeseen circumstance and that was, you know, that's an overall, you know, that's how the MC framework is, is meant to work. They do the site investigations, due diligence and work up those solutions.

All right. So the example you gave I think you'd agree is really just illustrating the working out of the process that the framework agreement provides for, correct?---Correct.

30

And it's certainly not a case of Downer holding back some alternative cheaper option just so that it can pump up its budget and derive more gainshare in the future. You're not suggesting that, are you?---No, no. You misunderstand me in that regard. There wouldn't be such a radical departure from, from a design in that regard if, if there was going to be a change like that. But the, the value-for-money option to the changes that go through once the contract is awarded are of a smaller scale, like it might change from large diameter piles down to micropiling, for example, or it might change from, I can't, can't think of too many other examples off the

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top of my head, but some of the engineering value-for-money options which are more of how you build it rather than what you're building.

All right. Once the target budget estimate is agreed between Downer and Transport, the design for the station upgrade isn't 100% complete, correct?
---No, correct.

There's more design work to be done, correct?---Correct.

- 10 And it's possible that further savings can be derived through that further more detailed design work, correct?---Correct. Sometimes there are increased costs and sometimes there are savings to be found.

All right. And of course once the people who were actually contracted to do the physical work come onsite and with the benefit of a bit more time than the contract process provides for they might come up with new options for doing things, correct?---Correct.

- 20 And some of those options might be cheaper options, correct?---Correct.

And so if a cheaper option materialises after the managing contractor contract has been entered into, you also can't say that's an instance of Downer sort of deliberately keeping a cheaper option up its sleeve to pump up its profit, can you?---That is, that is part of the intention with the managing contractor framework. So I guess if that had happened in one of the design and construct packages that the contractor would be keeping those savings. The idea under the MC framework is that those savings are shared between the contractor and Transport for NSW.

- 30 Yes, but I think you're agreeing with me that - - -?---I am agreeing with you.

- - - the mere fact that a cheaper option comes up doesn't show that - - -?
---Yes.

- - - Downer's engaging in some underhand conduct keeping that option up its sleeve deliberately when it was aware of it from the very outset. You're not suggesting that, are you?---Not in all cases, no.

Well, not in any cases, really, are you?---I could go back through, I'm sure if I was, if I had the time to go back through I'd be able to provide some examples to the Commission if required.

I should say at this stage, Chief Commissioner, I think I'm going to exceed my estimate. There was a little more that came up in Mr Wakim's evidence than I had anticipated. I estimate maybe another 15 minutes or so.

THE COMMISSIONER: On what, the same topic?

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MS HEGER: Well, it does relate to aspects of the target budget estimate, other aspects that Mr Wakim dealt with in his evidence.

THE COMMISSIONER: Yes, all right.

MS HEGER: All right. You accepted earlier that the framework agreement provides a fixed lump sum for the cost of Downer staff. Correct?---Correct.

20 And so Transport has obviously agreed that it will pay an amount not based on actual time worked by Downer staff but by reference to a fixed amount. Correct?---Correct.

And so if Downer ends up having to deploy more staff on a project, Transport wouldn't be charged for the extra staff. Correct?---Depends on the requirement for the extra staff. In some situations, Downer might submit a variation for that.

30 And the flip side is if Downer had fewer staff on a project as a function of the contract, Transport would still have to pay the fixed sum. Correct? ---That's the way it works, yes.

Well, that's what the parties agreed to. Correct?---Correct.

But you disagree with that mechanism provided for in the contract, don't you?---I felt that it put the position of, Transport for NSW in a position where we would be paying for services not provided.

40 All right. You gave evidence earlier that in some instances Transport was paying for staff that weren't there, is that right, or weren't working on the project?---Yes.

And how do you know that those staff weren't there? Did you go out and audit the particular people who were working on a particular site on a day by day basis?---No, I did not. It was also during the COVID lockdown, as I mentioned before. So it was actually quite difficult to ascertain where people were at all times - - -

10 And indeed. Sorry? Were you finished?---No, not quite. So Downer were never forthcoming when people were leaving the project. We did have a habit of following Downer staff on LinkedIn and made note of when they were joining other companies.

Well, you say Downer wasn't forthcoming when people were leaving the project. The contract provided for particular staff to be allocated to a project. Correct?---Correct.

And it also required Downer to notify Transport if those staff were no longer going to be on the project. Correct?---This was another - - -

20 Well, sorry. Can you answer yes or no before you go ahead and give an explanation? The contract required Downer to notify Transport if those staff provided for in the contract weren't going to be on the project?---This is difficult to provide a yes-or-no answer to. So if you let me elaborate a little, I'll explain?

30 All right.---So the contract, the framework agreement required Downer to notify if key personnel had left the project. Now, in my mind, many of the people listed on the project were key personnel, but in Downer's view, there was only about ten people that were considered key personnel. So Downer's position was that they would only notify Transport if their key personnel were to leave the project staff, not the entirety of the 55-odd people.

All right. So that might just come down to a difference of opinion between you and Downer as to what the contract requires. Is that right?---Yes.

Okay. And when you were acting as senior project manager, I think you mentioned this was during COVID. Correct?---For much of it, yes.

40 And many companies were experiencing staff shortages during COVID. Correct?---It's unprecedented, in my experience of working at Transport, for a contractor to lose so many people in such a short amount of time.

All right. Well, there was also a large volume - - -?---It wasn't also consistent with any of our other contractors.

Well, there was a large volume of Transport work being handed out amongst the industry around this time. Correct?---Correct.

10 And what I want to suggest to you is that there was a higher rate of attrition at Downer as a result of that.---If, that would have been common across all our contractors if that was the case, where it seemed to be quite specific to Downer. And not just this particular team at Downer.

Right. Well, in your limited time as senior project manager, I think it was only 14 months, can you really say that you had oversight of the staffing levels of all the contractors that Transport engaged?---No, but I speak regularly with my colleagues.

20 All right. Well, what I'm suggesting to you, Mr Wakim, is that if Downer did have some people leave a TAP project, that doesn't suggest anything untoward about the formulation of Downer's target budget estimate. There might be good reasons for those people leaving unexpectedly over time. You'd accept that, wouldn't you?---I'd expect in some circumstances you would expect a reasonable amount of attrition and, and churn and, and turnover of staff over, you know, a period of time, particularly in the construction industry. What I found on the Downer projects, that it was so widespread that it seemed to me - and I could be wrong - it seemed to me to be a deliberate strategy.

30 But you have no real basis. That's just speculation on your part, isn't it? ---It's speculation on my behalf, yes. I think I mentioned that.

All right. You also gave some evidence of Transport paying twice for the same person on different projects. Do you recall that?---Yes.

40 And you said that you obtained an organisational chart for the Sydney Metro and an organisational chart for a TAP project and you saw that seven names were common across both charts, is that right?---Yes, it was when Downer were tendering for the Mascot Station project, which is part of the More Trains, More Services project. It was - - -

All right. So not a TAP project actually?---Not a TAP project.

All right. And - - -?---But it was done by the same Downer team, so Downer had the five TAP projects and this Mascot MTMS project, all the station upgrades, and it was all being delivered by the same Downer team.

You weren't involved in formulating the budget estimates for the Metro project or that Mascot project, were you?---No, I was not.

10 No. So you have no idea whether, say, John Smith who appeared on both charts, you have no idea whether for the purposes of the Mascot project the budget only accounted for, say, 30% of his time and on the Metro project accounted for 70% of his time. You have no idea, do you?---No, I have a very clear idea, actually. Downer provided us with a clear matrix breaking down to point percentages on each project as to which person was working on what, so we had a very clear idea.

20 All right, so you're able to say that you undertook a review of all the relevant records and ascertained that Downer had formulated its budget based on all of those seven people working full-time on both projects? Are you really able to say that?---No.

Thank you.---I was able to ascertain how much Downer had assigned those people to the MTMS and TAP projects, which in those cases was 100% of their capacity. When I saw their names also on the Metro projects, which are very similar types of projects, being operated out of the same Downer office, it raised red flags, particularly as Mr Bedwani and Mr Watters had moved from the TAP project to the Metro projects.

30 Yes, but you didn't have the relevant documents - - -?---No.

- - - available to you to make a proper assessment, did you?---No, I did not have the relevant documents to make a proper assessment. It raised a red flag and I alerted both the Metro and Transport Teams to this for them to follow up.

You referred that off to somebody else and you have no idea what the outcome of their investigations were, I think your evidence was, is that right?---Correct.

And you have no idea whether the organisational charts that you saw reflected the people who were actually working on the ground day-to-day, do you?---How do you mean, sorry?

Well, you just made an assumption that if somebody's on an organisational chart, they're actually working on that project.---That's a reasonable assumption to make.

10 MR ENGLISH: Chief Commissioner, can I, with respect, Ms Heger might have a position on this. It might be able to assist the Commission if she can provide some information, or her client can, on this issue rather than just cross-examining Mr Wakim in relation to issues that are beyond the scope of the leave that you granted and matters that are really along this line of questioning within the purview of her client.

MS HEGER: I don't need to ask any more questions about this.

20 THE COMMISSIONER: Thank you. Time has expired. Do you have further questions?

MS HEGER: Can I just obtain instructions for one minute. Could I just ask another couple of questions? It will take me a few minutes, again on this topic of formulating the target budget estimate.

THE COMMISSIONER: Yes.

30 MS HEGER: Mr Wakim, you understand that the work done for the station upgrade sometimes involved, for example, taking possession of a station, that is, complete access to the station?---Yes.

Correct?---Yes.

Which means obviously trains can't run during that time, correct?---Correct.

And if you don't finish the work during an allocated possession and hand back the station on time, that can obviously result in huge disruption to the commuter network, correct?---Correct.

40 And also very large financial penalties for Downer under the contract, correct?---Correct.

And those possessions are only scheduled to occur at particular times throughout the year, correct?---Correct.

You can't just have access whenever you want it, correct?---Correct.

If you miss a possession because you don't have adequate resourcing in place, you might have to wait another few months for another possession to arise, correct?---That can occur, yes.

10 And in those circumstances it's only sensible for a contractor to be conservative in estimating the time and resources that it will take to complete work. You'd accept that, wouldn't you?---I accept that.

All right. And that might factor into the formulation of the target budget estimate, correct?---Correct.

I have no further questions. Thank you.

20 THE COMMISSIONER: Yes. Have you got questions?

MR ENGLISH: Nothing arising, thank you, Chief Commissioner.

THE COMMISSIONER: Thank you. Can this witness be excused?

MR ENGLISH: Yes.

THE COMMISSIONER: That concludes your evidence, and you're excused and released from the summons.---Thank you, Chief Commissioner.

30

MR ENGLISH: Pardon?

THE COMMISSIONER: You want him released from the summons?

MR ENGLISH: Yes, please.

THE COMMISSIONER: You're released from the summons. You're free to go.---Thank you, Chief Commissioner.

40

THE WITNESS EXCUSED

[3.07pm]

MR ENGLISH: Ms Davidson has the next witness, Chief Commissioner.

THE COMMISSIONER: Sorry?

MR ENGLISH: Ms Davidson has the next witness.

THE COMMISSIONER: Yes.

10

MS HEGER: I should say, Chief Commissioner, I think we've only been granted leave to be physically present during Mr Wakim's evidence so it might be appropriate if we be excused at this time.

THE COMMISSIONER: I'm sorry?

20

MS HEGER: I think we were only granted leave to be physically present in the hearing room during Mr Wakim's evidence, so we're happy to be excused at this time from the hearing room. We're also happy to stay if that's convenient for the Commission.

THE COMMISSIONER: So Mr Sanber is appearing. So is Mr Sanber the next witness?

MS DAVIDSON: Yes. Yes, he is, Chief Commissioner.

THE COMMISSIONER: Mr Bowe and Ms Hourigan have leave to be present in the hearing room.

30

MR BOWE: Good afternoon, your Honour. Bowe, Bowe solicitor.

THE COMMISSIONER: Yes, thank you.

MR BOWE: Mr Sanber is here. He's going up to the - - -

THE COMMISSIONER: Sorry? The other people, you're free to go, Ms Heger. Please take a seat. Now, Mr Bowe, have you explained to the witness section 38?

40

MR BOWE: I have, your Honour - I have, Commissioner.

THE COMMISSIONER: Is he seeking - I'm sorry?

MR BOWE: Yes, I have, Commissioner. I've explained the declaration in relation to section 38.

THE COMMISSIONER: And are you asking for the declaration to be made?

MR BOWE: I am asking that it be made.

10

THE COMMISSIONER: Yes. All right. Thank you. Now, Mr - - -

MR SANBER: Sanber.

THE COMMISSIONER: Sanber. Excuse me. Mr Sanber, will you take an oath or affirmation?

MR SANBER: Yep.

20 THE COMMISSIONER: What would you take? What you like to take, an oath or an affirmation?

MR SANBER: An oath.

THE COMMISSIONER: Yes. Okay. Can the witness be sworn.

THE COMMISSIONER: Yes. Please take a seat. Now, as a witness, you must answer all questions truthfully, produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of the objection is that although you must still answer the question or produce the item, your answer 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 the protection doesn't prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment of up to five years. The second exception only applies to New South Wales public officials. Evidence given by New South Wales public officials can be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official has engaged in or attempted to engage in corrupt conduct. I can make a declaration that all the answers given by you and all the items produced by you will be regarded as having been given or produced on an objection. This means you do not have to take an objection with respect of each answer or the production of each item. Mr Bowe tells me that he has explained the provisions of that section to you.---He has.

And you wish me to make that declaration, is that the case?---Yes, that's the case.

I will now proceed to do so. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of this 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.

DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THIS

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: Thank you. Yes, Ms Davidson.

10 MS DAVIDSON: Mr Sanber, could you state your full name for the record?---Mr Raja Sanber.

You hold a Bachelor of Civil and Environmental Engineering, is that correct?---I do.

And when did you complete that degree?---I think it was 2003.

And you also hold a Certificate IV in Construction Management?---I do.

20 And when did you complete that qualification?---I don't recall at this moment but I'm sure you've got the certificate somewhere.

Is that from the Capital Training Institute?---Correct.

After you graduated from university, can you outline for the Chief Commissioner your experience in the period between then and when you commenced working for RailCorp?---It was all in, in the private sector. Initially commenced while I was still at university, I was, and just after graduating, I was working for a form working company doing structures
30 constructions. Following that I worked for a number of mid- to small-civil engineering firms or companies, undertaking a range of works from, from, let's call them, yeah, substation construction, subdivisions, building basements, trainlines for the mines, wash plants in the mines, Southern Hemisphere's largest blind bore ventilation shaft in the mines, roads, Central, Central Coast Highway upgrade. That type of stuff. And I did work on the Southern Sydney Freight Line. Yeah.

And you started working at RailCorp in 2011, is that correct?---That is correct.

40

And what was your role when you first commenced at RailCorp?---I was engaged, I was, I took a job as a project engineer, which was a massive step down just for the, for the sake of any evidence going, moving forward in terms of my competence. I didn't quite understand - - -

When you say it was massive step down, can you explain what you mean by that?---Yeah, I will, yes. My experience would have given me, given me at least a project management position in RailCorp had I understood how the government sector worked at the time. I assumed it would be easier to get a,
10 a project engineering position and work my way up, not realising that within government, or within the government sector, you have to apply for each role and, and I, I, I jumped in at the bottom when I shouldn't have. But that's just - the only reason I bring it up is to make sure that I am explaining my skill level, which I saw was questioned in the opening statement.

Insofar as you took the project engineer job, what did that involve?---It involved some quality management work and, and the tracking and management of track possessions.

20 Was that in relation to the Glenfield Junction Alliance?---No. It was in relation to the Southern Sydney Freight Line, sorry, the South West Rail Link project.

South West Rail Link at that point?---And, yeah.

And then in August 2013 or from August 2013, you moved to Transport for NSW. Is that correct?---That's, there is a step between, before that, sorry, if I can please clarify, which was also missing from what I saw. While I was working at RailCorp, I was seconded into the Novo Rail Alliance. The
30 Novo Rail Alliance is an alliance between, was a, an alliance between RailCorp, Laing O'Rourke and another smaller, so other companies, that focused on installing systems within the, it was more, yeah, more systems-based and civil-based in terms of construction within, within the rail industry. And my role in that position was as a quality manager.

And you remained employed by RailCorp throughout the period that you were seconded to the Novo Rail Alliance?---Correct. And in, and when I was transferred over into Transport for NSW, as a result of the RailCorp reform in which Sydney Trains had been formed. Prior to Sydney Trains
40 forming, during that reform, I was transferred across, still in the Novo Rail position, but being paid by Transport for NSW as opposed to RailCorp.

So was that prior to the August 2013 point that you took on a role as a project engineer within Transport for NSW?---Again, I was a project engineer at RailCorp. My substantive position remained the same. It's just instead of getting a cheque from RailCorp, I started getting a cheque from Transport for NSW. However, my role as the quality manager on the Novo Rail, within the Novo Rail Alliance had not changed.

10 All right. But the time that you transferred over, I think, to use your word - -
-?---Correct.

- - - into Transport for NSW, did you agree to comply with the Transport for NSW Code of Conduct?---I did, yes.

And also its applicable policies and procedures?---I did.

And in that role once you had transferred over to Transport for NSW, did your work with the Novo Rail Alliance continue - - -?---It did.

20 - - - or were you then working on other projects?---No. I, it continued.

Until what period did that continue?---Until I think it may have been April 2014.

And after that, you worked on the Inner West Light Rail?---Sydney Light Rail Project, the Inner West, Inner West Light Rail upgrade which was the early works of the Sydney Light Rail project.

30 And was that from the 2014 date?---Yes. Correct.

And did you also during the period that you worked for Transport for NSW as project engineer work on the South West Rail Link?---In the capacity as a quality manager working within the Novo Rail Alliance.

All right. But you didn't transfer back - - -?---No.

- - - to working on that project in - - -?---No, I did not.

40 - - - some Transport for NSW capacity?---No.

And then in August 2016, is it correct that you became a project manager for Transport for NSW?---I believe, yeah, 2016 or 2017. I can't remember exactly but, yes, that, at around that period.

And was that in the context of the Sydney Light Rail project?---Correct.

And was that project manager position more senior than the project engineer position?---Yes, it was. Yes.

10 And was that, in fact, a Transport Senior Service position?---It was, yes.

Can you explain what was meant by the Transport Senior Service?---I was no longer on an award. I was, it's, it's a different form of employment contract.

Right. And was it Transport Senior Service Level 1 position?---Correct.

And, again, that is, as at August 2016 in taking on that role, do you recall a written agreement on your part to comply with the Transport for NSW Code of Conduct?---Yes.

And the code of ethics?---Yes.

You took on a position, well, is this correct, that you took on a position in November 2018 as a project manager within the Infrastructure and Services Division?---I did not change my position, I, I, there may have been a, a change in the contract at that time, but that's, I didn't - - -

All right. If we can have volume 3.2, page 41 brought up on the screen?
30 You can see this is December 2018 and you're sending - well, having sent to you and sending back a signed letter of acceptance and contract of employment. If we could scroll to the next page.---Yeah. I, I don't really remember exactly what it is but I think, if I vaguely recall that there was something to do with the contract of engagement changing within Transport for NSW.

Did you understand that to be within the Infrastructure and Services Division?---Yes.

40 And how long did you continue in that role?---I believe until I finished at Transport for NSW in 2020, I think it was.

In August 2019 did you take on a role as project manager within Parramatta Light Rail?---Yes.

And - - -?---I, I believe that was still within the same Infrastructure and Services Division.

That is you believe it was at the same level?---Yeah, yeah.

10 But the project you were working on was changing, is that correct?
---Correct. I, yeah, I moved from Sydney Light Rail to the, to the Parramatta Light Rail, yeah.

And in conjunction with that move do you recall signing another agreement in relation to compliance with Transport for NSW codes of conduct and codes of ethics?---I signed a lot of those, yes. That's, that's not an uncommon document to see. Maybe bi-monthly. Anyway - - -

Maybe?---Bi-monthly.

20

Bi-monthly.---You would see, you would see, yeah, I would have to sign a lot of these document, documents, quite often.

But you're not suggesting you were requested to sign it twice a month, were you?---Oh, I thought bi-monthly was every two months but, sorry, yeah. My understanding - - -

You will need to speak into the microphone.---Is that better?

30 Yes.---Yes. Sorry. Yeah, I'm saying it was, it was often.

Once you were a member of the Transport Senior Service staff, do you recall being asked to complete annual declarations in relation to your private interests?---Yes.

And was it the case that in relation to those declarations of private interests you did not indicate any private interest?---Correct.

40 So if we could bring up volume 3.2, page 100. This is an example of a Senior Service declaration completed by you in December 2016. Would you agree that, that is by December 2016, you had been a director of RJS

Civil, your company, for more than a year?---Correct. No, not more than a year. Two thousand and - oh, oh, sorry. What date did you say?

Well, this is December 2016.---Yeah. Okay, yes.

We'll come to it later but I think RJS Civil was created in October 2015.
---Correct, yes.

10 And you didn't make any declaration in relation to that directorship or that private interest, did you?---Do you want me to elaborate or just answer a yes or no? Because I can elaborate on the reasons why I did not, yeah.

Well, yes or no first.---Okay, yeah.

No, you didn't declare that interest?---Of course I didn't, yeah. I did not declare the interest.

20 And nor did you declare that interest at any other subsequent point, did you?---Correct.

Was there some explanation that you intended to give in relation to that?
---Yep. Yeah. Well, in terms of the interest I, I initially recall filling out the form to, to declare my interest. It was either just prior to or just after forming, well, Sanber Group is, is what I formed.

Which traded as RJS Civil?---Later on, yes. The, the name change didn't occur until after that but yes.

30 I, I went through the, what I understood at the time, to be the document that I needed to review to, to make a decision on whether it was something I needed to declare, and my understanding of it at the time was that if I was not trading and there was no conflict of interest there was nothing to report.

You signed equivalent Senior Service declarations on an annual basis, I think you've agreed?---Yes.

40 If we could have volume 3.2, page 102 brought up. So you'll see from this document it looks the same but the date is November 2017. Would you agree that by this time Sanber Group or RJS Civil was trading?---Correct.

And, indeed, by this time you had, were in the process of performing work and were contracted to perform work in relation to Victoria Street?---That is correct, and to give you some context as well as to why, again, I didn't think at the time, at the time of signing this or accepting this, I think it was just a click on, on the system, I did not perceive there to be a conflict of interest because of the, the main reason is I have no access, no visibility, no ability to see what's happening on a project that I'm not working on and therefore I could not see a conflict of interest at the time.

- 10 But notwithstanding that you would agree that you in your capacity as a Transport for NSW employee were, you or your company was contracting in a private capacity with Transport for NSW.---It was not with Transport for NSW, no.

Well - - ?---It was with Downer.

- 20 With Downer on a Transport for NSW project.---Exactly, and at the time my frame of mind or my understanding was that there was no conflict of interest because I could not see how there was any ability for me to, to have any visibility or undertake any, anything other than the fact that I was working for a, as a subcontractor.

- THE COMMISSIONER: Is that still your view?---Well, when I, the answer is no but that's because subsequently and after I've, you know, had this whole ICAC investigation and me searching my soul trying to work out, "Did I actually do something wrong?" and reviewing documents, et cetera, I had a reread of, of the employee guidelines and I picked up the word "perceived", a "perceived conflict", and I think in this, in this case there is a perceived conflict, so that's why now I'm in the frame of mind that there
- 30 was a conflict, but at the time I did not, I did not, I did not perceive that there was a conflict because of the separation. Now, I don't know if, I don't know if everyone understands this, but when you're working at Transport for NSW, when you're working on a project, you only have access to what you're working on. You don't, you don't, you can't get any access for, for anything else, and working in the city, you know, it's not like I was working, working in a project office in the city and the head office where the TAP projects were occurring was in North Sydney, so I did not have, I'm just trying to say there was such separation that I would have expected it to be fairly clear that there was no actual conflict of interest, only in terms
- 40 of, only in terms of if you're looking at the broader picture and saying Transport for NSW employee on a Transport for NSW project. And if you

look at it from that view, it's, I can see how it can, you know, you can jump to that conclusion, but if you actually look at my computer, my work emails, my search history, my web history, anything like that, you will see that there was no access whatsoever.

MS DAVIDSON: So to clarify your understanding at the time - - -?---Yeah.

10 - - - you understood in order to need to declare a private interest in this Senior Service declaration, correct me if I'm wrong as I'm putting this to you, that you either had to work in the same office as where the project that you were contracting with in a private capacity was being administered, is that, was that part of your understanding?---No, not that you had to work in the same office. There had to be a conflict.

All right. But I'm just testing what your understanding what a conflict was - - -?---Not a perceived conflict, a conflict.

20 - - - at the time, in order for there to be a conflict or a perceived conflict that you thought you needed to declare at the time. That's what I'm asking you about.---Yeah.

Part of your understanding, as I understand the evidence you've just put, was it needed to be administered from the same physical location. That is because you only had access to things that were being administered in your physical location, is that correct?---Not just physical location. Online access to the system, to the servers, to, to, to, you know, the software that stores the documentation, et cetera.

30 All right, so is this correct, unless you were aware of having access to Transport for NSW documentation in relation to that project - - -?---Correct.

- - - you didn't believe there to be either an actual or perceived conflict of interest in you, in a private capacity, contracting with Transport, ultimately with Transport for NSW through a head contractor but ultimately with Transport for NSW?---My only correction to your, to your clarification of my response is that at the, at the time I did not consider the perceived conflict. So I, I only understood it to be an actual conflict.

40 Right. So you didn't understand there to be a requirement to declare perceived conflicts?---Correct.

And insofar as you were, if you have a look at the bottom of this page, required to declare private interests, did your understanding of private interests extend beyond declaring actual conflicts of interest? Just to - - -? ---Just referring you to my previous response to that question. When I read, at the time when I read, when I, this was in 2015 when I, just before or just after I, I established Sanber Group, my reading of the employee handbook that covered that, that, was that you only declare private interests if there was a conflict of interest.

- 10 Do you recall ever revisiting or reconsidering - - -?---I said that to you since then, which was after this investigation had commenced.

If I could finish my question.---I apologise.

- In your time while you were - so not in the context of this inquiry and your review of documents for the purposes of preparing for this inquiry, but during the time that you were working for Transport for NSW, do you recall ever revisiting that employee handbook or other guidance documentation in relation to declarations of private interests?---Not in detail, I, although there, there were some requirements to undertake reviews, et cetera. What do you call them, training.
- 20

There were some requirements to undertake training, yes.---Yes.

Could you explain what those were?---They were requirements to undertake - it's more like online training when you, when you read, read slides and click "next".

- Was it in relation to conflicts of interest?---It was in relation to - oh, I can't say exactly, but I believe that a conflict of interest would have been covered in that.
- 30

Did you understand that there was a requirement to declare secondary employment?---My - yes, yes, I did.

And did you ever declare any secondary employment to Transport for NSW?---No, I did not.

- That included, that is, the requirement to make declarations in relation to secondary employment - - -?---Correct.
- 40

- - - was not simply in connection with being employed in the Transport Senior Service, was it?---Sorry, repeat the question. I didn't quite - - -

That requirement to declare secondary employment was not simply in connection with being a member of the Transport Senior Service, was it? It preceded - - -?---That's correct.

That is, it existed when you were in more junior positions as well?---Yeah, correct, yeah.

10

So that back in 2014 and 2015 you would have been subject to that requirement before you joined the Transport Senior Service?---Correct.

If we could have volume 3.2, page 108 brought up on the screen. This is an annual employee declaration.---Yep.

And you'll see that you signed it on 18/3/2015.---Correct.

20 At that time would you agree that you had involvement with the business of ASN Contractors?---Not as an employee but there was involvement, yes.

When did you first meet Nima Abdi?---When I was, when I was working, I think, in Novo Rail.

In Novo Rail.---Yeah.

So are you able to give a rough time frame in relation to that?---Oh, probably 2012-ish.

30 And what was the capacity in which you came to meet him?---He was the project engineer for Transport for NSW. I don't know exactly what he was looking after other than the fact that when we were doing quality inspections and defect close-out inspections and that type of stuff, he would come along on the, on those walks.

So you were working for RailCorp and he was at Transport for NSW already by that point?---I believe so, yes.

40 How would you describe your relationship with him at that stage?---Well, when we first met there was no relationship but going on long walks with,

with, with someone you get to know them more and more and, and it, it became an acquaintance.

It became an acquaintance. And did that acquaintance develop subsequent to that period?---Yes.

And how would you describe the nature of that development? Did it progress into a friendship?---Yes.

10 And did that friendship continue?---When you, until when? It's, there is, there - - -

Well, was there point at which it ended?---Yes.

And when was that?---I think it was 2018.

We'll come to the disintegration of that.---That's fine.

20 What about Tony Nguyen, when did you first meet him?---Probably in 2014.

And what was the capacity in which you met him?---Nima introduced me, introduced him to me.

Were you at that point doing work in relation to the Glenfield Junction Alliance?---No.

30 Did you share an office with him at some stage?---He was in, in an extremely large site office that had Novo Rail, Glenfield Junction Alliance, Transport for NSW. Yeah. There was 200 people in there, yes.

Was there a demountable building or an aspect of a demountable - - -?
---Yes, yes. One big, yeah, one big demountable building, yes.

And were you physically located close to him within that demountable building?---Yep.

40 And - - -?---Not, not - actually, sorry. That's, only in about 2013 and '14, not prior to that because when I was working at, with RailCorp, I was - - -

I'm sorry. It was once you were working with RailCorp?---Sorry, when I was working with RailCorp and not in the Novo Rail Alliance, we were in a site office on the other side of the train tracks.

But when you were in the Novo Rail Alliance - - -?---Correct.

- - - you were - - -?---Yes.

- - - located with him? And how did your relationship with him develop?

10 ---It did not develop.

Whose idea was it, or do you recall discussions with Mr Abdi or Mr Nguyen in relation to establishing TRN contractors?---Yes.

And who were they with?---Nima asked me to help Tony set up a company that he was looking to commence.

And did you agree to do that?---I did agree to help him, yes.

20 And by the time that - well, do you recall when that was roughly?---Around the time I met Tony.

So what would you describe as your knowledge or familiarity with Mr Nguyen at that time?---Very little.

Did you agree - I think you said you did agree to assist him?---Correct.

30 What was the reason that you agreed to assist him?---I've been, I've been wondering that myself for quite a while. Basically I'm, I'm, I'm a nice guy but more than that I am someone that, I think I explained to you at the time, earlier, was that I'm, I, I took a step back in my career in terms of my capabilities and I felt like I had a lot more capacity and I wanted to prove it to myself and others.

And having those understandable feelings, how did you think that assisting Mr Nguyen in setting up his company would enable you to do that?---As I said, it's proving, proving to myself and others that, others being someone like Nima and, and whoever else wanted to, you know, sing out my praise, yeah.

40

So you were looking for praise from Mr Abdi?---Yeah.

And what was the way in which praise from Mr Abdi could have assisted you?---How do I explain? When, when you, when you have a, a certain image, a brand, the more people talk about it, the, the more it is recognised, so - - -

Was it because of him holding a more senior role at that point?---No, he, I don't think he had a more senior role at that point, no.

10 And in relation to Mr Nguyen, I think you said you didn't have much familiarity with him?---Correct.

Did you consider, well, did Mr Abdi - I withdraw that. What was it that Mr Abdi asked you to do in relation to assisting him to set up TRN, him, Mr Nguyen, to set up TRN Contractors?---Well, there, there wasn't much more than can you help him set up the business.

All right. And what did you understand that to mean, do you remember?---I understood it to mean exactly what I did do, which was organise for, for
20 logos, templates, policy papers, documentation, project management documentation, you know, yeah, templates, really, that he could use to - - -

Templates that he could use?---Yeah.

All right. So did you ask your wife in that context to create some business cards?---Not create business cards but to, to design them, yes.

Design some business cards. So if we can go to volume 16.1, page 23 and have that brought up on the screen? 16.1, page 23. Sorry. That's still 123.
30 Just 23 without the 1 in front. You see this is an email, well, would you agree that's your email address there?---At the top, from, yes.

Yes. At the top. And it's on 4 May 2014 to an address there, Ms Tosh. Who did you understand that to be an email address for?---Nima.

For Nima? That is, for Mr Abdi? Do you know why he was using that email address?---I don't think he had a personal, I don't know, sorry. I was just jumping to a conclusion that he didn't have his own personal one but - -
-

40

And you see the subject line refers to “More logo ideas”? If we could scroll to the next page?---Yeah.

Are those logos that you had been involved in designing or your wife had been involved in designing?---Yes.

And was it after, well, did you subsequently have discussions with Mr Abdi in relation to the logo for TRN Contractors?---I don’t remember the exact nature of any but I’m sure I did, yes,

10

Do you know why you were sending the logo ideas to Mr Abdi rather than to Mr Nguyen?---Don’t even know if I had Mr Nguyen’s email address at the time. And, as I’ve said previously, I didn’t have a relationship with Mr Nguyen. I, I was sending it to, to - - -

So at this point, Mr Abdi was the intermediary. Is that fair to say?---I wouldn’t, I wouldn’t say just at this point. I think throughout my whole entire relationship, if you want to call it a relationship, with Tony, a lot of it was through Nima, yes.

20

Could we bring up volume 16.1, please, so same volume, page 16? This is an email to you on the same date, 4 June - I’m sorry. The previous email was May. This is 4 June 2014 to your email address. Is the person sending this email your wife?---Correct.

And you recognise that to be her email address?---Correct.

Had you asked her - - -?---Yes.

30

- - - to be involved in the design work?---I, I asked her to see what she can do, yes.

You see the subject line is, “Business cards updated,” if we can scroll to the next page. You’ll see there some names listed on the business cards. Had you been given, or do you recall whether you were given some instructions as to who was to be listed on the business cards?---My wife.

40

And who gave you those instructions?---I’m trying to recall whether it was a conversation with Tony or with Nima but it was either of those two. I can’t remember exactly.

Do you recall the nature of the conversation?---Yes. I think previously stated that, “Can you please put these names on them because we, because Tony wants to make the company seem to be more than just the one person.”

Right. So how did you understand the creation of business cards would assist in that?---To be honest, the business cards, I’ve got no, other than being able to hand something to, to, to a prospective client or contractor, that’s - - -

10

Right. Was that something that you were familiar with contractors doing in your, prospective contractors doing in your capacity as a project manager, handing out business cards of multiple people?---Only in meetings, but, yeah.

Right. Would that include business cards of people who weren’t there?
---No.

20 THE COMMISSIONER: Were any of these phone numbers yours?---Yes.

Which one?---The top middle one.

MS DAVIDSON: I was about to ask some questions. Are you content for me to continue on that subject, Chief Commissioner?

THE COMMISSIONER: Yes, of course.

MS DAVIDSON: I assume that you agreed to have your - - -?---I did.

30 - - - mobile number included on this card.---That’s true.

And Roger Smith is obviously not your name.---Correct.

What was the context in which you agreed to have your name listed on a business card for somebody who wasn’t you?---Similar to exactly what I just said a moment ago, to create the illusion that Tony’s company was more than one person. It’s probably the wrong thing to do. I admit that, but I agreed to have my number on there so that if someone called, it was, there is another person on the other end answering the call. I have to say - - -

40

Did you discuss what you would do - - -?--- - - - that I did not ever receive a call or ever pose as someone I'm not.

Did you discuss what you would do if you had, that is, discussed with Tony or Nima, what you would do if somebody had called your number, that is - - -?---Yeah.

- - - how you would answer the phone?---Didn't really discuss it, no.

- 10 Because you wouldn't be able to differentiate such a call from any other call you receive, presumably.---Correct.

It would be difficult for you to answer the phone as Roger Smith automatically.---Correct. Yeah. It's not, yeah.

You wouldn't have, would you?---No, and I did not.

- 20 Were you aware of another name being chosen in relation to your perceived association with TRN Contractors according to these business cards, that is another alias?---Do you, as, as of right now or at the time?

At the time?---No, not at the time.

Were you aware of the name Raj Sandy being, being used - - -?---Not at the time.

- - - in connection with TRN Contractors?---Not at the time, but afterwards, after the creation of these, yes.

- 30 After the creation of these. Are you able to place when you became aware of that?---I actually think, and you're probably going to go there as well, is when the, the name change occurred, ACN, I think.

That was the change to ASN.---ASN, yeah, sorry, whatever it was. Yep.

Do you know what TRN Contractors stood for?---It was, yes, it was supposed to be the acronym of, of, well, I actually thought it was Tony, Roger and, and Nick, yes.

Right, but when you say you thought it was that, were Tony, Roger and Nick - - -?---Well, I didn't choose the name. This is something that, that Tony wanted to do.

Right. Did you have discussions about the name?---We had a discussion. That's how I was able to, that's why he, the discussion was this is what he wanted to do.

Right. And would you agree that - - -?---And - sorry, go.

10

Would you agree that the TRN initials, that is that you say you understood to be Tony, Roger and Nick, were also an acronym in respect of Tony, Raja and Nima?---Yeah, that's, it was supposed to be similar to our names, yes.

Right. So the aliases, that is the names that are shown on these cards, were chosen to be similar to your names?---Correct.

So they'd have the same initials?---Correct.

20 Was that to achieve something, to your understanding, that was more plausibly closer to a real person?---It was to achieve the illusion that there was more than one person in that company.

THE COMMISSIONER: But hold on, that doesn't make sense, with respect, Mr - - -?---Please explain.

Did you have cards yourself?---No.

30 Did you have a card in your name?---No, I did not ever receive or print or hold any of these cards.

Yeah. So there were three of you in this organisation, TRN.---I wouldn't, I wouldn't say I was in the organisation, no.

But there were three persons, who were you, Mr Abdi and Tony Nguyen? You'd met together and you'd - - -?---The three phone numbers that are listed on there are our three phone numbers, I believe.

So I'm just - - -?---The reason - - -

40

- - - struggling to understand how you were giving the illusion of being a bigger company when there's only three people who are represented, and those three persons happen to have the same phone numbers as each of you.---Well, just to provide you some clarity on that, other than setting the company up and providing the templates and making some connections with contractors, accountants, stuff like that, there was no further involvement.

You're not answering my question.---So I - sorry, can you repeat the question so I can understand it?

10

You said that the aim of using these cards with these names was to represent the company as having been bigger than it otherwise would be. There's only three cards here of persons. You, Mr Nguyen and Mr Abdi did not have cards with your names on it, but your phone numbers are here and you happened to have other names mentioned here of persons whose initial at least corresponds with yours.---That's true.

Yeah.---What's the question, though, sorry?

20 Well, I'm just struggling to understand how you're creating any illusion that the organisation TRN Contractors is bigger than it otherwise is when there's only three people.---It's not three people.

And there were three people behind it.---As far as I know it was only one person. I don't, and I'm trying to make a clear distinction. I did not have, other than helping them set up the company - "them". Other than helping Tony set up his company, my association with that company finished completely.

30 So why bother lending your phone number?---Specific, because I, again, I was, I'm not saying this is right. I, it was wrong of me to do but I, I - - -

The question I asked you is why do it, not whether it's right or wrong. Why did you do it?---Oh, sorry, why do it? Yeah.

Yeah.---It was only to be, to be able to answer a phone call to make it sound like there was more than three people, more than one person that's involved in this company.

40 So you don't answer phone calls for this body? You had nothing to do with it?---Correct. But I did not answer any phone calls, I didn't receive any

phone calls. And I did not, like, I think after the ASN or, what was it, sorry?

MS DAVIDSON: ASN.---The ASN name change, I don't think I spoke to Tony for two years or a year and a half at least. And you can check my, well, you've got my phone records.

Chief Commissioner, are you content for me to continue?

10 THE COMMISSIONER: Mmm.

MS DAVIDSON: You made a similar request to your wife, did you, in relation to business cards for ASN later in 2014?---Correct.

And if we can have volume 16.1, page 18, brought up just to place the date of that. You'll see that's an email in relation to ASN business cards in October 2014. Do you recall asking your wife in relation to her assistance on that as well?---Yes.

20 If we could scroll to the next page and continue to scroll to the following page, and if we could keep scrolling. So that's Mr Sandrusi, which is the same name as we've seen before and here we see here Raj Sandy. So would you agree that by October 2014 you were aware of Raj Sandy being an alias that was being used in relation to the company?---Correct. Correct.

And you had agreed subsequently to your initial discussion about Roger Smith to the use of Raj Sandy?---We didn't have, we didn't have - no. No, we didn't have another discussion about it. This was just - - -

30 So how did Raj Sandy come to be used? How did you come to ask your wife to put that on the card?---Nima, it was, I don't recall if it was Nima or Tony but one of them asked me to use that name.

And you agreed to that as well?---I was following through, I was being consistent, yes. Why? Again, I, I had nothing to gain from it. So I don't know why.

40 Were you involved in the process of changing the name?---So, just, again, context. I was on the Sydney Light Rail project by then, working in the city. I didn't really speak to Tony at all. I did keep in touch with, with Nima but, you know, less frequently than previously. I received a call. I, I

believe it was from Nima saying Tony got a letter about some other TRN company complaining about the use of the name and he needed to change his name, can I make these changes. I may have spoken to Tony once about that as well but I, I don't recall exactly whether I had that conversation or not and I subsequently made these, the changes. I asked and sent it across. Well, I asked my wife to, to help and I made the changes and sent it across.

And was that the extent of your involvement in the name change?---Correct.

- 10 If we could have volume 16.1, page 12 brought up on the screen. This is a change of registration - well, change of name registration with ASIC dated 11 August 2014. Just to give some context, you said Tony had received a letter. Were you aware of ever seeing that letter?---I, I believe I saw it, yes.

Do you remember the context in which you saw it?---No, I don't recall.

If we can scroll to the next page in the same volume. This is a letter from Marsdens Solicitors in February 2015. So it seems to be in fact subsequent to the change of name but it does refer back to the earlier correspondence.

- 20 Is this the letter that you saw?---I can't recall if, if it is or isn't.

You will see in the third paragraph there the solicitors say - and I should note this is not a letter addressed to you, I'm not suggesting that it is. It's addressed to Susanne Po. Do you know who that is?---I believe that Susanne is Nima's - not Nima - Tony's wife but I've, I, I don't think I knew that at the time but, yeah.

- 30 You'll see there reference in the third paragraph to "Despite our letter of 24 November 2014 and subsequent correspondence, ASN Contractors are still operating the website TRN Contractors which uses the words 'TRN Contractors' in multiple places."---Yeah, okay.

Does that assist you in - - -?---I don't think I've seen that, no.

- - - recalling whether you've seen the letter or not?---No, no.

- 40 Can we have brought up volume 16, page 65? I'm sorry, volume 16.1, page 65. Now this you will see is a series of emails from a Joseph Felice to seemingly the Gmail address that you've indicated was yourself as well as Raj Sandy.---Yep. Yep.

And it's February 2015?---Yeah.

So it seems to relate to, and the bottom email in the chain refers to "attached correspondence that you just need to place on your letterhead and forward to Marsdens". Do you recall Marsdens was the firm of solicitors who'd sent the previous letter?---Yeah.

Is it still your evidence that you had no further involvement in the change of name?---I did not have, I've never used that
10 rajsandy@asncontractors.com.au email address.

But if you see the correspondence is also forwarded to your Gmail address?
---I can see that.

Do you recall receiving that at the time?---No, I don't recall it but I'm not saying it's not in my email address, but - - -

If you were not involved in any way in the change of name, is there any reason that it would have been forwarded or copied to you?---I know
20 Joseph. I know Joseph.

You know Joseph. Who's Mr Felice?---Felice, yeah.

Felice. Are you able to explain who he is?---He's a lawyer.

And what was your relationship with him?---He's a friend.

Had you passed on the correspondence?---No. I had, for something completely different, I had passed on Joseph's details to Nima.
30

When you say "something completely different" what was that?---Joseph, as, as a lawyer, does conveyancing and that type of work. And Nima was purchasing something or had, I don't know. He, he had something to do with a property acquisition or sale or, and I'd given Joseph, I, I'd given Joseph's details to, to Nima.

Might that be a convenient time?

THE COMMISSIONER: Yes.
40

MS DAVIDSON: I'm sorry, Chief Commissioner.

THE COMMISSIONER: Thank you. We'll continue with your evidence tomorrow, Mr Sanber.

MS DAVIDSON: Chief Commissioner, if an indication might be given to the witness in relation to the position tomorrow morning and commencing therefore at 2 o'clock - - -

THE COMMISSIONER: What time?

10

MS DAVIDSON: - - - tomorrow afternoon with this witness.

THE COMMISSIONER: Are you able to come back at 2 o'clock?---It's causing me a lot of, I, I, I know you said I don't need to object but we came in yesterday, came in first thing this morning - - -

We're actually trying to bring you forward. You were actually scheduled to give evidence later. We actually brought you forward because we were able to complete some other evidence sooner than was anticipated.---So is there a reason why I can't be first thing? I'm just asking. It's just availability. I'm happy to commence first thing. It will, it will help me.

20

Well, I understand there's a difficulty with counsel representatives. Are you able to come at 2 o'clock?---Can I just confer with Michael?

Yes, of course. Yes, tell me a time.---Can, can I just walk over?

Yeah. Step down. Whilst that's occurring, have there been any requests for cross-examination of Mr Sanber?

30

MS DAVIDSON: Not at this stage, Chief Commissioner.

MR BOWE: Commissioner, I wasn't quite sure exactly what you were saying before. If you were saying that there was some concern about counsel - - -

THE COMMISSIONER: Well, I understand that there's an availability of counsel issue for this witness. We can bring another witness forward, where that same problem doesn't arise.

40

MR BOWE: Yeah.

THE COMMISSIONER: So there will be other evidence at 10 o'clock tomorrow.

MR BOWE: So my issue tomorrow is that I've got a full hearing all day in the Downing Centre, but I do have my colleague, who's obtained consent to be here tomorrow and he can be here at 10 o'clock and be here for the full day and who has been watching - - -

10 THE COMMISSIONER: No, there was another witness we were going to do tomorrow at 10 o'clock, not Mr Sanber.

MR BOWE: Right. I've got you. Anyway, we will be available from 10 o'clock onwards - - -

THE COMMISSIONER: If he's available at 2 o'clock, that would convenience everyone.

MR BOWE: Okay. End of story. We are available.

20

THE COMMISSIONER: All right. Okay.

THE WITNESS: Can I ask, just from a time frame, is it expected to finish tomorrow or if I start at 2 o'clock - - -

THE COMMISSIONER: At this stage, we haven't been given any indication that anyone is seeking leave to cross-examine you. That may change. Do I anticipate we'll be able to finish Mr Sanber tomorrow?

30 MS DAVIDSON: I would hope so. I'm conscious that there is only a two-hour window. The alternative, Chief Commissioner, and subject of course to your convenience, would be that the witness who is to be commenced at 10 o'clock is going to go longer than that period of time, we could interpose that person to the whole of tomorrow and recommence and then finish with Mr Sanber at 10 o'clock on Thursday.

THE COMMISSIONER: Is that an option, Mr, does that convenience you?

40 MR BOWE: Yeah, Thursday I've got a problem as well. In fact I've got a problem Thursday, Friday, but - - -

THE COMMISSIONER: I see.

MR BOWE: But my colleague I don't think does. I think he's available Thursday.

THE COMMISSIONER: Well, it's up to you. You can come 2 o'clock tomorrow or we can do it on Thursday.

MR BOWE: Thank you, Commissioner.

10

THE COMMISSIONER: What would you prefer?

MR BOWE: Well, I'll leave that up to Mr Sanber.

THE COMMISSIONER: Mr Sanber, 2 o'clock tomorrow?---Yes, 2 o'clock tomorrow.

All right. We'll deal with it then.

20 MR BOWE: Thank you, Commissioner.

THE COMMISSIONER: We'll do our best to try and see if we can conclude tomorrow.---Please.

Adjourn.

THE WITNESS STOOD DOWN [4.05pm]

30

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